

(2014) 02 UK CK 0007

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 316 of 2009

Ram Pal Singh

APPELLANT

Vs

Moti Lal

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 18

Citation : (2015) 1 UC 232

Hon'ble Judges : Sudhanshu Dhulia, J.

Bench : Single Bench

Advocate : V.K. Kohli, Senior Advocate assisted by Kanti Ram Sharma, Advocate, for the Appellant; Ramji Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—This is a tenant petition challenging the order dated 18.01.1993 and 22.01.1993 passed by the Rent Control & Eviction Officer, Dehradun under Section 12 of the UP. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter referred to U.P. Act No. 13 of 1972) whereby the shop in question has been declared vacant and thereafter released vide order dated 22.01.1993 in favour of landlord/respondent. He also challenges the order dated 17.02.2009 passed by the Additional District Judge/F.T.C-2, Dehradun under Section 18 of the U.P. Act No. 13 of 1972 by which the court concerned dismissed the revision of the petitioner/tenant. The facts of this case are that there is a meat shop No. 704-B. Dakara Cantt. District Dehradun, which was given on rent to the petitioner by the erstwhile owner of the premises. The said property was purchased by one Motilal (present respondent/landlord) in the year 1987. who was then working as Sepoy, having the trade of Washerman, in Indo-Tibetan Border Police. The shop which was given to the tenant, according to him, was not being used and was kept under lock by the petitioner/tenant since a long time. He was about to retire from his service and, therefore, he moved an application under Section 12 of U.P. Act No. 13 of 1972 for declaring vacancy of

the shop in question and release the same in his favour before the Rent Control and Eviction Officer, Dehradun. as he wanted to open a dry cleaning shop in the said premises. He further submitted that he was in bona fide need of the said shop in question.

2. The concerned authority made an inspection of the building under Rule 8 of U.P. Act No. 13 of 1972. The inspection report is on record. It has come in the inspection report dated 12.01.1993 of the Rent Control and Eviction Officer that apart from the landlord and the tenant, there were many other persons in the locality, in whose presence the inspection was made by him. The names of the persons who were present at the time of inspection are as under :--

"1. Sri Rampal Singh, S/o Late Sri Moti Raw 704-C, Dakara, Dehradun (tenant)

2. Sri Moti Lal, S/o Sri Kishan Lal 704-D, Dakara, Dehradun (landlord)

3. Sri Rajkumar, S/o Late Sri Moti Ram, 704-C, Dakara, Dehradun

4. Smt. Bharti Devi, W/o Sri Moti Lal, 704-D, Dakara, Dehradun

5. Sri Vishnu Prasad S/o Sri Jagdish Prasad 661, Dakara Bazar, Dehradun

6. Sri Shyam Singh S/o Jhute Singh 126 Dakara, Dehradun

7. Sri Lalit Singh, S/o Sri P.L. Dutta 117, Dakara, Dehradun."

3. After completing the inquiry he came to the conclusion that the Shop No. 704-B, Dakara, Dehradun, which was given on rent to the petitioner, is locked by him since a long time. Apart from this he himself has constructed two shops adjacent to that shop, in which, according to him his brother is running a general store and in another he runs the butcher shop. It has also come on record that there was some dispute between the petitioner-tenant and the respondent-landlord of the shop in question and the tenant agreed to vacate the shop, if he has given "4,000/-. However, the petitioner denies that he has made any such demand.

4. Be that as it may on the basis of the inspection report, the Rent Control and Eviction Officer has passed a detailed order dated 18.01.1993 stating therein that since the petitioner has himself locked the premises and it is not in use, therefore, it has been declared vacant and landlord requires it for his bona fide need and subsequently, he released the shop in question in favour of the landlord/respondent vide order dated 22.01.1993. Both these orders were challenged by way of filing revision before the District Judge, Dehradun, which was dismissed vide order dated 17.02.2009 and the two orders of the Rent Control and Eviction Officer were upheld. Against the said order, the petitioner has preferred the present writ petition.

5. There are two grounds of challenge the impugned orders one is that vacancy could not have been declared as it can be declared only on limited grounds which has been enumerated under Section 12 of the U.P. Act No. 13 of 1972 i.e. if the landlord or the tenant of the building has substantially removed his effects

therefrom and secondly, if he has allowed it to be occupied by any person who is not a member of his family. Vacancy can be declared only in the above two circumstances for a commercial establishment or shop.

6. According to the petitioner none of these grounds exist in the present matter, and therefore, the declaration of the vacancy under Section 12 of the U.P. Act No. 13 of 1972 was bad in law. The second limb of argument is that the mandatory provision provided under Rule 8 of the U.P. Act No. 13 of 1972 regarding inspection of the building has not been followed properly in this matter. Rule 8 of the said Rules reads as under :--

"8. Ascertainment of vacancy (1) The District Magistrate, shall, before making any order of allotment or release in respect of any building which is alleged to be vacant under Section 12 or to be otherwise vacant or to be likely to fall vacant, get the same inspected.

(2) The inspection of the building, so far possible, shall be made in the presence of the landlord and the tenant or any other occupant. The facts mentioned in the report should wherever practicable, be elicited from at least two respectable persons in the locality and the conclusion of the inspection report shall be pasted on the notice board of the office of the District Magistrate for the information of the general public, and an order of allotment may be passed not before the expiration of three days from the date of such posting, and if in the mean time any objection is received, not before the disposal of such objection.

(3) Any objection under sub-rule (2) shall be decided after consideration of any evidence that the objector or any other person concerned may adduce."

7. Dealing with the second ground first, this Court is absolutely no doubt in its parameter that Rule 8 of U.P. Act No. 13 of 1972 have been followed in the present matter. The inspection report dated 12.01.1993 (Annexure No. 9 to the writ petition) clearly indicates that it was carried out not only in the presence of the landlord and the tenant but also in the presence of other persons, whose names have been mentioned in the inspection report as well as in the body of this judgment, who have categorically stated that the petitioner has locked the premises/shop since very long time and he is doing his meat business from the adjacent shop. Therefore, in view of the above fact it is apparently clear that the compliance of Rule 8 of the U.P. Act No. 13 of 1972 has been complied with.

8. Regarding the first arguments, this Court is of the opinion that once the premises in question was locked by the tenant himself and it was not being brought to use as revealed from the inspection report, then such a person i.e., landlord has substantially removed his effect from the premises. That being a situation there is absolutely no anomaly in the orders passed by the courts below. Accordingly the writ petition is dismissed. However, the petitioner shall vacate the shop in question within a period of three months from today i.e. on or before 01.06.2014 to enable him to get alternate accommodation and handover the peaceful possession of the same to the respondent-landlord.