
(2001) 02 AHC CK 0114

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29414 of 2000

Ram Adhar Lal Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(1), 12(I)(b), 12(l)(b), 3

Citation : (2001) 1 UPLBEC 916

Hon'ble Judges : R.K. Agrawal, J

Bench : Single Bench

Advocate : B.S. Pandey, for the Appellant;

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Heard learned Counsel for the Petitioner and learned Counsel appearing for the contesting Respondents.

2. By means of this petition filed under Article 226 of the Constitution of India, Petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 31.10.1998 passed by Respondent No. 1, declaring the building in question as vacant.

3. The dispute relates to building No. 86/382, Deo Nagar, Kanpur of which one Sri Jagdamba Prasad Awasthi was the original landlord. The said building was in the tenancy of Mr. Suraj Prasad alias Chhedi. The Petitioner was permitted to reside in the building in question in 1955 by Sri Suraj Prasad alias Chhedi, the chief tenant. On receipt of the application for allotment of the said building, proceedings u/s 16 read with Section 12 of the U.P. Urban Buildings (Regulation of Letting, rent and Eviction) Act, 1972 for short, "the Act" were initiated. On the directions issued by the Rent Control and Eviction officer, the building in question was inspected by the Rent Control Inspector. He thereafter, submitted his report to the Rent Control & Eviction officer, the copy of which is contained as Annexure

- 3 to the writ petition. The rent Control Inspector, by his report dated 29.05.1998, reported that the building in question was in occupation of the Petitioner who was not a member of the family of the tenant. On the basis of the said report, the notices were issued to the concerned parties. The Petitioner filed his objection in the said proceedings to the effect that he happened to be the real brother of the deceased tenant. He has been living in the building in question for the last 17 years and normally resided in the same at the time of the death of the tenant. He therefore being the heir of the deceased tenant, inherited the tenancy right and was entitled to continue in occupation of the said building. His occupation of the building in question was quite legal therefore, it cannot be said to be vacant. On the other hand, learned Counsel for the Respondents No. 2 and 3 have supported the report of the Rent Control Inspector and stated that the Petitioner although was the real brother of the deceased but was not his family member. They contended that he was included in the house in 1978, therefore, in view of the provisions of Section 12 (I)(b) of the Act, the building in question shall be deemed to be vacant. Parties thereafter produced evidence in support of their cases, oral and documentary. The Rent Control & Eviction Officer, after going through the entire material on the record, came to the conclusion that the Petitioner was inducted in the building in question by the tenant Shri Suraj Prasad alias Chhedi in the year 1978. Petitioner was not a family member of the deceased tenant, therefore, the building in question shall be deemed to be vacant in view of the provisions of Section 12(I)(b) of the Act, that after the death of the tenant, possession of the Petitioner cannot be legalised and declared the building in question as vacant by the impugned order dated 31.10.1998. Challenging the validity of the said order, the present petition has been filed.

4. Learned Counsel for the Petitioner vehemently urged that the Petitioner was the heir of the deceased tenant, he therefore, on his death, inherited the tenancy right in the building in question and his occupation cannot be said to be unauthorised and illegal, therefore, the order declaring the vacancy was liable to be quashed.

5. On the other hand, learned Counsel; appearing for the contesting Respondent submitted that the Petitioner was inducted in the building in question in 1978 in contravention of the provisions. After the death of the tenant, the occupation of the Petitioner cannot be legalised. The writ petition was therefore, liable to be dismissed.

6. The questions which arise for consideration in this case, are as to whether Petitioner was an authorised occupant of the building in question or he has, on the death of late Suraj Prasad alias Chhedi, inherited the tenancy rights in the building in question and thereafter, he was lawful occupant of the same. For resolving the aforesaid controversy, provisions of Section 3(a),(g), Section 12(1) and Clause (a) of Sub-section (4) of Section 34 of the Act are relevant which are reproduced below:

3. Definition:

In this Act, unless the context otherwise requires-

(a) "tenant", in relation to a building, means a person by whom its rent is payable, and on the tenant's death-

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) in the case of a non-residential building his heirs;

[Explanation - An occupant of a room in a hotel or a lodging house shall not be deemed to be a tenant];

(g) "family", in relation to a landlord or tenant of a building, means, his or her ?

(i) Spouse

(ii) male lineal descendants,

(iii) such parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her, and includes, in relation to a landlord, any female having a legal right of residence in that building;

12. Deemed vacancy of building in certain cases. -

A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if-

(a)...

(b) He has allowed it to be occupied by any person who is not a member of his family, or

34. Powers of various authorities and procedure to be followed by them - (I) The District Magistrate, the prescribed authority or any appellate or revising authority shall for the purpose of holding any inquiry or hearing any appeal or revision under this Act have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 (Act No. V of 1908), when trying a suit, in respect of the following matters namely,-

....

(2). ...

(3). ...

(4) Where any party to any proceedings for the determination of standard rent of or for eviction from a building dies during the pendency may be continued after bringing on the record:

(a) in the case of the landlord or tenant, his heirs or legal representatives:

(b) in the case of unauthorised occupant, any person claiming under him found

in occupation of the building.

7. Admittedly, the building in question is a residential building and the Petitioner is a real brother of the tenant, late Suraj Prasad alias Chhedi. It is also not disputed that Petitioner was found normally residing with the tenant at the time of his death.

8. A combined reading of the above noted statutory provisions reveals that an heir, to be determined in accordance with the personal law of the tenant concerned, may be the member of the family or not within the meaning of the term used under the Act, can be permitted to reside with the chief tenant during his lifetime in as much as the tenancy right could be inherited only by the heir or heirs who normally resided with the tenant at the time of his death in the disputed building. The induction of the heir in the building, therefore, will not cause vacancy within the meaning of the term used under the Act. Any interpretation to the contrary would render the above noted provisions redundant, or contradictory to each other and unworkable in as much as if the induction of an heir results in vacancy, Section 3(a)(1) and Clause (b) of Sub-section (I) of Section 12 would become contradictory to each other in as much as the spirit/object of the Act is that the heirs of the tenant shall inherit the tenancy rights, may be members of his family or not and unless an heir is permitted to reside in the building in question sometime before the death of the tenant he cannot be said to have resided normally with the deceased tenant at the time of his death. The induction of an heir, therefore will not cause vacancy in the building. Any interpretation to the contrary, would result in conflict harmoniously interpreted.

9. In *Smt. Rukmani Devi v. A.D.J. Kanpur and Ors.* 1977 A.R.C. 72 while considering the provisions of Section 3(a) and (g), it was ruled by this Court that premises in dispute being a residential building, the Petitioner (who was married daughter of the tenant) who resided with the tenant at the time of his death, would be a tenant within the meaning of the word u/s 3(a) of the Act, referred to the definition of word "family 3(g) had no relevance.

10. In *Munni Lal v. Smt. Sheo Dei* 1981 A.R.C. (Short Note Cases 13), it was held that there as no warrant for giving to the word "heirs", as occurring in Section 3(a) (1), a restricted meaning and limiting it to the members of the family of tenant, as defined in Section 3(g). In the said case, it was further held that married daughter residing with her parents would be an heir of tenant within the meaning of Section 3(a) of the Act irrespective of whether or not she would be regarded as a member of the family as defined u/s 3(g) of the Act. Therefore, Section 12(l)(b) of the Act was not attracted because the accommodation cannot be treated to be vacant merely because the married daughter was allowed to reside with her parents. She could not deemed to have occupied the accommodation.

11. In *Om Prakash and Ors. v. Prescribed Authority and Ors.* 1984 (2) A.R.C.

683, it was held that the definition of the word, "family was not relevant for the purposes of determining the question as to who would become tenant on the death of original tenant. On the death of the original tenant of a residential building, his heir living with him at the time of death, will become tenant and there would be no vacancy in the building on the death of the original tenant.

12. In *Dr. Ram Narain Bagley v. D. J. Saharanpur and Ors.* 1997(1) ARC 199, it was held that it was clear that u/s 3(a)(1) of the Act, there is a specific provision that in case of a residential building, only such heir will inherit tenancy rights who resided in the building at the time of death of the tenant. Under the provisions of the Act, there was no distinction between the contractual and statutory tenant to inherit the rights of the tenant. In case of a residential building, only such heirs of the deceased tenant would inherit the tenancy rights who were normally residing with him in the building at the time of his death. Similar view was expressed by this Court in *Surendra Kumar v. A.D.J. Kanpur Nagar and Ors.* 1998 (33) A.L.R. 306 and in *Pradeep Kumar Katiyar v. II Addl. City Magistrate and Anr.* 2000 (38) A.L.R. 550.

13. In view of the aforesaid decisions, it can easily be held that by allowing an heir to occupy the building even if he is not member of his family, no vacancy shall be caused in the building. In the present case, the authority below has erred in law and committed a mistake which is apparent on the face of the record in holding that by induction of the Petitioner by the deceased tenant resulted in vacancy in the building in question, particularly when it was not disputed that the Petitioner was the real brother and only heir of the deceased tenant. Thus in my opinion neither on induction of the Petitioner in the building in question nor on the death of the original tenant the building in question fell vacant. This writ petition, therefore, deserves to be allowed.

14. The Writ petition succeeds and is allowed with cost. The order dated 31.10.1998 is hereby quashed. The Respondents are restrained from interfering in the possessions of the Petitioner over the building in question except in accordance with law.