

(1979) 09 AHC CK 0061

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1964 of 1975

Ram Prasad Misra and Others

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 18-09-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 17(2)

Citation : (1979) AWC 762

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : T.P. Asthana, S.K. Mukerji and D.S. Sinha, for the Appellant; S.N. Verma, D.P. Bahadur and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India arising out of proceedings for allotment in respect of portion of first floor of house No. 24/24-B, Karachi Khana, Kanpur. The Petitioners Nos. 1 to 4 are the landlords of the said premises. The said premises fell vacant. Petitioners Nos. 1 to 4 nominated Vinod Mehra Respondent No. 5 for the purposes of allotment u/s 17(2) of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972, hereinafter referred to as the Act. The Rent Control and Eviction Officer, however, allotted the premises in favour of Shyam Sunder Bhatia, Advocate, who was also an applicant for allotment, holding that the question of nomination in the case does not arise as the provisions of Section 17(2) of the Act did not apply. Against the allotment order dated 12th November. 1974, passed in favour of Shyam Sunder Bhatia, the Petitioners filed an appeal, The appeal came up for hearing before the VIIIth Additional District Judge, Kanpur, who by his judgment dated 27th August 1975, dismissed the appeal. Aggrieved the present petition has been filed challenging the orders dated 12th November 1974 and 27th August 1975.

2. Sri S.K. Mukerji has made two submissions before me. His first submission is that the property in dispute was a part of a building of which the other part was in occupation of the Petitioners Nos. 1 to 4 and as such the Petitioners Nos. 1 to 4 had a right to nominate a person of their choice u/s 17(2) of the Act. The view to the contrary taken by the appellate court is manifestly erroneous. His second submission is that the mere fact that the property in dispute was used for non-residential purposes does not disentitle the Petitioners Nos. 1 to 4 to nominate a person u/s 17, Sub-clause (2) of the Act. The view to the contrary taken by the appellate court is manifestly erroneous in law.

3. It is admitted on record that the property in dispute is a portion of the first floor. The second floor is occupied by the landlords. It has been further found by the appellate court that the main door and the staircase are common to the first and the second floor. It is, therefore, clear that there is a common entrance to both the first and the second floor. The second floor is already in possession of the landlords use for residential purposes. By U.P. Act No. 28 of 1976 an Explanation was added to Sub-section (2) of Section 17 of the Act to the following effect:

Explanation: Where a building in the occupation of the landlord for residential purposes adjoins (whether horizontally or vertically) the building sought to be allotted, and

(a) There is a common entrance to or a common passage for both buildings; or

(b)

then notwithstanding that the two buildings are independently fit for residential purposes, they shall be deemed to be part of each other for the purposes of this Sub-section.

4. From the explanation now added it is clear that Section 17, Sub-section (2) of the Act has been further explained to include a building where there is a common entrance to the portion sought to be allotted and the portion in occupation of the landlord for residential purposes. In the instant case there is a common entrance to both the first floor as well the second floor. The second floor is a building vertically adjoining the first floor. In the circumstances the Explanation to Section 17, Sub-section (2) of the Act fully applied to the facts of the present case. In this view of the matter the building sought to be allotted would come within the meaning of Section 17, Sub-section (2) of the Act. The view to the contrary taken by the appellate court is manifestly erroneous.

5. In regard to the second submission, Section 17, Sub-section (2) of the Act clearly provides that where a part of a building is in occupation of the landlord for residential purposes and the question of allotment arises in respect of the remaining part then the landlord has a right to nominate a person for allotment. The necessary requirement is that the landlord should be occupying a part of the building for residential purposes, not that the other part should be also used for

residential purposes. Here it has been found as a fact that the second floor, which is a part of the building, has been occupied by the landlords for residential purposes. Therefore, Section 17, Sub-section (2) of the Act would apply and merely because the remaining part was not used for residential purposes will not take away the right of the landlords to nominate a person for allotment.

6. In view of the above I find force in both the submissions made by the Learned Counsel for the Petitioner.

7. In the result I allow the petition, quash the allotment order dated 12th November, 1974 passed in favour of Respondent No. 2 as well as the appellate order dated 27th August 1975 and direct that the nomination made by the Petitioners Nos. 1 to 4 in favour of Petitioner No. 5 be given effect to. Since no body has appeared to contest this petition, I direct the parties to bear their own costs.