

(2011) 10 UK CK 0032

In the Uttarakhand High Court

Case No : Review Application No. 642 of 2011 in Writ Petition No. 957 (M/S) of 2007

Naveen Chandra Joshi

APPELLANT

Vs

Rent Control and Eviction Officer/ ADJ Nainital

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Rent Control Act, 1972 — Section 11, 12, 12(1), 13, 15(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 8, 9(3)

Citation : (2011) 10 UK CK 0032

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon''ble B.S. Verma, J.—Heard Mr. Sharad Sharma, Senior Advocate, assisted by Mr. Kuleep Singh Rawal, Advocate for petitioner and Mr. M.S. Tyagi, Advocate for respondent on review applications.

2. Both these review applications have been filed to review the judgment and order dated 12-8-2011, passed by this Court in Writ Petition Nos. 957(M/S) of 2011 and 929(M/S) of 2011.

3. On behalf of respondents objection has been filed against the review applications.

4. At the outset it is pertinent to mention here that it has been the specific case of respondents that respondents Girish Chandra Joshi and his brother late Mohan Chandra Joshi were owner of shop in question. The shop was given to Chait Ram Chaudhary about 35 years back and Sri Chait Ram was running the restaurant in the disputed shop in the name and style of M/s Midlake Restaurant. On 13.5.2000 Chait Ram died and after his death he was survived by two daughters. These two daughters removed all the effects from the shop and handed over the shop to the landlord on 25-8-2000. The vacancy order was passed by the

Prescribed Authority on 22-3-1993, relying upon the report submitted by Senior Inspector, Rent Control dated 5-8-1992. In its reported the Senior Inspector had reported that the shop in question is closed for last 4-5 years. However the shop in question is in the possession of Sri Chaudhary. In the vacancy order passed by learned S.D.M. dated 22.3.1993 this fact has also been mentioned the shop in question is not being taken for any use for the last 4-5 years and the shop is closed and Sri Chaudhary is in possession of the shop. Therefore it is quite clear that at the time of passing the vacancy order the shop was not vacant and it was in the possession of Mr. Chaudhary, although Mr. Chaudhary was not running the restaurant and merely by not running a restaurant on the shop in dispute cannot be deemed that the shop was vacant. Mr. Chaudhary died on 13-5-2000 and thereafter the shop in question was got vacant by his daughters after removing the effects of late Sri Chait Ram Chaudhary, kept inside the shop. Therefore, it is clear that the vacancy order dated 22-3-1993 was passed against the material on record.

5. Learned Senior Advocate has submitted that this court has not considered his all the pleas and discuss all the case laws cited on his behalf in the judgment, hence the judgment is liable to be reviewed and his all the pleas taken in the petition should be considered. He has placed reliance on the judgment of Narinder Singh Vs. State of Haryana and Others, .

6. In the above cited judgment the Hon''ble Apex Court has observed that where various stands taken by writ petitioner, the High Court cannot restrict consideration to only one of them without even referring to the other pleas and if the High Court considers the other pleas to be devoid of any substance it should indicate the same in its order.

7. The above submission has no substance and the preposition of law laid down by Hon''ble Apex Court is not applicable to the facts of instant case. This court has not restricted its consideration to only one of the pleas taken in the writ petition. All the pleas, and the relevant judgments cited on behalf of petitioner, have been considered in the judgment.

8. In the review applications the main ground taken for reviewing the judgment and order dated 12.8.2011 passed by this court taken is that the finding recorded with regards to the deemed vacancy is bad for the reason that on account of creation of a sub-tenancy it will fall within the ambit of sub-section (b) of sub-section (1) of Section, 12 hence it would be a deemed vacancy and intimation was mandatory.

9. The learned Senior Advocate has re-argued the whole case, which is not permissible under the law. He has cited the following case laws before me at the time of hearing of review applications in support of his contentions:

(1) Lachhman Prasad Richaria v. IV Additional District Judge, Hamirpur and others, reported in 1990 (1) A.R.C. 497.

(2) M/s. Sunder Das Daulat Ram and Sons and another v. District Magistrate, Bareilly and others reported in 1999 (1) A.R.C. 24.

(3) Vishwanath v. IVth Addl. District Judge, Etawah and others, reported in 1984(1) A.R.C. 459.

(4) Ram Naresh Tripathi v. IInd Addl. Civil Judge, Kanpur and others, reported in 1980 A.R.C. 563.

(5) Dilip Chopra v. IIIrd Addl. District Judge, Allahabad and others, reported in 1980 A.R.C. 591.

(6) Jagdish Kumar v. District Judge, Badaun and others, reported in 1998(1) A.R.C. 305.

10. I have gone through above cited cases. In the case of Lachhman Prasad Richaria v. IV Additional District Judge, Hamirpur and others, reported in 1990 (1) A.R.C. 497, it has been held that person in possession without an order of allotment is unauthorized occupant in view of Section 11 and 13 and such person is neither a licensee nor a tenant.

11. In the case of M/s. Sunder Das Daulat Ram and Sons and another v. District Magistrate, Bareilly and others reported in 1999 (1) A.R.C. 24, it has been held that a person dispossessed taking help of Manager of Cinema, his position was merely of Manager and he had no authority to handover possession of Cinema building and its materials, in such situation, lessee or tenant is entitled restoration of possession and validity of subsequent lease is left open as it was subject matter of suit and has to be decided in suit itself.

12. In the another case of Vishwanath v. IVth Addl. District Judge, Etawah and others, reported in 1984 (1) A.R.C. 459 it has been held that Rule 8 of the U.P. Urban (Regulation of Letting, Rent and Eviction) Rules 1972, requires that notice is to be served on landlord and order passed in the proceedings cannot be set aside on the ground of non-compliance of Rule-8. It has further been held that order passed in allotment proceeding after remand cannot be set aside on the ground that notice under Rule 8 was notice issued. The purpose of intimating the landlord is that the premises may not be declared vacant without knowledge to him, so that in case the landlord desires, he or she may apply for release.

13. In the case of Ram Naresh Tripathi v. IInd Addl. Civil Judge, Kanpur and others, reported in 1980 A.R.C. 563, it has been propounded that death of landlord during pendency of release proceedings, and the legal heirs not substituted, proceedings not to abate in view of Section 34 (4).

14. In the case of Dilip Chopra V. IIIrd Addl. District Judge, Allahabad and others, reported in 1980 A.R.C. 591, it has been held that if landlord prior to notification of vacancy not given, landlord moved objection in allotment proceedings and was heard, thus even if no notice was issued before declaring vacancy, landlord's grievance cannot stand.

15. In the last cited case of Jagdish Kumar v. District Judge, Badaun and others, reported in 1998 (1) A.R.C. 305, the matter before the Court was whether order passed in transfer application neither appealable nor revisable can be subjected to test under supervisory jurisdiction of the High Court and it was clarified that second application is not maintainable.

16. As has been held by this Court that the vacancy order dated 22.3.1993 was passed by the Prescribed Authority based on the report of Senior Inspector, who had specifically mentioned therein that the shop was in the tenancy of Chait Ram and the shop was locked at the time of passing the vacancy order and this fact has also been mentioned by the Prescribed Authority in its vacancy order that the shop in question is in possession of Chait Ram although the shop was locked and closed for the last 4-5 years; after the death of Chait Ram on 13-5-2000, his daughters, the legal heirs had given possession of shop to the landlords after removing the effects of tenant Chait Ram; the notices were not served upon the landlords either at the time of passing the vacancy order or during allotment proceedings, therefore, the above cited cases are of no help to the cause of review petitioner.

17. Besides the above cited judgments, learned Senior Advocate has also cited the following cases:

(1) Laxmi Devi (Smt.) v. Rent Control and Eviction Officer, Kanpur Nagar and others, reported in 2000 (2) All RC 563.

(2) Girija Shankar and another and Anand Kumar Agnihotri and another v. Hirday Ranjan Chakraborty reported in 1988 (2) All RC 501.

(3) B.C. Jain and another v. IInd Addl. District Judge, Allahabad and others reported in 1979 All RC 149.

(4) Brij Mohan Sharma and another v. District Judge, Pauri Garhwal and others, reported in 1979 All RC 308.

(5) Sukhdei v. III Addl. District Judge, Gorakhpur and others, reported in 1980 All RC 222.

(6) Nand Kishore v. Additional District Judge and others, reported in 1979 All RC 497.

(7) (Smt.) Ratna Prasad v. Addl. District Judge 1978 (U.P.) R.C.C. 240. Mangal Singh vs. IVth Additional District Judge, Varanasi and others, reported in 1998(2) A.R.C. 305.

(8) Mangal Singh vs. IVth Additional District Judge, Varanasi and others, reported in 1998 (2) A.R.C. 305.

18. I have gone through the above cited rulings. In the case of Laxmi Devi (Smt.) v. Rent Control and Eviction Officer, Kanpur Nagar and others, reported in 2000 (2) All RC 563, it has been held that the tenant acquired residential

building in the same city and the house of sub let to a person not a family member the said house was deemed to be vacant. In the case at hand there was case of subletting the shop by the tenant in favour of another person.

19. In the case noted above at serial No. 2 Girija Shankar and another and Anand Kumar Agnihotri and another v. Hirday Ranjan Chakraborty reported in 1988 (2) All RC 501, it has been held that the tenant leaving the premises and the person occupying premises without consent of landlord, not a member of tenant's family, deemed vacancy occurs, even if occupation by such person was within knowledge of landlord. The facts of the cited case are not applicable to the facts of case at hand. After the death of tenant Sri Chait Ram the shop was let out by landlord to another person and he has been evicted by police later on and this court has already observed that the lease deed created in favour of Prashan Lal was illegal.

20. In the case noted at serial No. 3, B.C. Jain and another v. IInd Addl. District Judge, Allahabad and others reported in 1979 All RC 149, the matter before the court was regarding renewal of allotment application as well as correcting the wrong number of house mentioned in the earlier report of the Inspector.

21. In the case mentioned at serial No. 4, Brij Mohan Sharma and another v. District Judge, Pauri Garhwal and others, reported in 1979 All RC 308, the dispute was relating to non-compliance of sub-rule (3) of Rule 9 of the Rules and fixation of rent and it was held that the fixation of rent was tentative and is subject fixation of rent u/s 9 of the Act. As the fixation of presumptive rent is not conclusive and, since the petitioner can file an application U/S 9 of the Said Act for fixation of rent, the ground was not worthy of acceptance.

22. In the case mentioned at serial No. 5, Sukhdei v. III Addl. District Judge, Gorakhpur and others, reported in 1980 All RC 222, it has been held that the vacancy order u/s 12 (1)(b) was declared. Notice to tenant in occupation was issued at his address and notice returned unserved bearing an endorsement that he was not found at such address. Allotment order passed ex parte, it was held that since notice was issued at the address given by tenant in occupation, he cannot complain non-service of notice. The facts of the above cited case are different. In the case at hand the notice was sent to landlord which was not served upon him and he has left his address and was residing at Kanpur, but the notice was affixed at the house where he was not residing.

23. In the case of Nand Kishore v. Additional District Judge and others, reported in 1979 All RC 497, it has been held that in allotment of accommodation service of notice is a pure question of fact. In the case at hand there was also question of service upon the landlords, before the revisional court and the revisional court has dealt with and question of service of notice of notice in the proceeding of vacancy order as well as allotment proceeding was material as the vacancy order was passed when the shop in question was in possession of earlier tenant Chait Ram and the shop was not vacant and the allotment order was passed based on

illegal order of vacancy of the shop.

24. In the case noted at serial No. 7, (Smt.) Ratna Prasad v. Addl. District Judge 1978 (U.P.) R.C.C. 240, it has been held that tenancy rights accrue only after allotment.

25. In the last case noted at serial No. 8, Mangal Singh vs. IVth Additional District Judge, Varanasi and others, reported in 1998 (2) A.R.C. 305, the matter related to substitution of legal representative and it was held that it is not necessary in allotment proceedings and revision arising therefrom. In the case at hand it is the specific case of landlords that they did not participate in the proceeding of vacancy as well as in the allotment of the shop and at the time of passing vacancy order the shop in question was in occupation of Chait Ram tenant. Further in the above cited case the revision was pending before the court and question was whether the proceeding in revision on the death of opposite party during the pendency of revision has abated as no application for substituting the legal representatives of opposite party was moved.

26. Therefore, in view of above, the aforesaid rulings pressed into service by learned Senior Advocate are not applicable in the case at hand.

27. It is also to be noted here that this court in the impugned judgment in the concluding paragraph has made it clear that this fact is not disputed that the landlord did not inform the fact that the possession surrendered to the landlord by the legal heirs of late Sri Chait Ram, whereas it was obligatory on the part of the landlord to inform the vacancy of premises in question to give intimation in view of Section 15(1) of the Act, since the Rent Act No. 13 of 1972 was applicable on premises in question, the landlord had no right to give such building on rent. Therefore, this court has issued direction that if the provision of the Act are applicable on the building the landlord also has a right to move release application after declaration of vacancy and if the need of landlord was not found genuine, the R.C.E.O. may allot the premises to any other person in accordance with the provision of the Act.

28. Any how one thing is clear that on the date of passing the vacancy order in respect of shop in question, the shop was not vacant and it was in the possession of tenant Sri Chait Ram, who was tenant in the shop before a long period, who died on 13-5-2000 and thereafter his daughters had handed over the possession of the shop to the landlord. The vacancy order was therefore passed against the provision of law.

29. The second ground taken in the review applications is that after filing Vakalatnama through a counsel the landlord had participated in the proceedings of vacancy and had signed the order sheet on 3.9.1992 and signatures made in the order sheet by the landlord on 3-9-1992 corresponds with the signature made on Vakalatnama and with the signature made on the release application filed by the landlord. Stress has been given on the photocopy of order sheet dated 3-9-1992 filed as Annexure S.A. -3 filed with supplementary affidavit.

30. Perusal of above order sheet it shows that the order sheet has been recorded on 3-9-1992 fixing next date of 17-9-1992 and at the corner of this order sheet short initial of M.C. Joshi has been made noting the date "19/9". However, 19/9/1992 date was not fixed in the case and the date fixed was 17/9/1992, then how the landlord has noting the date 19/9/92. The petitioner also did not file the order sheet which may indicate that the date fixed in the case was 19/9/92. The order sheet dated 17-9-92, the next date fixed in the case vide order date 3-9-92, has also not been filed. Therefore it cannot said that the landlord had actually participated in the vacancy proceeding and the order sheet was signed by him on 3-9-92. This document Annexure S.A. -3 cannot be said to be a genuine document. This court has dealt this issue that the landlord had no knowledge of vacancy proceeding in the judgment and arrived at the conclusion that the Vakalatnama C.A.-3 does not support the contention of petitioner that the landlord/respondent had engaged any counsel on their behalf in the case. The revisional court has also dealt with this issue in its judgment in detail and it cannot be said that the issue of service of summons was not discussed.

31. The next ground taken in the review applications is that because the landlord had the knowledge of the proceedings of declaration of vacancy as he had appeared and filed an application on 4.11.1992 giving no objection to the vacancy, this application was signed by counsel who was engaged by filing a Vakalatnama, endorsement of Vakalatnama is not denied, hence the knowledge of the proceedings of vacancy would be deemed to be there with the landlord. The revisional court has already recorded finding that the landlord had never engaged any counsel and had filed the application 4.11.1992 given no objection to the vacancy. The Vakalatnama C.A.-3 was also not found to be filed on behalf of the landlord and the finding has been affirmed by this court.

32. The another ground taken in the review applications is that regarding the death of Mr. M.C. Joshi was also argued in the light of the provisions contained under sub section (4) of Section 34 which provides for substitution which is confined only to the proceeding "for determination of standard rent and for eviction" and as the proceedings at hand were not under the two aspects no substitution was required to be made.

33. The above ground taken by the learned Senior Advocate has no relevance. Sub section (4) of Section 34 of the Act says that where any to any proceeding for the determination of standard rent of or for eviction from a building dies during the pendency of the proceeding, such proceeding may be continued after brining on the record- (a) in the case of the landlord or tenant, his heirs or legal representatives; (b) in the case of unauthorized occupant, any person claiming under him found in occupation of the building. Therefore on the death of one of the landlord, the proceeding could be continued only after his legal representatives are brought on record which has not been done in the case in hand and the legal heirs of the deceased landlord were not substituted as the deceased landlord had his separate share in the disputed premises.

34. The next ground taken is that admittedly on 29-8-2000 a rent deed was executed by the landlord in favour of one of the prospective allottee for an indefinite period which was unregistered and executed at Baireilly which is outside the territorial domain of Uttarakhand, no tenancy right would have been created by such a rent deed in favour of Prashan Lal Sah and the effect of the rent deed dated 29-8-2000 would be that the landlord had no need, there was need of landlord is further fortified from the fact that admittedly there was no release filed by landlord u/s 16(1)(a) of the Act, this mode of creation of tenancy was malicious to overcome the allotment proceedings and its impact in the entire process has not been considered.

35. As stated above, this court has given specific finding that the vacancy order dated 22-3-1993 was passed without material on record, as the shop in question was not vacant at that time and it was in possession of tenant Chait Ram Chaudhary, and it was got vacated after the death of Chait Ram on 29-8-2000, and the tenancy in favour of Prashan Lal Sah was certainly illegal, however, due to the reason that the vacancy order dated 22.3.1993 was also illegal in itself and proceedings based on such an illegal order could be sustained in the eyes of law, that was the reason that this court has observed in the judgment that it was obligatory on the part of landlord to inform the vacancy of premises in question to give intimation in view of Section 15(1) of the Act, the landlord also has a right to move release application after declaration of vacancy and if need of landlord is not found genuine, the R.C.E.O. may allot the premises to any other persons in accordance with the provision of the Act. But on the basis of illegal vacancy order dated 22.3.1993 passed by the Prescribed Authority, the proceedings of vacancy as well as allotment of premises in favour of petitioner cannot justify the allotment in favour of petitioner, as the allotment order was passed after drawing proceeding on the vacancy order dated 22.3.1993.

36. Learned Senior Advocate also submitted that the orders dated 29-7-2006 and 21-8-2006 were sent notices by the Prescribed Authority to landlords Mohan Chandra Joshi and Girish Chandra Joshi and they were not vacancy orders and this court has wrongly treated these notices as subsequent vacancy orders passed by the Prescribed Authority.

37. The above submission has no substance. By a bare perusal of these orders it shows that although by these orders notice was sent to the landlords but the beginning lines of these orders show that the Prescribed Authority had passed specific order that shop No. 6 of Bank House Mall Road, Nainital, whose landlords are Sri Mohan Chandra Joshi and Girish chandra Joshi sons of Lakshmi Dutt Joshi, are declared vacant u/s 12 of Rent Control Act 1972 and whoever want to move allotment application/objection they may file the same upto 4-9-2006. There is no mention in these orders that is no mention that the said shop was declared vacant in the past by some order and a plain reading of these orders it is decipherable that the learned Prescribed Authority has declared the shop vacant by these orders and these orders are not based on some report. Any how,

if for the sake of argument it is presumed that these orders are notice of information of vacancy of disputed shop passed earlier on 22.3.1993, this court has already held that order passed against the provision of law. Further the mode of service of these notice upon the landlords has also been held to be improper, as one of the landlord Mohan Chandra Joshi had died and Girish Chandra Joshi was not residing at his address and he was residing at Kanpur, and the notice was affixed at his house, where he was not residing and the allotment order passed in favour of petitioner was passed without service of notice even to the legal heirs of deceased landlord. It is also pertinent to mention here that the learned Prescribed Authority in the allotment order has mentioned that notices 29-7-2006 and 21-7-2006 were sent in compliance of order dated 9-5-2006 passed by High Court of Uttarakhand. Perusal of order dated 9-5-2006 passed by this Court in W.P. No. Misc. Single 10203 of 1993 (New No. 4353 of 2001), shows that the writ petition was dismissed in default of petitioner and this court has not dealt with the question of legality of vacancy order passed on 22.3.1993, as the writ petition was dismissed for default of petitioner.

38. So far as the submission of learned Senior Advocate that this court has not dealt with all the submissions advanced by him in the writ petition and also did not discuss all the case laws cited by him, the same is also not tenable. This court has dealt with the submissions and relevant case laws of learned Senior Advocate after discussing the submissions and case laws cited by the respondent where were pressed into service.

39. Learned Senior Advocate also submitted that because the effect of judgment sought to be reviewed would be that it would be legalizing the tenancy created in favour of Prashan Lal Sah in pursuance to the lease dated 29-8-2000, no judgment could be rendered which result into a revival of an illegality, herein which is the rent deed of 29-8-2000. In support of his contention he has cited before me the judgment of Mohammad Swalleh vs. III A.D.J. Meerut, reported in 1987 2 A.R.C. 513 and the judgment of Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others, .

40. The gist of above cited cases is that order lacking jurisdiction need not be set aside if the result would be the revival of an illegal order.

41. It is admitted to parties that Prashan Lal was already evicted by the police from the shop in question on 19-5-2007, and this court has nowhere held that the lease dated 29-8-2000 made in favour of Prashan Lal was a valid lease. However, the Prescribed Authority proceeded in the case on the basis of illegal vacancy order dated 22-3-1993, which was passed without following the relevant provisions of the Act, therefore, in above peculiar facts and circumstances of the case, this ground taken by learned Senior Advocate is of no avail. The Prescribed Authority is already given liberty to initiate proceeding denovo to declare vacancy after hearing the parties.

42. So far as the assertion made by learned Senior Advocate in the review

applications that the court directed the parties to submit their arguments and the judicial pronouncements/citations, the order sheet nowhere indicates that any such direction was given to parties the learned counsel have filed the written submissions at their own.

43. So far as the grounds taken in the review applications that on delivery of judgment on 12-8-2011, in the open court, the counsel for the parties requested the Bench Secretary to provide the judgment for perusal and reading but the same was not provided, with assigning reasons that some corrections are required. Rule 1 of Chapter VII of High Court Rules makes provision of pronouncing the judgment and it nowhere provides that the Bench Secretary will provide judgment to the counsel for parties for its perusal.

44. No judgment regarding scope of review has been cited by the learned counsel for the review petitioner, as to how the review applications are maintainable in the case at hand.

45. In view of discussions made above, this court is of the view that the petitioner has failed to make out any ground to review the judgment passed by this Court.

46. The review applications are dismissed.