

(1999) 09 AHC CK 0088
In the Allahabad High Court
Case No : Writ Petition No. 4823 of 1988

Life Insurance Corporation of India, Lucknow	APPELLANT
Vs	
Additional District Magistrate (E), Rae Bareli and another	RESPONDENT

Date of Decision : 23-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(2)

Citation : (2000) 1 AWC 186

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Advocate : P.K. Khare and N.K. Twarei, for the Appellant;

Judgement

I.M. Quddusi, J.—This writ petition has been filed against the declaration of vacancy u/s 12 of U. P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) vide order dated 24.7.1985 against which objection was filed by the petitioner--L.I.C. to the effect that it is a sitting tenant in the premises in question which was rejected by the Rent Control and Eviction Officer (in short R.C.E.O.), vide his order dated 15.6.1985 and ordered to hear release application of the landlord. In the meantime, present writ petition was filed before this Court in which an interim order staying the operation of the order dated 15.6.1985 was passed on 21.6.1985.

2. I have heard learned counsel for the petitioner Sri P. K. Khare, learned standing counsel for respondent No. 1 and Sri Shafiq Mirza for respondent No. 2 who is the landlord and has given power of attorney to one Sri Prahalad Singh.

3. The L.I.C. was already a tenant of the premises in question from the year 1964 on a monthly rent of Rs. 110 per month through his attorney as the landlord resides at Bombay and he had appointed one Sri Prahalad Singh who is his relation. In the year 1980, an application for allotment was made in respect of the premises in question i.e.. Flat Nos. 4 and 5, Santosh Bhavan Kachari Road.

Rae Barelt on which a reports was sought for from the Rent Control Inspector by the R.C.E.O. The Rent Control Inspector had given his report on 11.12.1980, copy of which has been filed as Annexure- 1A to the writ petition. According to which, the Branch Manager of L.I.C. had given information in writing that due to excess work load, some portion of the office has been transferred to other place but the office is existing at the old place and there is no likelihood to voilate the same in near future. Again another application was moved on 17.6.1985 and report from the Rent Control Inspector was sought. The Rent Control Inspector by means of his report dated 18.7.1985 stated that one Raj Naratn Mehrotra, Branch Manager of the L.I.C. was living adjoining to the premises in question and on a query having been made to him, he informed that old records of the L.I.C. are kept inside the premises in question and the premises is not vacant. However, the Rent Control Inspector had indicated that the office was shifted to the 1st floor of the State Bank of India Building and when he was going to contact the landlord-Santosh Kumar, he found that a small plate was affixed outside the premises in question containing Atithi Grih, Jeevan Beema Nigam". Thereafter, a notice was published, a copy whereof was given to the petitioner and vacancy was declared vide order dated 24th July, 1986 and when the objections and written statements were filed, the same were rejected by the R.C.E.O. by his order dated 16.6.1988 holding that the vacancy was declared after affording opportunity of hearing to the parties.

4. The vacancy in the present case, has been declared under deeming clauses of Section 12 of the Act which is reproduced herein below :

12. Deemed vacancy of Building in certain cases.--(1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if :

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

(2) In the case of non-residential building, where a tenant carrying on business in the building admits a person who is not a member of his family as partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building."

5. In this writ petition, this question is to be considered whether against declaration of vacancy, the writ petition is maintainable or not?

6. The above controversy has been decided by the Apex Court in the case of Ganpat Roy and Others Vs. Additional District Magistrate and Others, , in which, it has been held that if the statute does not provide any efficacious relief for tenant for challenging the finding regarding occurrence of deemed vacancy, writ

petition under Articles 226 and 227 of the Constitution filed by the tenant would be maintainable. It is thus well-settled that the writ petition is maintainable against the declaration of vacancy.

7. Now, the order declaring vacancy as well as another order passed deciding the objections are to be considered here in the present writ petition. But before considering the same, it is to be noticed that the vacancy has been declared without giving any hearing to any party. However, the endorsement made in the order of declaration of vacancy shows that opportunity of post decisional hearing was granted as it was indicated in the endorsement that Santosh Kumar Singh, Brijesh Bahadur Singh, Advocate and Branch Manager, L.I.C. would show cause against the declaration of vacancy. When the cause was shown by the L.I.C. it was rejected by mentioning only that the objections have no force. No reason whatsoever has been given in either of the orders as to how the objections have no force and on what ground the vacancy has been declared.

8. There are two reports of the Rent Control Inspector. Reliance has been given on the second report in the order dated 15.6.1988 mentioning therein that on the basis of the report of Rent Control Inspector dated 19/20 July, 1985, vacancy was declared.

9. A perusal of the report of the Rent Control Inspector dated 22 July, 1985 shows that there was no vacancy as old records of L.I.C. are kept in the premises in question indicating therein that the premises in question was being used as "Guest House of the L.I.C. It is a thing of common knowledge that the L.I.C. maintains important records pertaining to the life insurance of the policy holders and creating disturbance by not allowing the L.I.C. to maintain its records, the public at large would be affected adversely and in this view of the matter, it cannot be said that if the old records are kept inside the premises in question, the premises is of no use and hence, it was liable to be declared vacant. The vacancy in the present case could not have been declared until the L.I.C. would have removed its records. The L.I.C. was a valid tenant and according to the report of the Rent Control Inspector, the landlord has also accepted that the L.I.C. was the tenant of the premises in question.

10. Learned counsel for the respondent has urged that in the matter of declaration of vacancy, the tenant cannot be heard. I do not agree with this as once the valid sitting tenant is there and the authority is going to declare the vacancy, even under the deeming clause (under Section 12 of the Act), the sitting tenant would be adversely affected because of declaration of the vacancy as the sitting tenant would be ceased to have any lease right/tenancy right over the premises in question. Hence, in case, the vacancy is declared without giving opportunity of hearing to the person going to be affected adversely by the order in case, vacancy is declared, it would be against the principle of . natural Justice. A property cannot be declared as vacant or deemed to be vacant unless it is specifically established by evidence on record that the circumstances stated in any one of the clauses (a) (b) and (c) have come into existence. The premises

can be deemed vacant in case sitting tenant or the landlord as the case may be has substantially removed its effects therefrom as contemplated in clause (a) of sub-section (1) of Section 12 of the Act. In this regard, this Court in the case of Surendra Kumar v. Smt. Kastoori Devi and others, 1979 All LJ 1227, has held that by the mere fact that the shop is locked and the tenant is unable to carry on business for some time for certain reasons, it does not entitle the authority concerned to declare vacancy. The same view has been taken in the case of Suresh Chandra Agarwal v. 1st Addl. District Judge and others. 1979 All LJ 694, which reads as under :

"When the furniture was found lying in the house after the house was sold no inference of removal of effects by transferee and further inference of occurrence of deemed vacancy on that basis could be drawn. Inference of deemed vacancy also could not be drawn merely because some of the members of the transferee's family were living in another city."

11. In view of what has been discussed above, the Rent Control and Eviction Officer, Rae Bareilly, has committed manifest error of law in declaring the vacancy in the premises in question.

12. In the result, the writ petition succeeds and is hereby allowed. The impugned Order dated 18th June, 1988 as contained in Annexure-5 to the writ petition is quashed and it is held that there was no vacancy at all in regard to the premises in question.

13. There will be no order as to costs.