

(1998) 09 AHC CK 0074

In the Allahabad High Court

Case No : C.M.W.P. No. 16612 of 1994, Connected with W.P. No"s. 28480 of 1995 and 4818 of 1996

Nem Chandra Jain

APPELLANT

Vs

IX Addl. District and Sessions Judge, Meerut and others

RESPONDENT

Date of Decision : 15-09-1998

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 16(1), 21(1)

Citation : (1999) 1 AWC 719

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Swapnil Kumar, Pradeep Kumar and Pankaj Mittal, for the Appellant;
S.C. and Pramod Jain, for the Respondent

Final Decision : Disposed Of

Judgement

J.C. Gupta, J.—Heard petitioners" counsel Sri Pankaj Mittal as well as Sri Framed Jain counsel appearing for the contesting-respondents.

2. These are three connected writ petitions- Writ Petition No. 28480 of 1995 and Writ Petition No. 4818 of 1996 arise out of the proceedings held u/s 21 (1) (a) of the U. P. Act No. XIII of 1972, (hereinafter referred to as the "Act"), whereas Writ Petition No. 16612 of 1994 arises out of proceedings held by the Rent Control and Eviction Officer u/s 16 (1) (b) of the Act. Writ Petition Nos. 28480 of 1995 and 16612 of 1994 are by the landlord while Writ Petition No. 4818 of 1996 has been filed by the tenant.

3. The dispute relates to a residential premises No. 174/125 Anandpuri. Railway Road. Meerut. It appears that the landlord had allowed the contesting-respondents to occupy the disputed accommodation on rent without an order of allotment at a time when the petitioner was employed in government service. After his retirement, the landlord moved an application u/s 21 [I] (a) of the Act for the release of a tenanted portion which is part of his house. The release

application was contested by the respondents and the same was allowed by the Prescribed Authority by the order dated 1.3.1993. Appeal filed by the tenant was, however, allowed by the order dated 18.4.95. Against the said order the landlord has filed Writ Petition No. 28480 of 1995. It further appears that in the meantime the landlord also moved an application for review before the Appellate Authority and the same was allowed by the order dated 25.1.1996 whereby the order allowing the appeal was recalled and the release application of the landlord has been allowed. Against this order of the Appellate Authority, the tenant has filed Writ Petition No. 4818 of 1996.

4. Sri Pankaj Mittal learned counsel appearing for the landlord made a statement before the Court that in view of the Full Bench decision of this Court in the case of Nootan Kumar and others v. IInd Additional District Judge, Banda and others 1993 12 ARC 204. the release application moved by the landlord u/s 21 (1) (a) of the Act was not maintainable as the same could be filed only against a tenant and since the status of the respondents could not be recognized as tenant, the contract of tenancy being void, the release application moved by the landlord was not being pressed and accordingly the Writ Petition No. 28480 of 1995 filed by the landlord be dismissed and the release order made in favour of the landlord u/s 21 (1) (a) of the Act be set aside. In view of this statement, both the Writ Petition Nos. 28480 of 1995 and 4818 of 1996 are disposed of with the order that the release application moved by the landlord u/s 21 (1) (a) of the Act stands rejected and the orders passed by the Prescribed Authority as well as by the Appellate Authority on the review petition of the landlord are set aside.

5. Now coming to the facts of the Writ Petition No. 16612 of 1994, it may be mentioned here that one Prem Prakash moved an application for allotment of the accommodation in question before the Rent Control and Eviction Officer stating that since respondent No. 3 has been in occupation without any order of allotment in his favour, his occupation was unauthorised and accordingly, accommodation was vacant and open for allotment. The matter was contested and thereafter by the order dated 22.3.1990 the R. C. and E. O. declared vacancy. Respondent No. 3 who was held to be in unauthorised occupation also applied for allotment, whereas the landlord-petitioner made an application u/s 16 (1) (b) of the Act for the release of the same for his personal requirement. The R. C. and E. O. by the order dated 3.1.1992, whose copy has been annexed as Annexure-5, rejected the release application of the landlord and on the same day made an order of allotment in favour of respondent No. 3. The petitioner-landlord filed two revisions, one against the order whereby his application for release was rejected and the other against the order of allotment made in favour of respondent No. 3. Both the revisions by a common judgment dated 21.3.94 have been dismissed by the revisional court, which order is under challenged in this writ petition.

6. Learned counsel for the petitioner-landlord firstly argued that once an application for release had been made, the Rent Control and Eviction Officer

could consider applications for allotment only after the rejection of release application and not before that. This position of law has not been disputed from the side of the respondents as well. Further argument of the learned counsel for the petitioner is that the Rent Control and Eviction Officer committed a manifest error of law in rejecting the landlord's application for release by allowing the prospective allottee to participate in the proceedings and file objections and evidence in support of his objections. Not only this, the prospective allottee was also heard and thereafter the release application was rejected by taking, into consideration the objections and evidence filed from the side of the prospective allottee. Learned counsel in support of his argument placed reliance on the Full Bench decision of this Court in Talib Hasan and another v. Ist Additional District Judge, Nainital. 1986 (1) ARC 1, and also on the decision of the Apex Court in Vijai Kumar Sankar v. Incharge District Judge and others 1995 (2) ARC 1 wherein the Apex Court also approved the Full Bench decision of this Court in Talib Hasan's case. From the aforesaid decisions, there can be no doubt that the matter relating to consideration of the application of release u/s 16 (1) (b) of the Act is entirely between landlord and the District Magistrate and no third person has any right to be heard in such proceedings. In the case of Ram Kumar Maheshwari v. A. D. M. and others 1982 (1) ARC 62. It has been held that once an application for release is made by the landlord, applications for allotment can be considered only after when the release application is rejected and while considering the release application, the prospective allottee cannot be allowed to participate in such proceedings and he has no right to be heard even on the principle- of audi alteram partem. In such matters, he has neither any right to file objections nor to adduce evidence. He has got no right even to challenge the release order made in favour of the landlord by way of revision or by filing writ petition.

7. In the case in hand, a bare perusal of the order of the Rent Control and Eviction Officer leaves no room of doubt that the respondent who was merely a prospective allottee participated in the proceedings relating to the release application, filed objections and adduced evidence in support of his objections- The R. C. and E. O. then heard his counsel also and thereafter the release application was rejected by taking into consideration the objections and the evidence of the prospective allottee. It is thus apparent that the Rent Control and Eviction Officer exercised jurisdiction in wholly Illegal manner as he considered the evidence which could not be made part of record. The revisional court agreed with this position of law. yet instead of remanding the case to the R. C. and E. O. for deciding the release application afresh excluding the objection and evidence of the prospective allottee, proceeded to record its own findings of fact. It is well-established principle that revisional court is not a Court of fact like an appellate court and where the revisional court finds that the order of the inferior court suffers from a jurisdictional error, it has the power to set aside the same and if necessary to remand the case for recording the requisite finding of fact. The revisional court also thus exceeded its jurisdiction in recording the finding of fact

by itself after appraisal of evidence. In any view of the matter, from a bare reading of the revisional court's order, it cannot be said that the mind of the learned Judge was not influenced by the evidence of the prospective allottee which had been taken on record in an Illegal manner by the R. C. and E. O. The revisional court failed to notice that there is a marked distinction between the powers of the authorities while dealing with an application of release u/s 21 (1) (a) of the Act and an application of release made u/s 16 (1) (b) of the Act. In the former the authority is not "only required to go into the question of bona fide need of the landlord but has also to examine and compare the hardships which each of the party was likely to suffer. This requirement is obviously for the reasons that in such cases, the building under tenancy is not vacant and is in physical occupation of the tenant, whereas u/s 16 (1) (b) the power of making an order of release is exercised in respect of a building which is either actually vacant or is treated to be vacant under any of the deeming provision of the Act and in such a case, the person who may be in occupation does not get any right to resist the claim of the landlord of bona fide need nor his hardships are to be taken into account while making an order of release in favour of the landlord. Significantly, neither Section 16 of the Act nor the Rules framed under the Act envisage any comparison between the landlord's need and that of the prospective allottee in a case where the landlord applies for release u/s 16 (1) (b) of the Act and that is why it is a recognised principle that the matter of release is entirely between the landlord and the District Magistrate.

8. Though elaborate guidelines have been provided in Rule 16 for assessing and comparing the need of the landlord and the tenant while disposing of release application made u/s 21 (1) (a) of the Act, there is no corresponding rule laying down guidelines or standard of proof for the disposal of an application made u/s 16 (1) (b) of the Act. The bona fide requirement of the landlord is to be tested on the facts and circumstances of each case, in the background of the landlord's position, his status in life and other relevant factors such as his social status, his habits, his style of living etc. Therefore, while Judging the claim of the landlord of his bona fide need for additional accommodation for occupation by himself and his family members, the District Magistrate cannot act as a rationing authority nor he is required to measure the requirement of the landlord of additional accommodation on any arithmetical formula. He cannot encroach upon the right of the landlord of a comfortable living nor he can compel the landlord to cramp himself and his family members in the accommodation which is already in his occupation. The need for additional requirement is to be judged from the landlord's point of view in a reasonable manner. In the present case, the landlord came with the case that after his retirement, he had come to the city of Meerut to settle down in his own house for leading a reasonably comfortable life and for that purpose, he required the entire house for himself and he was no longer interested to let out the same. Neither the Rent Control and Eviction Officer nor the revisional court has examined the matter in right perspective and for this reason, the impugned orders cannot be sustained. The matter shall have

to be sent back to the R. C. and E. O. and the R. C. and E. O. Is directed to restore the release application of the landlord to its original number and decide the same afresh according to law and in the light of observations made above.

9. Since the order of R. C. and E. O. rejecting the release application has been set aside and the release application has been restored to its original number, the order of allotment made in favour of the respondent No. 3 also cannot be sustained and will get vitiated in law as no such order could be made before the rejection of release application of the landlord moved u/s 16 (1) (b) of the Act and accordingly, the same is also liable to be quashed.

10. The impugned order of allotment is also otherwise bad in law on account of the fact that the same was made on the same day on which the application for release was rejected. It has been held by this Court in Smt. Madhur Lata alias Mudhu Lata v. Additional District Judge (Uttarakhand Case), Dehradun and another 1997 (2) ARC 309 that after rejection of release application filed by the landlord, a fresh date has to be fixed for disposal of application for allotment and there must be a time gap between the date of rejection of the application for release and the date of hearing of applications for allotment of the premises in dispute. In this view of the matter, even on this ground the order of allotment made in favour of respondent No. 3 is not sustainable.

11. For the reasons stated above. Writ Petition Nos. 28480 of 1995 and 4818 of 1996 are disposed of as indicated above and the release application moved by the landlord u/s 21 (1) (a) of the Act stands rejected while Writ Petition No. 16612 of 1994 is allowed and the order of the Rent Control and Eviction Officer dated 3.1.92 and of the revisional court dated 21.3.1994 are set aside and the release application of the landlord made u/s 16 (1) (b) is restored to its original number. The Rent Control and Eviction Officer is directed to decide the same according to law within a period of six weeks from the date of production of certified copy of this order. In the peculiar circumstances of this case, it is further directed that until the disposal of release application, the possession of the respondent No. 3 from the disputed accommodation shall not be disturbed,

12. It is further made clear that if ultimately the release application of the landlord is again rejected, the Rent Control and Eviction Officer shall also consider the application of the respondent No. 1 for allotment while considering the case of allotment of the building in question and it shall be permissible for him to make order of allotment in favour of the said respondent, if he is found entitled thereto.

13. In the circumstances, parties shall bear their own costs.