
(2007) 11 AHC CK 0004
In the Allahabad High Court

Mahendra Singh Chaudhary

APPELLANT

Vs

Rent Control and Eviction Officer and Others

RESPONDENT

Date of Decision : 26-11-2007

Acts Referred:

Transfer of Property Act, 1882 — Section 105

Citation : (2008) 1 AWC 569

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. This writ petition has been filed by allottee, who has been dispossessed either immediately before or after filing of the writ petition. This writ petition was filed during summer vacation on 7.6.2006 and on 9.6.2006, it was directed to be put up as fresh on 4.7.2006. It is admitted to the petitioner that before 4.7.2006, he had been dispossessed.

3. Earlier also matter came up before me in the form of Writ Petition No. 9334 of 2004, which was allowed on 5.9.2005.

4. Property in dispute is a shop, which was allotted to the petitioner by R.C. & E.O., Mathura on 1.1.2003. In execution of the aforesaid allotment order, Gopal Prasad Agrawal-respondent No. 2 in this writ petition was dispossessed on 3/4.3.2004 and possession was delivered to the petitioner. According to the respondent No. 2, he is owner of the shop in dispute and was running a medical store in the said shop for a long time, when he was suddenly dispossessed without any prior notice. On the allotment application, Smt. Sashi Gupta-respondent No. 3 was shown to have given her consent for allotment in favour of the petitioner stating therein that she was the owner.

5. Thereafter, against allotment order, respondent No. 2 filed review petition

before R.C. & E.O. as well as revision, which was belated and accompanied by delay condonation application. District Judge, Mathura on 21.5.2003, rejected the delay condonation application and dismissed the revision (Misc. Case No. 171 of 2003) as time barred. Thereafter, review petition was also rejected by R.C. & E.O. on 28.6.2003 holding that allotment order had merged in the revisional court's order, hence no review was permissible. Against the said order also Civil Revision No. 4 of 2003 was filed by respondent No. 2, which was dismissed by District Judge, Mathura on 26.2.2004. The said orders were challenged through the earlier writ petition.

6. Petitioner allottee contended that initially respondent No. 2 was the owner and he executed a registered gift deed in favour of Smt. Sushila Gupta (since deceased and survived by Smt. Shashi Gupta-her adopted daughter.) However, Smt. Shashi Gupta in the earlier writ petition filed application and affidavit stating that she was not the owner but respondent No. 2 was the owner, who was running medical store. Smt. Shashi Gupta further stated that one Fateh Chandra Sharma by fraud and misrepresentation obtained her signatures on the allotment application filed by the petitioner. Through my judgment and order dated 5.9.2005, I allowed the earlier writ petition and set aside the judgment and order of the revisional court and directed the revisional court to hear the revisions on merit. Thereafter, Revisional Court/A.D.J., Court No. 2, Mathura heard and allowed R.C. Revision No. 8 of 2005 and set aside the allotment order dated 1.1.2003, against which the said revision was directed. The said order of the revisional court dated 24.5.2006 has been challenged through this writ petition.

7. Revisional court observed that according to the report of the R.C.I., at the time of inspection, shop was found closed and neighbours stated that the shop was not let out and it was in possession of the landlord and that R.C.I. could not contact the landlord.

8. Possession was delivered through police on 2.3.2004. At the time of delivery of possession through police force, son of respondent No. 2 was present on the shop and possession was taken from him. Revisional court held that inspection was made on 16.12.2003, till then there was no consent of Smt. Shashi Gupta, however R.C.I. in the report mentioned her Delhi address, which shows his (R.C.I.'s) collusion with the allottee. R.C.I. mentioned the Delhi address of Shashi Gupta and stated that she was the owner and it was not possible to inform her. In the allotment order, no rent was mentioned. By virtue of Section 16(9) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, it was utmost essential to mention the rent in the allotment order and direct the tenant to pay the same within a week. Moreover, according to the Section 105, T. P. Act, there cannot be any tenancy without rent, Smt. Shashi Gupta (or Shashi Prabha) filed affidavit before revisional court also to the effect that her consent was obtained by fraud played by one Fateh Chand Sharma). Smt. Shashi Prabha also engaged a counsel before the revisional court, who also

stated the same thing. Revisional court also observed that before inspection, no intimation was given either to the occupant Gopal Prasad respondent No. 2 or even to alleged owner Smt. Shashi Gupta.

9. In this writ petition also, respondents No. 2 and 3-Gopal Prasad and Smt. Shashi Gupta have filed short counter-affidavit.

10. I do not find least error in the order passed by the revisional court. By virtue of Rule 8(2) of the Rules framed under the Act, it is essential to give notice to the occupant also and as far as possible inspection should be made in the presence of occupant also. Even if the case taken up by the petitioner is accepted still allotment order was without jurisdiction as neither any notice before inspection had been given to respondent No. 2, who was admittedly occupant nor any notice was given to him before declaring vacancy. In the following authorities, it has been held that allotment order is vitiated if any of the three notices is not given, i.e., notice before inspection, before declaration of vacancy and notice before allotment.

1. Yogendra Tiwari Vs. District Judge, Gorakhpur and Others,

2. Ganpat Roy and Others Vs. Additional District Magistrate and Others,

Accordingly, there is no merit in this writ petition, hence it is dismissed.