

(2004) 10 AHC CK 0156

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 45679 of 1999

Munna Lal Agarwal

APPELLANT

Vs

Rent Control and Eviction Officer/City Magistrate and Others

RESPONDENT

Date of Decision : 27-10-2004

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16, 2(2), 20(2), 21

Citation : (2005) 1 ARC 144 : (2005) 2 AWC 1647

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

Bench : Single Bench

Advocate : Pramod Jain, for the Appellant; Yogesh Agarwal and Shamim Ahmad, S.C., for the Respondent

Final Decision : Allowed

Judgement

S.U. Khan, J.—This writ petition is directed against the Composite order dated 21.10.1999 Passed by R.C. and E.O./City Magistrate, Mathura in Cases No. 130, 130A 130 B all of 1999 Mool Kishore Goswami v. Munna Lal. Through the said order passed u/s 12/16 of U.P. Rent Control Act, U.P.R.C. Act ip short (U.P. Act No. 13 of 1972) the three shops in dispute have been declared vacant on the ground that they were let out by the landlord/respondent No. 2 M.K. Goswami to the petitioner tenant without allotment order in 1984-85. Through the said order the shops have also been released in favour of the respondent. Proceeding were initiated on the applications of landlord filed on 1,10.1991 (Annexure -V). Earlier also vacancy was declared of the shops in dispute on 23.11.1994 against which a writ petition numbered as Writ Petition No. 39088 of 1994 was filed in this Court. In the said writ petition through interim stay order only dispossession of the petitioner tenant was stayed and further proceedings in consequence of vacancy declaration order were not stayed. The shops were therefore, subsequently released in favour of the landlord respondent on 29.2.1996. Revision filed against the said order was also dismissed hence writ petition was filed in this Court being Writ Petition No. 27416 of 1997. Both the writ petitions were dismissed on

29.5.1998. Thereafter SLP was filed before the Supreme Court being SLP (C) No. 10448 of 1998 which was converted into Civil Appeal No. 4209 of 1998. The appeal was disposed of on 24.8.1998 with the observation that "No proper attempt appears to have been made to determine the age of the shop building in order to decide the whether the provisions of U.P.R.C. Act are applicable."

2. Consequently the matter was remanded by Supreme Court to R.C. and E.O. for decision on question of applicability of the Rent Act after permitting both the side to lead proper evidence in that connection. In pursuance of the said order of the remand passed by Supreme Court the impugned order dated 21.10.1999 has been passed by R.C. and E.O.

3. Explanation 1 to Section 2 (2) of U.P.R.C. Act provides formula for determination the date/age of construction. Relevant portion of the Explanation is quoted below:-

(a) the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of building subject to assessment, the date on which the first assessment thereof comes into effect, and where the said dates are different, the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually "occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construction) for the first time:"

In view of three Judges Supreme Court Authority reported in Bishan Chand Vs. Vth Additional District Judge, Bulandshahr (Uttar Pradesh) and Another, as followed recently in Saleem Vs. District Judge, Muzaffarnagar and Others, most important evidence to determine the date of construction is its recording in the municipal records or first assessment of house tax over the building in dispute, Annexures 10, 11, 12, 13 and 14 on Pages 56 to 60 of the paper book are extracts of house tax assessment by the municipality in question. According to the learned Counsellor the landlord respondent only Annexure 10 on Page 56 which is for the period from 1943 to 1952 relates to the accommodation in dispute. While the other assessments Annexures 11 to 14 do not relate to the building in dispute. According to the learned Counsel for the tenant petitioner all the assessments relate to building in dispute. In Annexure 11 it is mentioned that temple is in good condition however, remaining portion has become Khandhar. In Annexure 12 property is mentioned as temple in ruinous condition (khandhar halat mein). Annexure 12 is for the period from 1972 to 1986. Annexure 13, which is for the period from 1986 to 1993 the property is mentioned as temple in ruinous condition/ 4 newly constructed shops/one room in second storey and thereafter shop on platform having tin shed and thereafter motor garage. In Annexure 14, which is for the period from 1993 to (no date or year given) property is mentioned as temple newly constructed after demolition. Thereafter it is mentioned that the temple is in ruinous condition and these

words are surrounded by lines. Thereafter four shops newly constructed thereafter one room on second story thereafter three rooms, store, kitchen, one latrine and bath. Thereafter shop on platform with tin shed demolished and three shops, one store, stairs and gallery. In Annexure 14 for the first time the name of petitioner Munna Lai is mentioned as occupant of shop Nos. 1, 2 and 5. Against the property which was mentioned as shop on platform demolished three shops, one store, stairs case in gallery. In the fifth column of occupation apart from Munna Lal's name the name of Bhikkhi Lal, Ratan Singh and Vijai are also mentioned and all are shown to be paying Rs. 50/- as rent. The rent of Munna Lal was shown as Rs. 50+Rs. 300=Rs. 350/-

4. In the assessment record from 1.4.1986 to 31.3.1993 (which is anchor sheet of tenants argument) it is shown that initially the entries were same as in the record dated 1.4.1985 and the entries were changed on the basis of order of some authority dated 9.12.1992. It appears that the fact of construction of new shops and the name of the tenant M.L. Agarwal in the column of occupier was added on the basis of the order dated 9.12.1992. In the impugned order of R.C. and E.O. it is mentioned that Sri M.L. Agarwal had himself filed application for correction of municipal board record pertaining to assessment of house tax over the property in dispute. Proceeding for release had been initiated by the landlord on 1.10.1991. It is clear that in order to get benefit in the release proceedings giving rise to the instant writ petition, tenant after the initiation of the proceedings gave application before the competent authority under U.P. Municipalities Act for correction of house tax records. An evidence coming into existence during pendency of proceedings has got little probative value as it carries with it ample possibility of manipulation. Even otherwise date of construction of a building for the purposes of the U.P.R.C. Act has to be determined on the date on which proceedings are initiated and not on any subsequent date. On 1.10.1991 when proceedings were initiated there was no house tax assessment of the allegedly new shops.

5. Apart from house tax assessment tenant did not bring on record any evidence of new construction. U.P.R.C. Act is presumed to be applicable to every building unless it is proved that the building is covered by any of the exemptions provided under U.P.R.C. Act. It is always easier for the landlord to eject the tenant if U.P.R.C. Act is not applicable. If the Act does not apply then it is highly improbable for the landlord to assert that it applies to the building in dispute. Tenant himself took benefit of the Act by depositing the rent u/s 30 thereof admitting whereby that the Act applied to the building in dispute. The tenant cannot contract himself out of R.C. Act but there is no bar in treating the Act to be applicable by the tenant even if does not apply. Deposit of rent u/s 30 of the Act estoppes the tenant from asserting that Act does not apply (vide 2002 (2) ARC 702 Satya Narain v. R.C. and E.O..

6. In view of the above it is quite clear that when release application was filed U.P.R.C. Act was applicable to the building in dispute.

7. However, the matter does not end here. The landlord himself let out the shops in dispute to the tenant. Earlier the view of this Court was that agreement of letting without allotment order is void and not binding even in between landlord and tenant vide Nootan Kumar v. A.D.J. 1993 (2) ARC 204 (F.B.): 1994 ALJ 999 (F.B.). However the said authority has been over ruled by the Supreme Court in Nutan Kumar and Others Vs. IInd Additional District Judge and Others, . The Supreme Court has held that such an agreement is binding in between landlord and tenant but not upon Rent Control and Eviction Officer. A learned Single Judge in the case of Jagdish v. D.J. 2002 (1) ARC 327, held that if landlord had let out the building without allotment then he could not apply for release u/s 16 of the Act. The said case was decided before the Judgment of Supreme Court over ruling the Full Bench authority of Nootan Kumar. Another learned Single Judge has referred the said question decided in the case of Jagdish to a larger Bench. Referring order is reported in Ajai Pal Sing v. D.J. 2004 (1) ARC 362.

8. In my opinion during the currency of Full Bench judgment of the Nootan Kumar landlord could be permitted to file release application u/s 16 of the Act on the ground that even though he himself let out the building to the tenant still as it was done without allotment order, hence legally building was vacant. The reason is that in view of the Full Bench landlord had been left with no other option. He could not file release application u/s 21 of the Act where need of the landlord might be contested by tenant and tenant could asserts his hardship. By virtue of the Full Bench judgment even suit on the grounds of default etc. as mentioned u/s 20 (2) of the Act could not be filed if the landlord had let out the building after July 1976 without allotment order,

9. However, reversal of the Full Bench judgment by the Supreme Court has changed the entire scenario. Now the agreement is binding in between landlord and tenant and landlord can file suit for eviction on the grounds mentioned u/s 20 (2) of the Act and also release application u/s 21 of the Act on the ground of bonafide need. I am, therefore, of the opinion that if landlord lets out building on which U.P.R.C. Act is applicable without allotment then he himself can not file release application on the ground of deemed vacancy u/s 12/16 of the Act. In release proceedings u/s 16 of the Act tenant/unauthorized occupant can not participate and he can not assert that need of the landlord is not bonafide. As the agreement of letting is binding in between landlord and tenant hence landlord is fully entitled to file release application u/s 21 of the Act.

10. Accordingly order passed by R.C. and E.O. declaring vacancy and allotting the shops in favour of the landlord is erroneous in law and liable to be set aside.

11. Writ petition is, therefore, allowed. Order dated 21.10.1999 passed by R.C. and E.O. is quashed.

12. It has been held by me in Khurshida v. A.D.J. 2004 (2) ARC 64, that in rent control matter while allowing the writ petition of tenant rent can be enhanced. The property in dispute consists of three shops, accordingly it is directed that

w.e.f. October 2004 onwards tenant petitioner shall pay rent to the landlord respondent at the rate of Rs. 1,200/- per month.