
(2006) 08 AHC CK 0164

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.19159 of 1989

Poonam Gupta

APPELLANT

Vs

4th Addl District Judge, Rampur and Others

RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 15(1)(b)

Citation : (2006) 08 AHC CK 0164

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

Final Decision : Disposed Of

Judgement

S.U. Khan, J.

1. Heard Sri M. Bhargava, learned counsel for the petitioner and Sri Manu Saxena, learned counsel appearing for the respondents.

2. In the instant writ petition dispute relates to a shop. Rent Control and Eviction Officer, Rampur declared the shop in dispute to be vacant through order dated 12.2.1987 and thereafter it was allotted to the petitioner on 6.3.1987 at the rate of Rs.100/ per month. According to the learned counsel for the petitioner, possession was taken by the petitioner immediately after allotment from the previous tenant. Thereafter original landlord respondent No.3 (since deceased and substituted by legal representatives) filed a review application under Section 16(5) of U.P. Act No.13 of 1972. The said application was allowed on 15.12.1988 by the Rent Control and Eviction Officer, Rampur. The said order was passed in case No.1 of 1988. The review/restoration was allowed on the ground that the order declaring vacancy and allotment were ex parte. The matter was posted for hearing of both the parties. The said order was challenged through Rent Revision No.4 of 1989. IV Additional District Judge, Rampur through judgment and order dated 24.7.1989 dismissed the revision and directed the parties to appear before the Rent Control and Eviction Officer on a particular date. The said orders are challenged through this writ petition.

This writ petition was dismissed in default on 18.5.2006. Thereafter landlord filed release application before the Rent Control and Eviction Officer, which was allowed ex parte on 28.6.2006. The said order has been annexed as Annexure "4" to the supplementary affidavit filed by the petitioner today.

3. In my opinion the matter requires decision by Rent Control and Eviction Officer after hearing both the parties concerned. As far as the impugned orders are concerned there is absolutely no fault therein. However, the order of release passed during the period when this writ petition remained dismissed in default also deserves to be set aside being ex parte and also on the ground that dismissal in default order has been set aside.

Accordingly writ petition is disposed of by the following directions:

(1) The release order passed by the Rent Control and Eviction Officer dated 28.6.2006 is set aside.

(2) Question of vacancy shall not be reassessed as both the parties admit that in 1987 the previous tenant left the shop in dispute.

(3) Question of release in favour of landlord shall first be considered by the Rent Control and Eviction Officer. Even though it is settled that in the matter of release under Section 16 of UP. Act No. 13 of 1972 apart from the landlord no other party has got any concern, however as a special case in view of the fact that the petitioner is in possession since 1987 in pursuance of allotment order, I direct that petitioner shall be permitted to oppose the release application of the landlord. However, it is made clear that apart from opposing the need of the landlord, petitioner shall not be permitted to put forth his own need. If Rent Control and Eviction Officer finds the need of the landlord to be bonafide then the building in dispute shall be released in favour of the landlord. However, if release application is rejected then the building in dispute must be allotted to the petitioner. In that eventuality allotment application by no other person shall be entertained.

(4) As the property in dispute is a shop, hence it is directed that with effect from September, 2006 onwards petitioner shall pay rent/damages for use and occupation to the landlord @ Rs.800/ per month. No further amount shall be payable by the tenant. It is further directed that in case release application is rejected and shop in dispute is allotted to the petitioner then it shall be allotted at Rs.800/ per month.

(5) Both the parties are directed to appear before Rent Control and Eviction Officer concerned along with certified copy of this judgment on 11.9.2006.

(6) Petitioner is permitted to carry out such minor repairs in the shop in dispute which may be necessary to make and maintain it water proof and wind proof. However, the expenses incurred shall not be either payable by the landlord or adjustable in the rent/damages for use and occupation.

4. Writ Petition is disposed of accordingly.

(Ordered accordingly)