
(2005) 02 AHC CK 0101

In the Allahabad High Court

Case No : C.M.W.P. No's. 50284 of 2002 and 33694 of 2003

Maifoos Ahmad

APPELLANT

Vs

Rent Control and Eviction Officer/A.C.M. IIIrd and Others

RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 AWC 897

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : R.N. Bhalla and J.P. Singh, for the Appellant; Rama Goyal, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—Both these writ petitions since arise out of the same set of facts between the same parties, therefore they are dealt with by this common judgment.

2. By means of Writ Petition No. 50284 of 2002 under Article 226 of the Constitution of India, the petitioner-tenant challenges the order passed by the Rent Control and Eviction Officer/A.C.M. IIIrd, Kanpur Nagar, dated 28th October, 2002, copy whereof is annexed as Annexure- VII to the writ petition, whereby the respondent No. 1 have declared the occupation of the petitioner-tenant in house No. 111A/19B, G. T. Road, Najirabad. Kanpur Nagar, to be or an unauthorised occupant and declared the vacancy in the aforesaid accommodation. The aforesaid vacancy was declared when the case was registered by the Rent Control and Eviction Officer on the information of one Surendra Singh and on the basis of the aforesaid information of Surendra Singh, the Rent Control Inspector inspected the accommodation in question on 27th September, 2000 and submitted its report. On the basis of the report submitted by the Rent Control Inspector, the Rent Control and Eviction Officer found that when the Rent Control Inspector inspected the accommodation in question Sri

Maifoos, the petitioner-tenant was present, who stated that he is the tenant since 1985 of the accommodation in question and is carrying on his business in the name and style of Mariyaters and Travels. Surendra Singh, the landlord of the accommodation who has let out the accommodation in question in January, 1985, has told the petitioner-tenant that the provisions of Rent Control Act are not applicable, therefore the accommodation in question has been let out without any allotment order. In fact there is no vacancy and the petitioner-tenant has no intention of vacating the shop in question. After filing of the objection by the petitioner, on 10th April, 2001, the matter was taken up by the Rent Control and Eviction Officer and he discussed the objections taken up by the petitioner-tenant and found that it is admitted that the shop in question was constructed in the year 1975 and was for the first time assessed with regard to the house tax by the resolution of the local body concerned dated 25th March, 1975. It is also found by the Rent Control and Eviction Officer that the shop is in the occupation of petitioner-tenant since 1985 but without any allotment order. The aforesaid objection was controverted by Surendra Singh, who is the owner and landlord of the accommodation in question and found that in fact it is not correct that Maifoos, the petitioner-tenant is occupying the shop in question since January, 1985, he therefore found that tenant Maifoos have occupied the accommodation in question after the accommodation in question has come within the purview of the U. P. Act No. 13 of 1972. The Rent Control and Eviction Officer recorded a finding with regard to the occupation of Maifoos, the alleged tenant of the accommodation in question that the accommodation in question has been occupied by Maifoos after the accommodation in question has come within the purview of U. P. Act No. 13 of 1972, hereinafter referred to as the Act". It is admitted fact that Maifoos, the tenant is occupying the aforesaid accommodation in question without any allotment order. In these circumstances, the Rent Control and Eviction Officer found that legally there is a vacancy in the accommodation in question and declared the occupation of Maifoos to be that of an unauthorised occupant.

3. Learned counsel appearing on behalf of the petitioner-tenant tries to demonstrate that the findings arrived at by the Rent Control and Eviction Officer suffer from the manifest error of law, but to me it appears that he could not demonstrate that the findings arrived at by the Rent Control and Eviction Officer with regard to the accommodation in question coming within the purview of the provisions of the Act" and also that the occupation of Maifoos, the petitioner-tenant is without any allotment Order can either be said to be perverse or suffer from the manifest error of law, so as to warrant any interference by this Court in exercise of power under Article 226 of the Constitution of India, particularly in view of the Full Bench decision in Nootan Kamar v. Additional District Judge 2003 (1) AWC 213 (SC) : 2003 (1) SCCD 71 : AIR 2002 SC 3456 that if the occupant is occupying the accommodation in question is covered by the provision of the Act, then his occupation is that of an unauthorised occupant and is liable to be evicted, like the petitioner-tenant and any contract to the contrary between the

landlord and the occupant would not bind the authorities under the provisions of the Act. In this view of the matter, I do not find this to be a fit case for interference by this Court in exercise of power under Article 226 of the Constitution of India and the writ petition is liable to be dismissed.

4. Now coming to the facts of Writ Petition No. 33694 of 2003, it is apparent that the present writ petition has been filed by petitioner-tenant Maifoos against the order of the District Judge, Kanpur Nagar, dated 17th February, 2003, passed in Rent Revision No. 17 of 2003, connected with Rent Revision No. 420/7 of 2002, which has been dismissed summarily at the admission stage on the ground that no revision is maintainable against the order declaring the vacancy or release of the accommodation in question. In view of the law laid down by the Apex Court in Ganpat Roy and Others Vs. Additional District Magistrate and Others, no revision lies against the order declaring the vacancy, particularly the fact that the writ petition filed by petitioner-tenant against the order declaring the vacancy has been dismissed by the Rent Control and Eviction Officer. The present writ petition, so far as the revision against the order declaring the vacancy is concerned, is liable to be dismissed. So far as the revision against the order of release of the accommodation in question in favour of the landlord is concerned, since the petitioner has been held to be an unauthorised occupant, in view of the Full Bench decision of this Court in Talib Hassan and Anr. v. 1st Additional District Judge, Nainital and Ors. 1986 ARC 1 an unauthorised occupant or the prospective allottee has no say in the matter of release of the accommodation in question once the vacancy is declared and the question of release is exclusively between the landlord and the authorities under the Act. In this view of the matter. I do not find error in the order passed by the revisional court in dismissing the revision summarily. This writ petition, therefore has no force and is liable to be dismissed.

5. In the result, both these writ petitions have no merits, therefore are dismissed. The interim order, if any, stands vacated. However, there will be no order as to costs.