

(2002) 04 AHC CK 0038
In the Allahabad High Court
Case No : C.M.W.P. No. 19605 of 2001

Mishri Lal Gupta and Another

APPELLANT

Vs

Rent Control and Eviction Officer, Aligarh and Another

RESPONDENT

Date of Decision : 09-04-2002

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(2)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 10(6)

Citation : (2002) 2 AWC 1558

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : M.K. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—Heard Sri M. K. Gupta, learned counsel for the petitioners.

2. The petitioners have filed this writ petition challenging the order dated 10.12.1999 passed by the Rent Control and Eviction Officer, Aligarh. exercising the power of the District Magistrate delegated by virtue of the provisions of U. P. Act No. 13 of 1972. The petitioners filed an application purporting to be an application under Rule 10 (6) of the Rules framed under the U. P. Act No. 13 of 1972 on the allegations that the petitioner No. 1 was carrying on the business in the shop in question which is closed for the last 3 years. He is now intending to take petitioner No. 2 as partner in the firm and this application has been moved for the permission to admit a person as a partner as provided under Rule 10 (6) of the Rules framed under the U. P. Act No. 13 of 1972.

3. Sub-rule (6) of Rule 10 of the Rules framed under the U. P. Act No. 13 of 1972 reads as under :

"(6) A person who is deemed to have ceased to occupy a building within the

meaning of Section 12 (1) (b), or who is evicted u/s 21 by virtue of being a tenant referred to in Explanation (1) of Section 21 (1) shall not be allotted that or any other residential building and a person who is deemed to have ceased to occupy a building within the meaning of Section 12 (2), shall not be allotted that or any other non-residential building for a period of two years from the date of such eviction or deemed cessation, as the case may be :

Provided that :

(a) if the District Magistrate is satisfied in case referred to in Section 12 (2) that the admission of partner or new partner is bona fide transaction and not a mere cover for subletting, he shall, if any application had been made in that behalf before the admission of such partner or new partner, allot the non-residential building in question afresh to the newly constituted or reconstituted firm ;

(b) in the case of a residential building under the tenancy of a person who shall be deemed by virtue of Section 12 (3) to have ceased to occupy it by reason of his or any member of his family building or otherwise acquiring in a vacant state or getting vacated another residential building in the same local area, whether that other building is built or acquired or got vacated before or after the date of commencement of the Act, if the District Magistrate is satisfied that the two buildings are occupied by the tenant and a member of his family separately, and that they are separate in messing, the District Magistrate may re-allot the residential building deemed to be vacant u/s 12 (4) to the said tenant or to the said member of his family, as the case may be ;

(c) in case of a residential building under the tenancy of a person who shall be deemed by virtue of the proviso to Section 12 (3) to have ceased to occupy it upon the expiration of a period of one year from the date of commencement of the Act by reason of his or any member of his family having built another residential building in the same local area, where that other building was let out at the commencement of the Act and the tenant or the member of his family, as the case may be, has been unsuccessful in spite of his best efforts in securing vacant possession thereof, the District Magistrate may postpone the making of allotment order In respect of the building deemed to be vacant u/s 12 (4)".

4. A perusal of Rule 10 (6) of the Rules will demonstrate that a partner or new partner cannot be admitted unless a prior permission to admit a person as a partner or a new partner has been granted by the District Magistrate in the present case. Proviso (a) of Sub-rule (6) of Rule 10 of the Rules provides that "if any application had been made in that behalf before the admission of such partner or new partner, the District Magistrate shall allot the non-residential building in question afresh to the newly constituted or reconstituted firm".

5. The Rent Control and Eviction Officer has recorded a categorical finding that even before permission has been granted by the District/ Magistrate/Rent Control and Eviction Officer, Sri Rajendra Kumar Gupta the proposed partner has already started business in the shop in question in the name and style of Shiva General

Stores, and, therefore, the finding has been recorded that the proposed partnership is not a bona fide transaction and held that since the tenant has entered into partnership of a person who is not his family member, there is deemed vacancy u/s 12 (2) of the U. P. Act No. 13 of 1972 and thus the application filed by the petitioner is rejected.

6. Learned counsel for the petitioners has tried to assail the finding recorded by the Rent Control and Eviction Officer on the ground that he has not considered the proposed partnership deed which was annexed along with the application under Rule 10 (6) of the Rules framed under the U. P. Act No. 13 of 1972. Needless to say that once the authority has come to the conclusion that the proposed partnership is not a bona fide transaction, it is not necessary for him to go clause by clause with the proposed partnership.

7. No other argument has been advanced by the learned counsel for the petitioner.

8. The writ petition lacks merit and it is accordingly dismissed. The interim order, if any, stands vacated.