
(2012) 11 AHC CK 0074
In the Allahabad High Court
Case No : Writ A. No. 24057 of 1998

Ram Murti Yadav (Dr.)

APPELLANT

Vs

Rent Control & Eviction Officer Kanpur Nagar & Others

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12

Citation : (2012) 11 AHC CK 0074

Hon'ble Judges : Sudhir Agarwal, J

Judgement

Sudhir Agarwal, J.—This is a writ petition under Article 226 of the Constitution of India filed by Dr. Ram Murti Yadav son of Sri K.N. Yadav claiming himself to be a tenant of disputed accommodation assailing the order dated 15.07.1998 passed by Rent Control and Eviction Officer, Kanpur Nagar (hereinafter referred to as the "RCEO") declaring certain portion of house No. 1/57 Nawabgang, Kanpur Nagar, vacant, and directing for notification of vacancy for its allotment; and, the order dated 20.07.1998 releasing the aforesaid accommodation in favour of Sri Rajeev Kumar Jain, respondent no. 2 and Smt. Sadhna Jain wife of Sri Rajeev Kumar Jain, the owners of aforesaid accommodation.

2. The vacancy was declared by RCEO on the ground of unauthorized subletting, i.e., in purported exercise of power under Section 12 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act, 1972").

3. The house in question of which the disputed accommodation was a part, earlier was owned by Smt. Kundan Devi wife of Sri Jagdish Sharan Saxena. It was subsequently purchased, through a sale deed, by respondents no. 2 and 3 from Smt. Kundan Devi. One Sri A.K. Jauhari son of Sri R.S. Jauhari filed an application dated 11.06.1997 seeking allotment of accommodation possessed by petitioner on the ground that there is a deemed vacancy on account of illegal subletting by petitioner to one Sri Mahatam Pandey whereupon the RCEO issued

order for inspection and report from Rent Control Inspector. The report dated 26.08.1997 was submitted by Rent Control Inspector stating that there are four rooms, one small room, one store, verandah, kitchen, bathroom, angan, gallery and outside chabutara being part of building in question and at the time of inspection, it was told to be, in possession of one Ram Murti Yadav, residing in disputed part since 1972. Sri Jauhari filed affidavit alleging that earlier the accommodation in question was in the tenancy of one Bramco Corporation and thereafter without any letter of allotment it came to be occupied by petitioner who occupied the same alongwith Mahatam Pandey, whose name has been shown in the voter list also.

4. The objection was filed by respondents no. 2 and 3 supporting the allegations of Sri A.K. Jauhari stating that Bramco Corporation was a tenant till 1977 and thereafter petitioner became the tenant who also allowed one Sri Mahatam Pandey to stay in the disputed accommodation though Sri Pandey was not a member of his family and, therefore, the accommodation in the eyes of law is deemed vacant since there is no valid tenancy in favour of petitioner, Sri Ram Murti Yadav.

5. The RCEO has looked into the evidence adduced by parties and find that municipal record for the period of 1973 to 1978 shows that house in question was owned by Smt. Kundan Devi wife of Sri Jagdish Sharan Saxena and its occupant/tenant was M/s Bramco Corporation. In the subsequent five years record of 1987 to 1992 of Nagar Mahapalika Kanpur Nagar, it was mentioned that by order dated 04.12.1990 the names of Narendra Kumar Saxena and Rajeev Kumar Saxena, sons of Sri Jagdish Sharan Saxena, were substituted as owners. In the building in question, one room and one Kothari was shown in the tenancy of Sri Mahatma Pandey at Rs. 50/ per month and three rooms and one kitchen under tenancy of Sri Ram Murti Yadav at a monthly rent of Rs. 65/. He also noticed that in the voter list of 1993 and 1995, name of Sri Mahatam Pandey was shown being resident of house No. 1/57, i.e., the disputed one.

6. Though the occupation of accommodation in question by Sri Mahatam Pandey was disputed by Sri Ram Murti Yadav but a finding of fact has been recorded by RCEO and he has also found that alleged receipts filed by petitioner to show his tenancy prior to 1977 were not genuine but doubtful. It is held that Ram Murti Yadav came in possession of accommodation in 1978 but he occupied the accommodation illegally being unauthorized occupant since there was no letter of appointment issued in his favour and, therefore, the vacancy in question must be deemed to be vacant.

7. Learned counsel for the petitioner submitted that there are documents to show that he entered into tenancy of accommodation in question on 15.10.1972 and a copy of such certificate issued by Smt. Kundan Devi dated 15.10.1972 has been filed as Annexure1 to the supplementary affidavit dated 13.02.2011. He has also filed copies of some of money order receipts, said to have been sent in December, 1972 and onwards showing receipt of money by Smt. Kundan Devi in

December, 1972 and onwards. Besides, he has also filed documents of Nagar Mahapalika showing birth of a child to petitioner giving address of present accommodation and also receipt of payment of house tax and water tax in 1973, 1974 etc. The genuineness and validity of all these documents cannot be examined by this Court hereat.

8. The RCEO has ignored the rent receipts adduced by petitioner only by observing that they are doubtful but he has not said that they are forged, fictitious or manipulated. It cannot be doubted that in case the petitioner entered into tenancy of accommodation in dispute in October, 1972 even if without any letter of allotment, such tenancy could have stood regularized under Section 14 of Act, 1972 provided that it was let out to petitioner in 1972. The respondents no. 2 and 3 obviously have come into picture on purchase of accommodation in question on 18.10.1993 and, therefore, they could not have any personal knowledge as to what prevailed prior thereto, exactly. The RCEO, in my view, has erred in law by simply rejecting all the documents filed by petitioner in support of his claim on the ground that the same are only Photostat copies though there is nothing on record to show that genuineness of those documents was challenged by respondents no. 2 and 3.

9. There is one more thing. The order says that two rooms and one tin shed was occupied by the erstwhile owner, Smt. Kundan Devi at a monthly rent of Rs. 20/ which is wholly perverse and unbelievable, inasmuch as there cannot be any occasion to a landlord to occupy his/her own accommodation and to pay himself/herself any amount of rent. This also shows that the relevant issues have not been considered correctly and properly.

10. In the above facts and circumstances, in my view, the matter required reconsideration.

11. In the result, the writ petition is allowed. The orders dated 15.07.1998 and 20.07.1998 are hereby quashed. The matter is remanded to RCEO to reconsider petitioner's claim regarding commencement of his tenancy in 1972, permitting parties to place on record all relevant documents and thereafter to decide the same afresh in the light of observations made above and in accordance with law. The RCEO shall decide the matter expeditiously and in any case, within a period of six months from the date of production of a certified copy of this order.

12. No costs.