

(1975) 02 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 6589 of 1973

Rajendra Prasad Srivastava

APPELLANT

Vs

Rent Control and Eviction Officer and Others

RESPONDENT

Date of Decision : 19-02-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7A, 7F
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 16
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 — Rule 13, 13(4)

Citation : (1975) AWC 238

Hon'ble Judges : K.N. Singh, J

Bench : Single Bench

Advocate : Amar Sukh Rai, for the Appellant;

Final Decision : Allowed

Judgement

K.N. Singh, J.—This is a petition under Article 226 of the Constitution of India, directed against the order of the Rent Control & Eviction Officer, Allahabad, dated 25-9-1973 dismissing the Petitioner's objection filed against the release application of the Landlady, Respondent No. 2.

2. Smt. Indra Devi is the Landlady of the premises in dispute. The premises consists of two independent portions, one in the Eastern side and the other in the Western side of the building. The Eastern portion fell vacant as the outgoing tenant, Sri S.N. Mitra vacated the same. Proceedings for allotment were taken before the Rent Control & Eviction Officer under the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to as the Act). The Landlady contested the proceedings on the ground that the house was covered by the Act as it had been constructed after 1951. The Rent Control & Eviction Officer rejected the Landlady's contention. There upon a writ petition was filed in this Court which was also rejected on the ground that the Landlady should get a

declaration from the civil court. Thereafter the landlady filed a civil suit for the declaration that the building was a post 1951 construction. That suit is still pending and no final decision has been given. Meanwhile proceedings were taken by the Rent Control & Eviction Officer for allotment of the premises in question. By an order dated 25-9-1971 the Rent Control & Eviction Officer, Allahabad allotted the Eastern Portion of the first floor to Rajendra Prasad Srivastava, the Petitioner. The Landlady challenged the order of allotment before the State Government u/s 7-F of the Act. The State Government by its order dated 10-2-1972 rejected the representation and upheld the order of allotment. Even thereafter the Petitioner could not get possession of the premises in question. On his application proceedings u/s 7-A of the 1947 Act were taken which are still pending.

3. Meanwhile the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 came into force. Thereupon the Landlady filed an application u/s 16 of the 1972 Act for the release of the premises in question. The Petitioner filed objection against the release application saying that the release application was not maintainable. The Rent Control & Eviction Officer by his order dated 25-9-1978 rejected the Petitioner's objection on the ground that he was not entitled to maintain any objection against the release application. The Petitioner has challenged that order of the Rent Control & Eviction Officer in the present proceedings.

4. The facts as stated above clearly show that the order of allotment was passed in favour of the Petitioner as early as on 25-9-1971 but he could not get the possession due to various steps taken by the Landlady. After the rejection of the representation by the State Government, the Petitioner was entitled to get possession but even then he could not get possession, because one Ghulam Husain took possession of the house in collusion with the landlady. The Landlady has also filed a suit for declaration which is pending before the Civil Court. But when she found that the allotment order was to be given effect she made an application for the release of the accommodation in her favour. This has been done only with a view to defeat the Petitioner's right which accrued to him under the allotment order dated 25-9-1971. These facts have not been controverted as no counter affidavit has been filed. I have therefore no reason to discard the Petitioner's uncontroverted averments.

5. The Petitioner has a valid allotment order in his favour. He is entitled to obtain possession of the premises in question and in the eye of law there is no vacancy in the premises in question. In these circumstances the Rent Control & Eviction Officer committed a patent error of law in rejecting the Petitioner's application merely on the ground that his objection was not maintainable under Rule 13(4) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Clause (4) of Rule 13 no doubt lays down that the question of release will be a matter between the District Magistrate and the Landlord, and the outgoing tenant or the prospective allottee, if any, shall have no right to file any objection

at all. In the present case the premises in question was allotted to the Petitioner but he could not get possession of the premises. on the facts and circumstances available in the present case, the provisions of Rule 13(4) are not attracted. The Rent Control & Eviction Officer misdirected himself in rejecting the Petitioner's objection.

6. In the result the petition is allowed and the order of the Rent Control & Eviction Officer dated 25-9-1973 is quashed. Since no one has appeared in opposition to the writ petition there will be no order as to costs.