

(2001) 05 AHC CK 0059
In the Allahabad High Court
Case No : C.M.W.P. No. 17916 of 2001

Leelawanti and another

APPELLANT

Vs

Incharge District Judge, Kanpur Nagar and others

RESPONDENT

Date of Decision : 17-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16, 18
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 10(6)

Citation : (2001) 3 AWC 1774

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : W.H. Khan and J.H. Khan, for the Appellant; S.C., Chhotey Lal and A.N. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—Heard Sri W.H. Khan, learned counsel for the petitioners and Sri Chhotey Lal, learned counsel for respondent No.3.

2. The premises in suit is house No. 111-A/214, Ashok Nagar. Kanpur Nagar. It was declared vacant on 26.2.2001. That order of vacancy was challenged in this High Court in Writ Petition No. 8394 of 2001. The writ petition was dismissed on 26.4.2001 by order Annexure-3 of the petition with the following observations :

"It is made clear that inspite of the fact that the tenanted accommodation has fallen vacant, the petitioner shall be entitled to move an application for fresh allotment in view of the proviso (b) to Rule 10 (6) of the Rules framed under the Act and if the District Magistrate is satisfied that the tenanted building as well as the other building in occupation of Ashok Chhabara are occupied separately and that there is separate messing, he may re-allot the building under the tenancy of the petitioner and his son Prem Chhabara who have become Joint tenants after

the death of the original tenant late Radha Kishan Chhabara".

3. After the decision of the writ petition against the declaration of vacancy, the premises in dispute have been released in favour of the landlord-respondent No. 3 by order dated 2.5.2001, Annexure-2 to the petition. Against that order, the petitioner preferred a revision u/s 18 of U.P. Act No. XI of 1972 which has also been dismissed on 5.5.2001, Annexure-1 to the petition. Aggrieved by it, the petitioner has invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

4. Sri W.H. Khan, learned counsel for the petitioner has placed reliance on the above observation of the writ petition. However, it is of no avail to the petitioner. After the declaration of the vacancy, the question of release of the premises is to be considered first and in case the release application is rejected the question of allotment can be considered. In this case, the question of release was considered and the premises was released. Therefore, the stage for consideration of the question of allotment did not arise. Therefore, the petitioner cannot get any benefit of the observations made in the writ petition mentioned above.

5. It is next contended by Sri W.H. Khan that the respondent No. 2 has erred in releasing the accommodation. The petitioner is prospective allottee and has no right to contest the release. However, it is contended that he has placed certain materials on record and it was incumbent on the respondent No. 2 to consider the same. In support of the argument, learned counsel for the petitioner referred to the decision of Ram Kumar v. VIIth Addl. District Judge, Meerut, 1993 (1) ARC 309. In this case, it was held that the prospective allottee can neither file objections against release application nor can contest it. However, it was further observed that the facts necessary for showing that the need of the landlord is not bona fide, stated by the tenant can be taken into consideration for examining the bona fide need of the landlord. The other case referred to is Bisheshwar v. VIth Addl. District Judge, Varanasi 1994 (2) ARC 85. It was held by this Court that the District Magistrate can take evidence from any source for deciding release application, including from a prospective allottee. On the basis of this, it is contended that the learned prescribed authority should have considered the documents which were placed by the petitioners on record. The documents are the record of Nagarpalika showing the premises in possession of the petitioners which are paper Nos. 55 and 56 of this petition. That they show that landlord has no need of the disputed premises.

6. As against this, learned counsel for the respondent No. 3 has referred to number of cases in which it has been laid down that the prospective allottee cannot dispute the release application nor can challenge it by way of revision or writ petition. In the case of Swaroop Narain Srivastava Vs. IVth Addl. District Judge and Others, . It was observed that when application made by landlord for release of his vacant building as well as by former tenant for reallocation thereof, it was held that the landlord's application must be considered in preference to tenant's application. The other case referred to is Smt. Krishna Rani v. District

Judge. Dehradun, 1990 AWC 894, wherein it was observed that the prospective tenant's objection cannot be considered in an application for release. It was further observed that the prospective allottee has no locus standi to be heard. In Baboo Mohd. Yaqoob v. R.C.&E.O.. 1987 (2) ARC 84 it was held that the prospective allottee has no right to participate in the release proceedings.

7. Apart from this, in the case of Rent Control and Eviction Officer, Allahabad Vs. Dr. M.M. Laloraya and Others, , it was held by the Division Bench of this Court that the Rent Control and Eviction Officer has no Jurisdiction to enter into sufficiency of the needs of landlord. In Dr. Har Charan Singh v. 13th Addl. District Judge AIR 1983 SC 79 it was held that the Rent Control and Eviction Officer is not required to assess the sufficiency of the accommodation of the landlord. He can only consider whether the need of the landlord is bonajide or mala fide.

8. In view of the above decisions, the petitioners has no right to challenge the release order.

9. Apart from this, the Rent Control and Eviction Officer cannot examine the bona fide need of the landlord. He has held that the need is bona fide. Therefore, there is no reason to interfere in the order.

10. Lastly, it is contended by Sri W.H. Khan, learned counsel for the petitioners that the petitioners are in possession of the premises and it has been declared vacant, on that basis they are unauthorised occupants ; that they require some time to vacate the same. Therefore, the petitioners are allowed six months" time to vacate the premises in dispute and the dispossession of the petitioners from the premises in dispute shall remain stated till six months.

11. The petitioner is without merit and is hereby dismissed with above direction.