
(2006) 03 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33017 of 2001

Rajdhari

APPELLANT

Vs

Smt. Ranjana Gupta and Sri Desh Raj Singh

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Citation : (2006) 2 AWC 1964

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

Bench : Single Bench

Advocate : Rajesh Tandon, Rama Goel, S.N. Mishra and S. Tandon, for the Appellant; A.N. Sinha, for the Respondent

Judgement

S.U. Khan, J.—Petitioner claiming himself to be the tenant of the accommodation in dispute has challenged the order passed by R.C & E.O dated 28.2.2001 declaring the vacancy of the accommodation in dispute, subsequent order of R.C & E.O dated 31.8.2001 releasing the accommodation in dispute in favour of owner landlord Smt Ranjana Gupta and order dated 13.9.2001 passed by the District Judge dismissing the revision directed against earlier two orders of R.C & E.O. Proceedings before R.C & E.O/ACM (VI), Kanpur Nagar were initiated on the allotment application of Deshraj Singh respondent No. 2 and were registered as Case No. 66 of 2000 Deshraj v. Smt. Ranjana Gupta. Smt Ranjana Gupta landlady purchased the accommodation in dispute from its previous owner landlord in the year 1997. Accommodation in dispute consists of one room and a Verandah on the ground floor. According to the landlady and respondent No. 2 the accommodation in dispute was let out to Ram Dhari real brother of the petitioner who died in the year 1979 and petitioner not being family member of Ram. Dhari (as provided u/s 3(g) of U.P. Act No. 13 of 1972) did not inherit the tenancy hence he was unauthorized occupant and building was legally vacant. Petitioner pleaded that he was joint tenant with Ram Dhari and after the death of Ram Dhari he was residing in the house in dispute along with Paras Nath son of Ram Dhari.

Tenant petitioner also pleaded that in the year 1981 in similar allotment proceedings before R.C & E.O, R.C & E.O by order dated 10.12.1981 held that there was no vacancy. However copy of the said order was not filed before R.C & E.O hence R.C & E.O rightly refused to place reliance upon the said assertion. The petitioner requested R.C & E.O to summon register of the year 1997 in respect of the earlier order. Said application was rejected and it was directed that petitioner could file copy of the earlier order. Copies were not filed.

2. Petitioner also pleaded that he was residing along with his brother Ram Dhari since 1974 however receipts were issued in the name of Ram Dhari. In respect of residence of son of Ram Dhari with the petitioner, R.C & E.O observed that the said son had not filed any affidavit in that regard. R.C & E.O also found that in the records of Nagar Nigam petitioner's name was not entered as occupant. R.C & E.O through order dated 28.2.2001 held that accommodation in dispute was deemed vacant as possession of petitioner since 1979 i.e. after the death of Ram Dhari the tenant was unauthorized. Thereafter R.C & E.O on 31.8.2001 released the building in dispute in favour of the landlady respondent No. 1. Against said orders Rent Revision No. 58 of 2001 was filed by the petitioner which was dismissed on 13.9.2001 by District Judge, Kanpur Nagar holding the same to be not maintainable on the ground that revisional court could not set-aside the vacancy declaration order and unauthorized occupant could not challenge the release order. Now the Supreme Court has clarified the legal position. It has been held by the Supreme Court in Achal Misra Vs. Rama Shanker Singh and Others, that in revision against allotment or release order, correctness of vacancy declaration order can also be challenged.

3. Petitioner filed two rent receipts of 1974-75 to show that through the said receipts rent was received from Ram Dhari and Raj Dhari. However learned Counsel for the landlady has filed certified copy of list of documents. From the said certified copies it is quite clear that the said receipts were filed on 14.3.2001 i.e. after order of declaration of vacancy dated 28.2.2001. Even otherwise petitioner in his objections before R.C & E.O copy of which is annexure 1 to the writ petition clearly stated in para 6 that previous landlord Lakshmi Kunwar Harnam Singh never issued receipts. Accordingly no reliance can be placed upon the said receipts.

4. Without entering into the merits of the case, this writ petition is to be allowed on the ground of limitation. The Supreme Court in Mansaram Vs. S.P. Pathak and Others, has held that proceedings for eviction on the ground of vacancy after 22 years are not maintainable. Even though no limitation has been prescribed under U.P. Act No. 13 of 1972, however for eviction on the ground of vacancy limitation of 12 years will have to be read therein in view of the aforesaid authority of Mansa Ram (vide A.K. Dixit v. M. Tripathi 2006 A.L.R. 383). Incidentally in the instant case also proceedings for eviction of petitioner who is in unauthorized occupation of the accommodation in dispute was initiated after 21 years (unauthorized occupation was alleged to be since 1979 and allotment application

were filed in the year 2000).

5. Accordingly writ petition is allowed. All the three impugned orders are set-aside.

6. I have held in *Khursheeda v. A.D.J.* 2004(2) ARC 64 that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act, writ court is empowered to enhance the rent to a reasonable extent.

7. Accommodation in dispute contains one room and a Verandah and is situate in Kanpur, which is most expensive city of Uttar Pradesh. Existing rent of Rs. 10/- per month is virtually as well as actually no rent.

8. Accordingly, it is directed that with effect from April 2006 onwards petitioner shall pay rent to the landlady respondent No. 1 at the rate of Rs. 500/- per month.

9. Landlady is at liberty to institute suit for eviction against petitioner on such grounds, which may be available to her including the ground of sub-tenancy. If such a suit is filed the same shall be decided on the basis of evidence brought on record therein without being influenced by the findings recorded in the judgments challenged in this writ petition and this judgment of the writ petition.