
(2005) 06 UK CK 0025

In the Uttarakhand High Court

Case No : Civil Writ Petition No. 4824 of 2001 (M/S)

Raghubir Singh Mall (since dead) and Others

APPELLANT

Vs

Addl. District Judge and Others

RESPONDENT

Date of Decision : 18-06-2005

Acts Referred:

Constitution of India, 1950 — Article 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 15, 15(1), 17(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 11, 9, 9(1)

Citation : (2006) 1 UC 542

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : A. Rab, for the Appellant; Learned Standing Counsel for Respondents Nos. 1 and 2, B.P. Nautiyal, H.M. Bhatia and Arvind Vashistha, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Verma, J.—By means of this writ petition, the Petitioner has sought a writ of certiorari quashing the 1-9-1984 passed by Rent Control and Eviction Officer, (for short R.C. and E.O.) Mussoorie in Rent case No. 22 of 1984 regarding Chandra Lok Cottage No. 1 Loidour Cantt. Mussoorie and the judgment and order dated 23-5-1985 passed by the Addl. District Judge, Dehradun. By the impugned order dated 21-9-1984 the R.C. and E.O. allotted the premises in question in favour of Sri D.P. Bijalwan-Respondent No. 4. Vide judgment and order dated 23-5-1985, the learned District Judge dismissed the revisions preferred by Raghubir Singh and others.

2. Brief facts giving rise to the writ petition are that the allotment proceedings started before the R.C. and E.O. on the basis of an application moved by Kala Singh (Respondent No. 3) dated 26-4-1984 on which report of the Rent Control Inspector was called for. He submitted his report on 30-5-1984. The R.C. and E.O. issued notices to the concerned parties inviting objections. After hearing

them the vacancy was declared on 22-8-1984 and notified. There were seven prospective allottees. The land lady Smt. Chandrakanta Baijpai nominated Sri Raghubir Singh claiming the benefit of Section 17(1) of the U.P. Act No. 13 of 1972. The R.C. and E.O. then went on scrutinizing the relevant provisions of law before passing the impugned allotment order. Ultimately the R.C. and E.O. came to the conclusion that the nomination by the landlady was not in accordance with the provisions of Section 17(1) of the Act. Thereafter on the merits of the case, the R.C. and E.O. came to the conclusion that the case of the prospective allottee Sri. D.R Bijalwan was genuine on the point of inter-se comparative need of the Applicants. Accordingly the R.C. and E.O. passed the impugned allotment order.

3. Aggrieved by the impugned judgment and order, two of the prospective allottees, namely, Sri Raghubir Singh and Kala Singh as well as landlady Smt. Chandrakanta preferred separate revisions before the Additional District Judge concerned. The learned Judge after considering the relevant points and. hearing the parties did not find favour with the revisionists and accordingly dismissed all the three revisions. Aggrieved by the two impugned orders, one of the prospective allottee Rabhubir Singh (deceased) has come up before this Court in the writ petition, who was substituted by his L.Rs.

4. I have heard the learned Counsel for the parties and have carefully perused the entire material on record including the impugned orders. It is admitted fact that the Petitioner is the nominee of the landlady.

5. In support of his contention, the Petitioner has submitted that the finding of the R.C. and E.O. was not in accordance with law as the landlady communicated the vacancy to the authority concerned on 05-7-1984, which was received by him on 06-7-1984. The intimation by the tenant having vacated the accommodation on 27-7-1984 and the nomination by the landlady being made on 02-8-1984 was in accordance with law, therefore, the finding of the R.C. and E.O. to the contrary was illegal and perverse. It was further contended that the finding of the learned lower court that the accommodation in question fell vacant in February 1984 is wrong on the face of record. It was lastly contended that the occupation of the Petitioner over the premises in suit from the date of his nomination by the landlady onwards, the allotment order in favour of the Respondent No. 4 D.P. Bijalwan is illegal, null and untenable.

6. The main questions for determination in the present writ petition are whether the impugned orders suffers from gross illegality and are against the provisions of Section 15(1) and Section 17(1) of the U.P. Act No. 13 of 1972.

7. In order to examine the legality of the aforesaid provisions, it is necessary to reproduce these provisions hereunder:

Section 15(1) of the Act provides that "(1) Every landlord shall, on a building falling vacant by his ceasing to occupy it or by the tenant vacating it or by release from requisition or in any other manner whatsoever, gives notice of the vacancy in writing to the District Magistrate not later than seven days after the

occurrence of such vacancy and such notice may at the option of the landlord be given before the occurrence of the vacancy.

8. In the instant case, the proceedings regarding allotment of the accommodation in question started on the application moved before the Rent Control and Eviction Officer, Mussoorie, dated 26-4-1984. The R.C. and E.O. called for report from the Rent Control Inspector, who submitted his report dated 30-5-1984 to the R.C. and E.O. concerned. Notices were issued to the parties concerned and the vacancy was declared on 22-8-1984. Ultimately by judgment and order 21-9-1984 the Rent Control and Eviction Officer allotted the disputed premises in favour of one of the prospective allottees, namely, Sri D.P. Bijalwan, the Respondent No. 4. As mentioned earlier, aggrieved by the order of allotment, the Petitioner, one Kala Singh as well as the landlady went up in Revision before the Additional District Judge, Dehradun, which were registered as R.C.R. No. 250 of 1984, No. 257 of 1984 and No. 258 of 1984. The Revisional Court framed two points for determination in the revisions (1) Whether the nomination of Sri Raghuvir Singh Mall made by the landlady was a valid nomination? If so, its effect? And (2) Whether on merits the principle of "first come, first served" as laid under Rule 11(i) has been illegally ignored by the Rent Control and Eviction Officer, thereby, rejecting Sri Kala Singh's right to secure allotment order? The Revisional Court in paragraph 14 of its judgment observed that "considering all what has been discussed above I hold that the finding of the Rent Control and Eviction Officer that the nomination by the landlord in favour of Sri Raghuvir Singh Mall is not valid is in accordance with law and does not suffer from any jurisdictional error." Accordingly, the point No. 1 was decided against the landlady and her nominee. On Point No. 2 the revisional court has observed that "from this overwhelming evidence it is evident that the Rent Control and Eviction Officer has rightly allotted the accommodation in question to Sri D.P. Bijalwan Advocate." Accordingly, all the three Revisions were dismissed.

9. In support of his contention, learned Counsel for the Petitioner submitted that in this case, the Petitioner can challenge an order rejecting his application and allotting the accommodation to the rival Applicants by way of revision and in the Writ Petition. He has relied upon the case of Smt. Narendra Kaur v. XII Additional District Judge Kanpur Nagar and Ors. 1992 (1) ARC 243. It was further submitted that the landlady intimated the vacancy to the District Magistrate on 6-7-1984 but no allotment was made by the R.C. and E.O. within the statutory period of 21 days as provided u/s 17(1) of the Act, therefore, the R.C. and E.O. was bound to allot the premises to the Petitioner, who was nominated by the landlady. In the case before the Allahabad High Court, the landlady intimated the vacancy to the R.C. and E.O. whereupon the vacancy was declared by him. However, no allotment was made within the statutory period of 21 days from the date of receipt of the nomination. Then the landlord nominated the Petitioner on 29-10-1988 for allotment of the premises under Sub-section (1) of Section 17 of the Act. When no action was taken by the R.C. and E.O., the landlord again submitted his nomination in favour of the Petitioner on 5-12-1988. The

proceedings were kept pending. In the meantime the landlord permitted the Petitioner to occupy the premises on 31-8-1988 and the Petitioner was in continuous possession of the premises since 31-8-1988. The Rent Control and Eviction Officer started the proceedings effectively after about 2,1/2 years and allotted the premises in favour of Respondent No. 3, which gave rise to the Writ Petition. In the instant case, the allotment proceedings were started on the application of one of the prospective allottees, namely, the Respondent No. 3. The facts of the instant case are quite distinct from the case before the Allahabad High Court, therefore, the case-law cited above is of no avail to the Petitioner.

10. The contention of the learned Counsel for the Petitioner that the provisions of Section 17(1) of the Act were ignored by the R.C. and E.O. is not tenable. In the judgment and order dated 23-5-1985, the revisional court, while dealing with the provisions of Section 17(1) of the Act has clearly observed in paragraph No. 12 that "the landlady Smt Chandra Kanta jumped into the proceedings which were started at the instance of Sri Kala Singh roughly three month's before she pretendedly intimated the vacancy on 5th July, 1984 vide her application paper No. K-11/1. It is significant to note that Sri Kala Singh filed his allotment application dated 26-4-1984/3-5-1984 paper No. Ka-3/3 on the ground of deemed vacancy with the allegations that the original tenant Sri Bailwal had substantially removed his house hold effects on 29-2-1984. It was on this ground that the Rent Control and Eviction Officer declared the property in question as vacant." The Revisional Court further observed that "the learned Rent Control and Eviction Officer has rightly held in his judgment dated 21-9-1984 that there is overwhelming evidence on record to prove that the Original tenant Sri S.M. Bailwal had vacated the house in question on 29-2-1984. In fact Sri Bailwal had been transferred in the year 1983 as has also been admitted by Smt. Chandra Kanta. Her Chowkidar resides in the premises in question. She should have intimated the vacancy soon after 30-6-1983 and if he was transferred after 30-6-1983 then she should have intimated the Rent Control and Eviction Officer about the vacancy within seven days from 29-2-1984, i.e. when Sri Bailwal removed his house hold effects. Sri Bailwal's contention as laid in his affidavit paper No. 18/2 dated 27-7-1984 that he had vacated the house in question on 27-7-1984 is collusive and unworthy of credit. He has not explained as to why he got the electric connection severed on 25-2-1984 on his own request and why he had withdrawn his children from the Mount Pleasant Nursery School on 27-2-1984."

11. It is significant to mention here that the Revisional Court while dealing with Point No. 1 itself has reproduced the provisions of Sub-section (1) of Section 17 of the Act in the judgement. It is admitted case of the Petitioner that the landlady intimated the vacancy to the Rent Control and Eviction Officer as late as on 5-7-1984 saying that the property in question fell vacant on 30-6-1984. It was also not disputed by the Petitioner that the inspection of the premises by the Rent Control Inspector was made on 22-5-1984. The learned Counsel for the Petitioner could not point out any material on record which could indicate that

the landlady intimated the vacancy to the Rent Control and Eviction Officer within a period of seven days as laid down in Sub-section (1) of Section 15 of the Act. On the other hand, it is apparent on the face of record that the allotment proceedings in question were initiated on the basis of application dated 26-4-1984/3-5-1984 moved by the Respondent No. 3 before the R.C. and E.O. From a bare perusal of the impugned judgment and order dated 23-5-1985 as well as from reading of allotment order dated 21-9-1984 passed by the Rent Control and Eviction Officer Dehradun, it is evident that in the present case, the provisions of Sub-section (1) of Section 15 of the Act were not invoked by the landlady and therefore, it was not open to the Petitioner to have obtained the order of allotment from the Rent Control and Eviction Officer under the provisions of Sub-section (1) of Section 17 of the Act, being the nominee of the landlady. The learned Additional District Judge has elaborately discussed the entire controversy in the light of the provisions of Sub-section (1) of Section 17 of the Act and I find no reason to disagree with the conclusions arrived at by the courts below. The findings on the point of deemed vacancy is a finding of fact. It has not been shown to me that this finding of deemed vacancy suffered from any manifest error of law.

12. Learned Counsel for the Petitioner further relied upon the case of Prakash Narain v. District Judge Kanpur and Ors. 1985 (U.P.) RCC 163. This case too is of no help to the Petitioner. In the case before the Allahabad High Court, on the notices issued to the sitting tenant and the landlord by the R.C. and E.O. Kanpur, the landlord appeared before him and filed his affidavit. On 21-7-81 the matter regarding deemed vacancy was heard and 30-7-81 was fixed for orders. It was on 26-7-81, the landlord intimated the R.C. and E.O. that the sitting tenant vacated the premises on 19-7-1981. This intimation purported to have been given u/s 15(1) of the Act. Report from the Rent Control Inspector was obtained, who submitted the same to the Rent Control and Eviction Officer on 7-8-81. On 12-8-81, the landlord submitted his nomination in favour of the Respondent No. 3, which was rejected and allotted the premises in favour of the Petitioner. The landlord and his nominee preferred the revision before the District Judge, which was allowed and the order of allotment passed in favour of the Petitioner was set aside. The writ petition preferred by the Petitioner was dismissed. Thus, the facts of the present case are quite different.

13. Learned Counsel for the Petitioner further relied upon the case of D.F. Gandhi and Anr. v. Rent Control and Eviction Officer 1st District Allahabad reported in 1997 (2) ARC 501, wherein it has been observed that "Sub-section (1) of Section 17 applied both where a tenant has ceased to occupy or expected to vacate. A perusal of Rule 9 would also lead to same conclusion inasmuch as Sub-clause (f) of Sub-rule (1) requires mentioning of the actual or expected date of vacancy. If Section 15(1) was not applicable in cases of expected vacancy, Clause (f) of Rule 9 would not contain the words "expected date of vacancy". Therefore, there can be no doubt that Section 15(1) is applicable not only to the actual vacancy but also to cases where the building is likely to fall vacant on account of cessation of

occupation by the sitting tenant." In the case before the High Court of Allahabad, the sitting tenant gave an information through letter dated 27-9-95 to the landlord-Petitioner that she was going to vacate the tenanted shop by 15-11-95 as she was likely to get another shop. She further stated in the letter that she was removing all her belongings, fittings, etc. from the tenanted shop and requested the landlord to take possession himself or through any person authorized by him. This letter was received by the landlord on 29-9-95. The expected vacancy was intimated to the Rent Control and Eviction Officer as per provisions of Section 15(1) of the Act on 5-10-95. Rent Control Inspector was asked to submit his report, which was submitted by him on 16-10-95 stating therein that the tenant had substantially removed the goods from the shop. It was reported by the Rent Control Inspector that the shop was likely to be vacated by the tenant in the near future. Intimation of deemed vacancy was sent by the landlord to the R.C. and E.O. Notices were sent to all concerned, but nothing more was done by the Rent Control and Eviction Officer in the matter of allotment. Subsequently, the landlord nominated Petitioner No. 2, but the R.C. and E.O. rejected the nomination made by the landlord. The landlord and his nominee challenged the order of the Rent Control and Eviction Officer before the High Court. Decision in the case of *Irshad Ahmad v. VII Additional District Judge Aligarh* and Ors. 1994 (2) A.R.C. 37 was relied upon wherein it was held that the landlord gets a right to nominate a person of his choice for purposes of allotment of a building after twenty-one days from the date of intimation of vacancy. It has further been held in the said decision that the period of twenty-one is to be counted from the date of Intimation of vacancy not from the date of declaration of vacancy. The writ petition was ultimately allowed, the impugned order was quashed and the Rent Control and Eviction Officer was directed to issue a formal order of allotment in favour of Petitioner No. 2. In the present case, as found by the Revisional Court the premises in question had fallen vacant on 29-2-1984 and the nomination made by the landlady in favour of the Petitioner on 2-8-1984 (vide Annexure-5 to the Writ Petition). It has already been mentioned earlier that the Revisional Court had given concrete reasons while dealing with the point of nomination of the Petitioner by the landlady and it was found that the nomination of the Petitioner was not a valid nomination. The Rent Control and Eviction Officer has also observed in his impugned order that "there is no evidence which shows that the premises were under the occupation of the tenant after February. While the vacancy was intimated by the landlady in the month of July. This is not in my opinion an intimation in conformity with the provisions of Section 15 of the Act. In these circumstances, the nomination by the landlady u/s 17(1) is bad in the eye of law."

14. The contention of the Petitioner that the provisions of Section 17(1) of the Act were ignored is devoid of force simply because in the instant case the landlady failed to discharge her obligation to intimate the vacancy regarding the suit premises to the R.C. and E.O. as provided u/s 15(1) of the Act. It would suffice to mention here that the provisions of Section 17(1) of the Act provides

that "Where the District Magistrate receives an intimation, under Sub-section (1) of Section 15, of the vacancy or expected vacancy of building any allotment order in respect of that building shall be made and communicated to the landlord within twenty-one days from the date of receipt of such intimation and where no such order is so made or communicated within the said period, the landlord may intimate to the District Magistrate the name of a person of his choice and thereupon the District Magistrate shall allot the building in favour of the person so nominated unless for special and adequate reason to be recorded he allots it to any other person within ten days from the receipt of intimation of such nomination." It is thus amply clear that this provision of law under Sub-section (1) of Section 17 only comes into play when the condition under Sub-section (1) of Section 15 of the Act is fulfilled by the landlord/landlady. It is very interesting to mention that the sitting tenant S.M. Bailwal having been transferred substantially removed his house hold effects on 29-2-1984 which is clear from the perusal of annexure 6 (report of the Rent Control Inspector dated 30-5-1984), but the landlady never chose to intimate to the R.C. and E.O. regarding the vacancy or expected vacancy before 5/6-7-1984. This is a strong circumstance which speaks against the case of the Petitioner particularly because the vacancy of the premises occurred due to the transfer of Sri Bailwal. It may also be noted here that the learned Additional District Judge observed in his judgment and order dated 23-5-1985 that Sri Bailwal had been transferred in the year 1983 as was admitted by the landlady Chandrakanta. Therefore, in my opinion, it is not a case in which provision of Section 17(1) of the Act was in any way attracted.

15. Having considered the entire material from all the four corners, particularly the report of the Rent Control Inspector dated 30-5-1984 (Annexure-6) filed by the Petitioner himself read with the impugned order of allotment dated 21-9-1984 and the judgment and order dated 23-5-1985 passed by the Revisional Court, there is no room to dispute that the premises in question had fallen vacant on 29-2-1984, therefore, the nomination made by the landlady in favour of the Petitioner on 2-8-1984 vide Annexure-5 was not a valid nomination as envisaged by Section 17(1) of the Act. The impugned judgment and order dated 21-9-1984 of the Rent Control and Eviction Officer as well as judgment and order dated 23-5-1985, passed by the Additional District Judge, Dehradun, dismissing the revision preferred by the Petitioner do not suffer from any manifest error of law or perversity. In my opinion, it is not a case fit for interference in the Writ Petition under Article 227 of the Constitution of India.

16. For the reasons and discussion aforementioned, I find no force in this writ petition, which is liable to be dismissed.

17. In the result, the writ petition fails and is hereby dismissed. No order as to costs. Interim order, dated 5-6-1985 is vacated.