

(1997) 07 AHC CK 0100
In the Allahabad High Court
Case No : CMWP No. 23301 of 1997

Punjab Cycle and Rickshaw Company and Anr.	APPELLANT
Vs	
District Judge, Varanasi & Ors.	RESPONDENT

Date of Decision : 25-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 11, 13

Citation : (1997) 07 AHC CK 0100

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

Final Decision : Dismissed

Judgement

J. C. Gupta, J.—Heard Sri S.N. Verma along with Sri A.C. Tripathi, Counsel for the petitioners and Sri TP. Singh, Counsel appearing for respondent No. 3.

2. By means of this writ petition, the petitioners have challenged the order of the Rent Control and Eviction Officer dated 13297 releasing the disputed accommodation in favour of the landlord, respondent No. 3 after declaring vacancy by the order dated 271094 and also the order of the revisional Court dated 8797 passed by the District Judge, Varanasi dismissing the revision preferred by the petitioners.

3. From the findings recorded by the Courts below, it emerges out that the petitioners came in occupation of the accommodation in question in the year 1986 with the consent of the landlord and the petitioners' case that they were in occupation since the year 1975 as tenant, was not believed.

4. Learned Counsel for the petitioner firstly urged that the Rent Control and Eviction Officer declared the vacancy on an assumption that it was a case of deemed vacancy under Section 12 of U.P. Act No. 13 of 1972 which, according to him was not attracted to the facts of the case. On the other hand, learned Counsel for the respondents argued that even if Section 12 in terms was not attracted, it was still a case of vacancy, as under the provisions of the present

Act, no person can occupy the building after the enforcement of the Act without a valid order of allotment. Section 13 of the Act imposes restrictions on occupation of building without an order of allotment or release. It says that where the landlord or tenant ceases to occupy a building or part thereof, no person shall occupy it in any capacity on his behalf or otherwise than under an order of allotment or release under Section 16, and if a person so purports to occupy it, he shall, without prejudice to the provisions of Section 31, be deemed to be an unauthorised occupant of such building or part.

5. In the Full Bench decision in *Nootan Kumar and others v. Hnd Additional District Judge, Banda and others*, 1993 (2) ARC 204, it was held that where the contract has been entered into in violation of Section 11 of the Act, the possession of the occupant will be unauthorised under Section 13 of the Act. Section 11 puts a total prohibition on letting without allotment order. It says that no person shall let out any building except in pursuance of an order of allotment issued under Section 16. In the instant case, as per the findings recorded by the Courts below, the petitioners came into occupation of the building in question in the year 1986 without an order of allotment. It is immaterial whether they came as licensee or as tenants. In such a situation the District Magistrate had jurisdiction to pass an order of allotment or release after treating the building vacant. It is well settled that merely because an order is purported to be made under a wrong provision of law, it does not become invalid so long as there is some other provision of law under which the order could be validly made. Mere recital of a wrong provision of law does not have the effect of invalidating an order which is otherwise within the power of the authority making it.

6. In this view of the matter the mere fact that the Rent Control and Eviction Officer has wrongly proceeded to treat the building vacant as a case of deemed vacancy, he would not loose jurisdiction to pass an order of allotment, as vacancy in law existed by virtue of the provisions of Section 11 read with Section 13 of the Act arisen.

7. Before this Court an argument has also been advanced from the side of the petitioners that as per the own case of the landlord, the petitioners were inducted in premises in July 1986 and since the building was assessed for the first time with effect from 1 477, at the time of contract of tenancy in the year 1986, the period of ten years had not elapsed and therefore, at the time of letting, the provisions of U.P. Act No. 13 of 1972 were not applicable and for this reason, the occupation of the petitioners would not be unauthorised, as no allotment order was required at that time because of the nonapplicability of the Act. No such plea was raised either before the Rent Control and Eviction Officer or before the revisional Court nor any material was placed before the two authorities even to indicate that in year 1986 provisions of U.P. Act No. 13 of 1972 were not applicable to the building in question. It may be relevant to mention here that before the revisional Court it was not disputed that the premises in question is governed by the provision of U.P. Act No. 13 of 1972.

Such an observation is to be found on page 145 of the paperbook. Before this Court by means of a supplementary affidavit, this new plea is sought to be raised for the first time. This plea required investigation into a question of fact because only on the proof of fact now pleaded it could be held that at the time of letting, period of ten years from the date of construction of building had not expired. It has been held in a number of decisions of the Apex Court that a plea not specifically raised before the competent authority which goes to the root of the question and is based on admitted and uncontroverted facts and does not require any further investigation into a question of fact, the writ Court may be justified in entertaining it, but if the plea requires investigation of the fact, the Court will not permit a petitioner to raise such a plea for the first time in writ jurisdiction. See *A. St, Arunchalam Filial v. Mis Southern Roadways Ltd.* and another, AIR 1960 SCI 191. *The Cantonment Board Ambala v. Pyarelal*, AIR 1966 SC108.

8. Reference may also be had to the decision in the case of *R.L. Sharma v. Managing Committee*, AIR 1993 Supreme Court 2155, wherein also it was held that a new plea not raised before the Tribunal or administrative authorities cannot be allowed to be raised for the first time in writ proceeding. It would thus appear that a new plea which requires further investigation into a question of fact, should not be allowed to be raised for the first time in writ jurisdiction. For these reasons the petitioners therefore, cannot be permitted to raise before this Court for the first time a plea that in the year 1986 provisions of U.P. Act No. 13 of 1972 were not applicable especially when the said position was conceded before the revisional Court and the plea is dependent upon investigation of facts.

9. It is also well settled that a relief in a writ is an equitable relief and this Court would not come forward to protect such a person, who under law is treated as an unauthorised occupant for violating mandatory provisions of law.

10. It this stage, learned Counsel for the petitioners submitted that some reasonable time may be allowed to the petitioners for vacating the accommodation in question to which Sri. TP. Singh, Counsel for the respondent has no objection provided the petitioners give an undertaking before the authority concerned that they will handover vacant possession of the premises in question after the expiry of the time allowed by this Court. Sri A.C. Tripathi states that the petitioner., are prepared to furnish such an undertaking.

11. For the reasons stated above, this writ petition is dismissed in limine. However, on filing an undertaking in writing within fifteen days from today before the Rent Control and Eviction Officer, Varanasi to the effect that the petitioners shall handover vacant possession of the disputed premises to the landlord on or before 11/01/1997, the dispossession of the petitioners from the dispute premises in pursuance of the impugned order shall remain stayed till the time for filing the required undertaking and if undertaking in terms of the above is filed, dispossession shall remain stayed up to 31/10/97.