

(2005) 11 AHC CK 0008
In the Allahabad High Court
Case No : C.M.W.P. No. 8990 of 1983

Rameshwar Singh and Another	Vs	APPELLANT
Ramesh Chandra and Others		RESPONDENT

Date of Decision : 08-11-2005

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(1), 14, 16
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 24, 24(2)

Citation : (2006) 2 AWC 1094

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : J.N. Tewari, for the Appellant;

Judgement

S.U. Khan, J.—Petitioner No. 1 is landlord of the property which is in the form of Atta (first floor accommodation) consisting of two portions, northern and southern of House No. 220, situate in Mohalla Shah Qamar, Etawah. Northern portion is in dispute. Admittedly the portion situate towards south was in possession of the father of respondent Nos. 1 and 2 as tenant since before start of dispute in respect of northern Atta. Petitioner No. 2 Jagat Narain filed allotment application before Rent Control and Eviction Officer, Etawah in respect of northern Atta. R.C. and E.O. held that southern portion was in tenancy of Babu Ram, father of respondent Nos. 1 and 2, namely, Ramesh Chandra and Mahesh Chandra. R.C. and E.O. further held that relations between the parties were not cordial and litigation had taken place between the parties previously also. The previous tenant of the northern Atta in dispute Krishna Kumar stated that he was tenant thereof and he vacated the same on 30.5.1977. Both the landlord as well as the outgoing tenant intimated the vacancy to R.C. and E.O. The building in dispute was inspected on 3.6.1977. Rent Control Inspector found respondent Nos. 1 and 2 to be in possession of the property in dispute. On 10.2.77, the landlord had also lodged F.I.R. against respondent Nos. 1 and 2.

Respondent Nos. 1 and 2 had asserted before the R.C.I, that they were in possession of the northern Atta in dispute since 1968 or 1969. This version was not believed by the R.C. and E.O. However respondent Nos. 1 and 2 filed receipt showing payment of house tax [vide receipt No. 32 dated 21.11.1974) in respect of the premises in dispute (on the northern side). On the basis of that receipt alone R.C. and E.O. by order dated 3.4.1979 held that there was no vacancy and the opposite parties (respondent Nos. 1 and 2) were entitled to the benefit of Section 14 of the U.P. Act No. 13 of 1972 as Smt. Naseem (previous occupant) vacated the Atta in dispute prior to 10.2.1977 the date of F.I.R. and opposite parties (respondent Nos. 1 and 2) took its possession on her vacation. R.C. and E.O. further held that no report of forcible possession was ever made, and house tax receipt established that the opposite parties paid tax for both the Attas (Atta in dispute and southern Atta). Southern Atta was admittedly in tenancy occupation of father of respondent Nos. 1 and 2.

2. Against the order dated 30.4.1979, two revisions were filed. Civil Revision No. 107 of 1979 was filed by petitioner No. 2 and Civil Revision No. 113 of 1979 by petitioner No. 1. District Judge, Etawah, through judgment and order dated 2.3.1983, held that the revisions, against order refusing declaration of vacancy by R.C. and E.O., were not maintainable. As such he dismissed both the revisions as not maintainable. Through this writ petition, the revisional court's order dated 2.3.1983 as well as the order passed by the R.C. and E.O. dated 30.4.1979 have been challenged.

3. R.C. and E.O. in his judgment observed that the occupation of the opposite parties of northern Atta undoubtedly was unauthorized because they occupied without any allotment order in their favour and without the consent of the landlord. R.C. and E.O. also held that even though Krishna Kumar, previous tenant was keeping prostitute of the name of Smt. Naseema in the Atta in dispute, however the said Atta was vacated prior to 1977 while the application for allotment was filed before the R.C. and E.O. on 30.5.1977. It was also held that Krishna Kumar had colluded with the landlord.

4. So far as the question of maintainability of revision against the order passed by the R.C. and E.O. refusing declaration of vacancy is concerned, I need not decide the same. The order dated 30.4.1979, has also been challenged apart from the order dated 2.3.1983 of the revisional court upholding the findings recorded by R.C. and E.O. In this writ petition validity of the order dated 30.4.1979, can be adjudged.

5. One of the arguments of learned Counsel for respondent Nos. 1 and 2 is that after vacation of the property in dispute by the previous tenant Krishna Kumar, landlord occupied the same. Thereafter, if he was forcibly evicted by respondent Nos. 1 and 2 then the allotment application/release proceeding is not maintainable in such situation. In support of this argument he referred to the judgment delivered by me in Jamuna Prasad Vs. Incharge District Judge and Others, . In the case cited by learned Counsel for respondent Nos. 1 and 2, the

applicant for allotment had asserted that he was valid tenant and had been illegally dispossessed. In view of this assertion, it was held by me that allotment proceedings were not maintainable as according to the said assertion it was a case of rank trespass. However, in this case the position is slightly different. It was found by the R.C. and E.O. that Krishna Kumar was previous tenant and he had vacated the building in dispute. The date of vacation is not clear. In such situation the proceedings u/s 12 of U.P. Act No. 13 of 1972 cannot be said to be not maintainable. In this case the intimation of vacancy of the building was given by the outgoing tenant. However, if the property is in peaceful possession of the landlord since long or in possession of the tenant and then he is forcibly evicted then proceedings under Sections 12 and 16 are not maintainable. In this case the property was not occupied by third person, i.e., respondent Nos. 1 and 2 forcibly. According to the finding of R.C. and E.O., after vacation by previous tenant property was occupied by respondent Nos. 1 and 2. The case is squarely covered by Section 12(1)(a) of the Act.

6. Accordingly I hold that proceedings were quite maintainable. The view of the R.C. and E.O. that by mere payment of house tax a person can be entitled for regularisation of tenancy is not appreciable. The tenancy can be regularised u/s 14 of the Act only if after July, 1976, the landlord himself lets out the building. Mere payment of house tax cannot create any right, otherwise any person can get right by paying house tax in advance.

7. The writ petition is accordingly allowed. Order dated 30.4.1979, is set aside. It is held that the accommodation in dispute is vacant. Petitioner No. 1 may file release application u/s 16 of U.P. Act 13 of 1972 unless he has already filed such application. If release application is rejected or no such application is filed then allotment applications already filed shall be considered and building in dispute shall be allotted to the deserving applicant keeping in view the preference of the landlord in this regard. No fresh allotment application shall be accepted. R.C. and E.O. shall finalize the proceedings preferably within four months from the date of production of a certified copy of this order before him.

8. Respondent Nos. 1 and 2 are in unauthorized possession since 1977 till date. They are liable to pay damages for use and occupation to the landlord, which are determined at the rate of Rs. 300 per month. As the date of occupation is not clear hence they shall pay damages since 1.1.1978. The damages may be recovered under Rule 24 of the rules framed under the Act. For the said purpose certified copy of this judgment shall be treated to be certificate of recovery under Rule 24(2) in Form G.