
(2000) 09 AHC CK 0093

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40153 of 2000

Mohd. Iqbal

APPELLANT

Vs

XVIIth Addl. District Judge, Kanpur Nagar and Others

RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16, 16(5)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 8(2)

Citation : (2000) 09 AHC CK 0093

Hon'ble Judges : R.H.Zaidi, J

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—Heard learned Counsel for the petitioner and also perused the record.

Present petition arises out of proceedings under. Section 16 read with Section 12 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. XIII of 1972), for short the Act and is directed against the order dated 3152000 whereby the application filed by the petitioner for inspection of the building in question has been rejected by the Respondent No. 1.

2. It appears that the petitioner made an application for allotment of House No. 33/696A, Munshi Purwa, Kanpur which according to him was vacant as the same was vacated by Mohd. Anis who was the tenant in the said building. The Rent Control and Eviction Officer directed the Rent Control Inspector to make local inspection and submit his report. The Rent Control Inspector, thereafter inspected the building in question and submitted his report. On the basis of the said report the building in question was declared vacant by the judgment and order dated 331994 and by order dated 2131994 the above noted building was allotted to the petitioner and possession over the said building was also delivered to him to the extent it was in occupation of Mohd. Anis on 2931994. The

petitioner after taking possession over the building in question offered to pay the rent of the same to the landlady, the Respondent No. 3 but she refused to accept the same. Therefore, the rent was deposited under Section 30 of the Act and thereafter continued to deposit the rent in the Court. Respondent No. 3, challenging the validity of the order of declaration of vacancy and allotment filed an application under Section 16 (5) of the Act contending that the building in question was declared vacant without following the procedure prescribed under the Act and the Rules and that too without affording an opportunity of hearing to her and that as soon as she came to know about the declaration of vacancy and allotment, she filed an application for review. The application filed by the Respondent No. 3 was opposed by the petitioner. The Rent Control and Eviction Officer after going through the material on the record set aside the order of allotment dated 21 31994 holding that provisions of Rule 8 (2) of the Rules framed under the Act, were not complied with and the allotment orders were passed without affording an opportunity of hearing to the landlady, by the judgment and order dated 2171998. Challenging the validity of the said order the petitioner filed a revision under Section 18 of the Act which was registered as Rent Revision No. 42 of 1998. The said revision was dismissed on 2141999. The Respondent No. 3 thereafter filed an application under Section 16 (I)(b) of the Act. The release application filed by the Respondent No. 3 was ultimately allowed by judgment and order dated 1861999. The petitioner, thereafter filed an application under Section 16 (5) for recalling the order dated 1861999. According to him the order of release was passed behind his back and without affording an opportunity of hearing to him. According to the petitioner the release application was based on false facts. The Rent Control and Eviction Officer after hearing the parties dismissed the application filed by the petitioner under Section 16 (5) of the Act by his order dated 22111999. The validity of the said order was challenged by the petitioner by filing a revision under Section 18 of the Act before the Court below. In the said revision, petitioner filed an application stating therein that the order of release was obtained by suppression of material facts. The same was therefore liable to be set aside. She also applied for local inspection of the building in possession of the Respondent No. 3 and also applied for appointment of an Advocate Commissioner to make local inspection of the building in possession and occupation of the Respondent No. 3. The said application was opposed by the Respondent No. 3. The Revisional Court after hearing the parties dismissed the application by order dated 2952000. Hence the present petition.

3. Learned Counsel appearing for the petitioner vehemently urged that the release order was obtained by the Respondent No. 3 by suppressing the material facts therefore, it was necessary for the Court below to issue a commission to inspect the building in possession of the said respondent. The Court below acted illegally in rejecting the said application.

4. I have considered the submissions made by learned Counsel for the petitioner.

5. The Revisional Court in the impugned order observed that in the revision" only the validity of the impugned order is to be seen. For the said purpose, it is not necessary to inspect the said building and that there was no justification for appointment of an Advocate Commissioner inasmuch as inspection report of the building in question is already on the record. I do not find any illegality in the impugned order. In my opinion petitioner has got no right to intervene in the proceedings. Admittedly the order of allotment passed in his favour has already been cancelled. At present his status is that of a prospective allottee. It is well settled in law that the matter of release is between the District Magistrate and the landlord. The prospective allottee has got no right to intervene in the proceedings for release of the building. A reference in this regard may be made to a decision in Talib Hasan and another v. 1st Additional District Judge, Nainital and others. The said decision was also approved by the apex Court in.....

6. In view of the aforesaid decision no case for interference under Article 226 of the Constitution of India is made out.

The writ petition fails and is hereby dismissed.

A copy of this order may be issued to learned Counsel for the petitioner within four days on payment of usual charges.