

(2008) 03 AHC CK 0173
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 13050 and 13190 of 2005

Ramji Kakkar and another

APPELLANT

Vs

Rent Control And Eviction Officer, Varanasi and others

RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

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

Citation : (2008) 03 AHC CK 0173

Hon'ble Judges : Dilip Gupta, J

Final Decision : Allowed

Judgement

Dilip Gupta, J.—The dispute in the present writ petitions arises out of an application for release filed by the landlord in respect of the tenanted shop. It is the contention of the petitioners that the said shop was allotted to Shail Kakkar by the Rent Control and Eviction Officer, Varanasi by the order dated 19th August, 1993 and thereafter possession of the shop was also delivered to her but an application was filed by Mohd. Ayub under section 12 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) with a prayer that the shop be declared vacant. It was inter alia stated in the said application that he had purchased the property by a Registered sale deed on 18.10.2000 and that the earlier landlord had given the shop to Ramji Kakkar without any allotment order. This application was led against Ramji Kakkar and the earlier landlord Vinay Prakash. In the said case petitioner Shail Kakkar filed an application for impleadment on the ground that she was the allottee of the shop and she also prayed for permission to file evidence. This application was rejected by the Rent Control and Eviction Officer, Varanasi by the order dated 9th September, 2004. This order has been challenged by Shail Kakkar in Writ Petition No. 13190 of 2005.

2. After the rejection of the aforesaid impleadment application, the Rent Control and Eviction Officer, Varanasi proceeded to decide the application filed under section 12 of the Act. Ramji Kakkar raised an objection that the said application

was not maintainable. Mohd. Ayub then filed an application on 11th October, 2004 under section 16 of the Act. The Rent Control and Eviction Officer, Varanasi rejected the application filed under section 12 of the Act and proceeded to decide the application filed by the landlord under section 16 of the Act. Vacancy was declared by the Rent Control and Eviction Officer, Varanasi by the order dated 17th February, 2005. Ramji Kakkar and Shail Kakkar have sought the quashing of this order in Writ Petition No. 13050 of 2005.

3. I have heard learned Counsel for the petitioners and the learned Counsel appearing for the respondent landlord and have perused the material available on record.

4. It is the contention of the petitioners that the shop in dispute was allotted in favour of Shail Kakkar by the Rent Control and Eviction Officer, Varanasi by the order dated 19th August, 1993 and a copy of the said order has been annexed as Annexure 4 in, Writ Petition No. 13050 of 2005. The Rent Control and Eviction Officer, Varanasi in the order dated 17th February, 2005 has declared vacancy as only a photostat copy of the allotment order was annexed. As noticed above, the contention of Shail Kakkar is that the shop in dispute was allotted to her by the order dated 19th August, 1993 of the Rent Control and Eviction Officer, Varanasi. This fact was not seriously disputed by the landlord and even otherwise the Rent Control and Eviction Officer could have directed Ramji Kakkar to place on record the original order. He could have also checked the veracity of the order from the file maintained in his office because the allotment order was issued by his office on 19th August, 1993. The Rent Control and Eviction Officer has also observed that there is some dispute with regard to boundaries of the shop but in the counter affidavit filed by the landlord, it has been stated that there is no dispute regarding boundaries. This apart, such an objection was not raised by the landlord before the Rent Control and Eviction Officer, Varanasi. In such circumstances the order dated 17th February, 2005 deserves to be set aside and is accordingly set aside.

5. In Writ Petition No. 13190 of 2003 the specific case taken up by Shail Kakkar is she was in possession of the shop on the basis of the allotment order dated 19th August, 1993 issued by the Rent Control and Eviction Officer, Varanasi. The landlord should have impleaded her as an opposite party but he impleaded her son Ramji Kakkar, and the earlier landlord. If vacancy was to be declared Shail Kakkar was a necessary party and the application for impleadment filed by her should have been allowed. The order dated 9th September, 2004 is therefore, set aside.

6. In normal circumstances the matter would have been sent back to the Rent Control and Eviction Officer, Varanasi to pass a fresh order on the impleadment application but, in the facts and circumstances of the case, when Shail Kakkar has taken a specific case that the shop was allotted to her and she has also filed the allotment order, it is desirable that the application for impleadment may be allowed by this Court.

7. Writ Petition No. 13190 of 2005 is accordingly allowed. The order dated 9th September, 2004 passed by the Rent Control and Eviction Officer, Varanasi is set aside. The application filed by Shail Kakkar for impleadment is allowed and she is impleaded as opposite party No. 3 in the application.

8. Writ Petition No. 13050 of 2005 is allowed. The order dated 17th February, 2005 passed by Rent Control and Eviction Officer, Varanasi declaring vacancy is set aside. The matter is remitted back to the Rent Control and Eviction Officer, Varanasi to pass a fresh order in accordance with law after hearing the parties and after giving opportunity to the newly impleaded opposite party No. 3 Shail Kakkar to file her objection. It is expected that the Rent Control and Eviction Officer, Varanasi shall pass an order expeditiously as the matter is old.

9. No order as to costs.