

(2008) 03 AHC CK 0157

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 61885 and 56658 of 2007

Rangiji Sahkari Avas Samiti Ltd

APPELLANT

Vs

R.C.and E.G./Additional District Magistrate (CITY), Agra and
others

RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(1)(b), 16(2), 16(5)(b), 18

Citation : (2008) 03 AHC CK 0157

Hon'ble Judges : Dilip Gupta, J

Final Decision : Disposed Of

Judgement

Dilip Gupta, J.—Writ Petition No. 61885 of 2007 has been filed by Rangiji Sahkari Avas Samiti Ltd. (hereinafter referred to as the landlord") for setting aside that part of the order dated 26th August, 2003 passed by the Rent Control & Eviction Officer by which the application filed by it under section 16 (1) (b) of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter referred to as the "Act") for release of the building in its favour was rejected. The petitioner has also sought the quashing of the judgment and order dated 12th October, 2007 passed by the learned Additional District Judge, Court No. 12 Agra by which Revision No. 88 of 2004 filed by it under section 18 of the Act for setting aside the said order was dismissed.

2. Writ Petition No. 56658 of 2007 has been filed by the State of U.P. and the District Supply Officer, Agra for setting aside the judgment and order dated 12th October, 2007 passed by the learned Additional District Judge, Court No. 12 Agra by which Revision No. 87 of 2004 filed by the landlord for setting aside that part of the order dated 26th August, 2003 of the Rent Control & Eviction Officer which rejected the application filed by the landlord under section 16 (5) (b) of the Act for being put back in possession of the building, was allowed.

3. The facts, as they emerge from the various affidavits filed by the parties in the

aforesaid two writ petitions, indicate that the dispute relates to a part of the building bearing Municipal No. 3/50 commonly known as "Bharatpur House", Khandari Agra. The said building initially belonged to the Bharatpur Royal Family Religious and Ceremonial Trust. This Trust executed a lease deed in favour of the landlord on 10th February, 1989. The landlord is a registered Cooperative Housing Society registered under the provisions of the U.P. Cooperative Societies Act, 1965 engaged in the business of providing residential plots and houses to its members. The accommodation in dispute which relates to the first floor of the building was initially in the tenancy of the District Planning Officer, Agra who was redesignated as the Chief Development Officer, Agra. It is said that on 17th November, 1997 the said tenant vacated the accommodation in dispute and it came into the possession of the landlord. On 8th December, 1997 the District Supply Officer, Agra made an application for allotment of this accommodation in dispute in his favour under section 16 (1) (a) of the Act. The Rent Control & Eviction Officer thereupon called for a report from the Inspector who submitted it on 12th November, 1998. The report mentions that the accommodation in dispute had been vacated by the tenant and they had shifted their office to Sanjay Palace Commercial Complex, Agra and, therefore, the accommodation in dispute had fallen vacant. On the basis of this report, the Rent Control & Eviction Officer passed an allotment order dated 29th January, 1998 in favour of the District Supply Officer, Agra.

4. The landlord filed an application under section 16 (5) (a) of the Act for review of the order dated 29th January, 1998 and by the order dated 13th January, 2000 this application filed by the landlord was allowed and the order of allotment made in favour of the District Supply Officer, Agra was set aside. Feeling aggrieved, a Revision was filed by the District Supply Officer which was dismissed by the judgment and order dated 5th August, 2000. A writ petition was then filed by the District Supply Officer in this Court being Writ Petition No. 43774 of 2000 to challenge these orders. The writ petition was dismissed by this Court by the judgment and order dated 11th May, 2001. It is said that the order dated 13th January, 2000, by which the order of allotment dated 29th January, 1998 made in favour of the District Supply Officer was set aside, has attained finality.

5. The landlord, after the passing of the aforesaid order dated 13th January, 2000, made an application under section 16 (1) (b) of the Act for release of the entire first floor of the property in its favour. The landlord also moved an application under section 16 (5) (b) of the Act for eviction of District Supply Officer from the property as possession had been taken by the allottee on the basis of the allotment order dated 29th January, 1998.

6. The Rent Control & Eviction Officer by the order dated 26th August, 2003 rejected both the aforesaid applications filed by the landlord under section 16(1) (b) and section 16 (5) (b) of the Act.

7. The landlord then filed two Revisions under section 18 of the Act. While

Revision No. 87 of 2004 was filed against the order passed by the Rent Control & Eviction Officer on the application filed by the landlord under section 16 (5) (b) of the Act, Revision No. 88 of 2004 was filed against the order passed by the Rent Control & Eviction Officer on the application filed by the landlord under section 16 (1) (b) of the Act. Revision No. 87 of 2004 was allowed and this has led to the filing of Writ Petition No. 56658 of 2007 by the State of U.P. and the District Supply Officer. Revision No. 88 of 2004 was dismissed and this has led to the filing of Writ Petition No. 61885 of 2007 by the landlord.

8. I have heard Sri V.K. Singh learned Senior Counsel for the landlord duly assisted by Sri K.K. Arora learned Counsel and Sri Ram Krishna learned Standing Counsel appearing for the State of U.P. and the District Supply Officer, Agra and have perused the materials available on record.

9. I propose to first deal with the submissions advanced by the learned counsel for the parties in Writ Petition No. 61885 of 2007.

Writ Petition No. 61885 of 2007

10. Sri V.K. Singh learned Senior Counsel for the landlord submitted that the application filed by the landlord for release of the premises was liable to be allowed and the Rent Control & Eviction Officer and the Revisional Court completely fell in error as they failed to correctly construe the provisions of sections 16 (1) (b) and 16 (2) of the Act.

11. Sri Ram Krishna, learned Standing Counsel, on the other hand, defended the order passed by the Rent Control & Eviction Officer and the Revisional Court and submitted that the application filed by the landlord for release of the accommodation was rejected on a proper appraisal of the evidence.

12. The order rejecting the application filed by the landlord under section 16 (1) (b) of the Act is under challenge in this petition. It is not in dispute that after the declaration of the vacancy, the premises were allotted by the Rent Control & Eviction Officer to the District Supply Officer, Agra under section 16 (1) (a) of the Act by the order dated 29th January, 1998 but this order was set aside on 13th January, 2000. The landlord then filed an application for release of the building under section 16 (1) (b) of the Act. This application was supported by an affidavit of Subhas Chandra Verma, Secretary of the Society. The relevant paragraphs of the application are as follows:

"(1) That applicant is a registered Cooperative Society duly registered under U.P. Sahkari Samiti Adhiniyam 1965. The registration No. of the society is 1154, as per certificate granted by Sahayak Avas Ayukt, Avas Sahayak Nibandhak, Uttar Pradesh Avas Vikas Parishad, Lucknow on 19.6.1987.

(2) That the main object of the applicant Sahkari Samiti is to arrange land, building material and other services for its members and also to help the in constructing the buildings.

(3) That with this object in view, applicant Samiti took permanent lease of property number 3/50 (new) 165/I(old) a five storied building with land underneath commonly known as Bharatpur House, Khandari, Agra from Bharatpur Royal Family Religious and Ceremonial Trust, Public Religious Trust. This lease deed is dated 10.2.1989 and is duly registered. This property is in dilapidated and dangerous condition and requires reconstruction. The condition of the property is duly mentioned in above mentioned lease deed.

(4) That applicant Samiti was specifically given right by the lessers to demolish whole or part of the above property and reconstruct it and use it as applicant Samiti likes.

(5) That Samiti wanted to take possession of this property and wanted to demolish the property and build houses for its members.

(10) That as already stated the property in question is 125 years old and it is in dilapidated and dangerous condition, requiring demolition and reconstruction the applicant Samiti in view of its objects has to demolish every portion of property of which Samiti gets actual possession and will reconstruct the house for its members, which is the main object of the Samiti as per its byelaws. The applicant has to provide land and houses to its members. The fact is that the property was got leased from Bharatpur Royal Family Religious and Ceremonial Trust for demolition and for reconstruction of property for members of the Society. This fact was also mentioned in the review application dated 19.7.1999. The Samiti has requisite financial capacity to demolish the entire property and construct new houses on the land.

(11) That the applicant has requisite financial capacity to demolish and reconstruct the property which is in dilapidated condition. The Samiti is getting proper estimate of expenditure over the proposed demolition and new construction prepared. The Samiti has also instructed its architect to prepare the plan for proposed new constructions conforming to the byelaws and regulations of the local authority competent to sanction the plans i.e. Agra Development Authority.

(12) That the need of the Samiti for aforesaid purposes of demolition and new construction of houses for its members is bona fide, genuine and urgent and is in accordance with the main object of the Samiti.

(13) That Samiti through its Sachiv gives an undertaking that on getting actual possession of property or any part of it, the Samiti will demolish it and will get new houses constructed for residence of its members.

13. The Rent Control & Eviction Officer called for a report from the Commissioner who submitted a report about the condition of the building. The landlord filed objections to the said report.

14. The Rent Control & Eviction Officer by the order dated 26th August, 2003 rejected the release application filed by the landlord. The Rent Control & Eviction

Officer noticed that the release application filed by the landlord is required to be decided before the application for allotment filed by the prospective allottee is taken up and that the proposed allottee has no right to object to the release application. The Rent Control & Eviction Officer also noticed that the landlord had stated in the application that the building, which was old and in a dilapidated condition, was required to be demolished and reconstruction for its members for which purpose adequate financial resources, were available with the landlord but came to the conclusion that the provisions of Rule 17 of the Rules had not been complied with by the landlord. The Rent Control & Eviction Officer also noticed that the list of the members of the Society had not been filed and observed that merely on the basis of the Memorandum of Association of the Society and the affidavit, it cannot be said that there was any bona fide need. The release application was, accordingly, rejected.

15. Revision No. 88 of 2004 filed by the landlord for setting aside the aforesaid order was dismissed. A perusal of the Revisional order indicates that the bona fide need of the landlord was first considered. In this connection, the Revisional Court examined the averments made in paragraph 10 of the application filed by the landlord and observed that there was no averment in the said paragraph about the bona fide requirement of the landlord. It also observed that the landlord had not indicated in the application for what purpose and for which of its members the first floor of the building was required though in paragraph 12 of the application it was stated that the building was bona fide required for the purposes of demolition and new construction of houses for the members. The Revisional Court, therefore, concluded that the landlord had not pleaded about bona fide need and in the absence of any pleading, the evidence could not be examined and nor could any relief be granted. The Revisional Court, therefore, rejected the claim of the landlord on the ground of bona fide requirement.

16. The Revisional Court then examined whether the building was in a dilapidated condition and was required for the purposes of demolition and new construction. It noticed that the landlord had in this connection filed an affidavit of Rajiv Kumar Singh, Executive Engineer who had stated that the building was in a dilapidated condition. The Revisional Court also noticed that the landlord had also filed the notice sent by the Executive Engineer Nagar Nigam which indicated that some portion of the second floor had fallen and the remaining portion was in a dilapidated condition. The Revisional Court also examined the five affidavits filed on behalf of the District Supply Officer, Agra regarding the proper condition of the building. It also examined the report submitted by the Advocate Commissioner who had mentioned that the building was not in a dilapidated condition. It is on the basis of the report submitted by the Advocate Commissioner that the Revisional Court found that the building was not in a dilapidated condition. The Revisional Court also examined whether the provisions of Rule 17 of the Rules had been complied with and in this connection found that the landlord had filed the plan of the proposed construction, the estimate of expenditure over proposed demolition and new construction and papers

regarding the financial capacity of the landlord for the proposed demolition and new construction and observed that there was no occasion to dispute this fact because loan was readily available for building houses as the policy of the Government was to ensure that maximum number of people were provided residence. The Revisional Court, however, dismissed the Revision holding that the building was not in a dilapidated condition.

17. In order to appreciate the contentions advanced by the learned Counsel for the parties, it would be necessary to reproduce the relevant provisions of sections 16 and 18 of the Act and the same are as follows:

"16. Allotment and release of vacant building. (1) Subject to the provisions of the Act, the District Magistrate by order

(a) require the landlord to let any building which is or has fallen vacant or is about to fall vacant, or a part of such building but not appurtenant land alone, to any person specified in the order (to be called an allotment order); or .

(b) release the whole or any part of such building, or any land appurtenant thereto, in favour of the landlord (to be called a release order):

Provided that in the case of vacancy referred to in subsection (4) of section 12, the District Magistrate shall give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under clause (a).

(2) No release order under clause (b) of subsection (1) shall be made unless the District Magistrate is satisfied that the building or any part thereof or any land appurtenant thereto is bona fide required, either in its existing form or after demolition and new construction, by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, calling or where the landlord is the trustee of a public charitable trust, for the objects of the trust, or that the building or any part thereof is in a dilapidated condition and is required for purposes of demolition, and new construction, or that any land appurtenant to it is required by him for constructing one or more new buildings or for dividing it into several plots with a view to the sale thereof for purposes of construction of new buildings:

Provided that no application under this subsection shall be entertained for the purposes of a charitable trust the objects of which provide for discrimination in respect of its beneficiaries on the ground of religion, caste or place of birth.

4. Where the allottee or the landlord has not been able to obtain possession of the building, allotted to him or, as the case may be, released in his favour, or any part thereof, the District Magistrate, on an application of the allottee or the landlord, as the case may be, may by order evict or cause to be evicted any person named in the order as well as every other person claiming under him or found in occupation, and may for that purpose use or cause to be used such

force as may be necessary and put or cause to be put the allottee or the landlord in possession of the building or part.

5 (a). Where the landlord or any other person claiming to be lawful occupant of the building or any part thereof comprised in the allotment or release order satisfies the District Magistrate that such order was not made in accordance with clause (a) or clause (b), as the case may be, of subsection (1), the District Magistrate may review the order:

Provided that no application under this clause shall be entertained later than seven days, after the eviction of such person.

(b) Where the District Magistrate on review under this subsection sets aside or modified his order of allotment or release, he shall put or cause to be put the applicant, if already evicted, back into possession of the building, and may for that purpose use or cause to be used such force as may be necessary.

Section 18. Appeal against order of allotment or release. (1)

(3) Where an order under section 16 or section 19 is rescinded, the District Magistrate shall, on an application being made to him on that behalf, place the parties back in the position which they would have occupied but for such order or such part thereof as has been rescinded, and may for that purpose use or cause to be used such force as may be necessary."

18. It is, therefore, clear that under section 16 (1) (b) of the Act, the District Magistrate can release the whole or any part of the building in favour of the landlord. Under section 16 (2) of the Act the release order can be passed in favour of the landlord if any of the three conditions enumerated therein are satisfied. The three conditions are:

(a) That the District Magistrate is satisfied that the building or any part thereof or any land appurtenant thereto is bona fide required, either in its existing form or after demolition and new construction, by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, calling or where the landlord is the trustee of a public charitable trust, for the objects of the trust.

OR

(b) That the building or any part thereof is in a dilapidated condition and is required for purposes of demolition, and new construction.

OR

(c) That any land appurtenant to it is required by him for constructing one or more new buildings or for dividing it into several plots with a view to the sale thereof for purposes of construction of new buildings.

19. The learned Senior Counsel for the landlord submitted that the release

application was filed both in respect of condition (a) and condition (b) mentioned above but the Rent Control & Eviction Officer as well as the Revisional Court committed an illegality in rejecting the release application in respect of condition (a) and that even in respect of condition (b), the Revisional Court committed an error in holding that the building was not in a dilapidated condition even after holding that the provisions of Rule 17 of the Rules had been complied with.

20. The contention of the learned Senior Counsel for the landlord in respect of condition (a) needs to be examined first because if this condition is satisfied, it may not be necessary at all to examine condition (b).

21. The Rent Control & Eviction Officer has mainly confined the order to condition (b) and has only made a passing remark that the list of the members of the Society had not been filed and merely on the basis of the memorandum of Association of the Society and the affidavit, it cannot be said that there was any bona fide need. The Revisional Court has come to the conclusion that there is no pleading regarding condition (a) in the release application and, therefore, evidence cannot be examined and no relief can be granted.

22. It is, therefore, necessary to examine the release application filed by the landlord. Paragraph (1) of the release application mentions that the applicant is a registered Cooperative Society registered under the provisions of the U.P. Cooperative Societies Act, 1965. Paragraph 2 mentions that the main object of the Society is to arrange land, building material and other services for its members and also to help them in constructing the buildings. Paragraph 3 mentions that with this object in view, the applicant had taken permanent lease of the five storied building commonly known as Bharatpur House by the registered deed dated 10th February, 1989. It also mentions that the property is in a dilapidated and dangerous condition and requires reconstruction. Paragraph 4 mentions that Society was specifically given right by the lessors to demolish the whole or part of the property and reconstruct it and use it in the manner the Society liked. Paragraph 5 mentions that the Society wanted to take possession of the property and wanted to demolish the property and build houses for its members. Paragraph 12 of the application mentions that the need of the Society for aforesaid purposes of demolition and new construction of houses for its members is bona fide, genuine and urgent and is in accordance with the main objects of the. Society. The Society has also given an undertaking in paragraph 13 of the application that on getting actual possession of the property or any part of it, the. Society will demolish it and will get new houses constructed for the residence of its members.

23. A conjoint reading of the aforesaid paragraphs of the release application leaves no manner of doubt that the landlord had specifically pleaded that the building was bona fide required after demolition and new construction. The Revisional Court completely fell in error in holding that there is no pleading regarding condition (a). The Revisional Court has also made a passing remark that the landlord did not mention which of the members and for what purpose

the first floor of the building was required. As noticed above, the landlord had clearly stated that the requirement of the landlord was for the purpose of demolition and new construction of houses for the members of the Society which was in accordance with the main object of the Society. Thus, the purpose for which the building was required was mentioned in the application. Non mention of the names of the members of the Society in the application form, particularly when the memorandum of the Association of the Society had been filed, is of no consequence.

24. Such being the position, the Rent Control & Eviction Officer and the Revisional Court committed an illegality in rejecting the release application.

25. In such circumstances, the matter is normally required to be remanded but this Court in *Kelawati (Smt.) v. Special Judge (B.C. Act), Moradabad and others* 2006 (63) ALR 418, after placing reliance upon two decisions of the Supreme Court, has observed that in certain circumstances, the release application can be allowed by this Court. The relevant portion of the judgment is quoted below:

"When both the Courts below have rejected the release application of the landlord and judgments are found to be erroneous in law by writ Court, matter is normally remanded. However, that formula is not to be necessarily followed in every case, particularly when the matter is pending for long. Release application in the instant case was filed in the year 1991. The Supreme Court in *G.C. Kapoor v. N.K. Bhasin* 2001 (45) ALR 808 (SC), allowed the release application out rightly which had been rejected by the Prescribed Authority/Lower Appellate Court as well as High Court. The Supreme Court in *R.E.V. Grounder v. V.V.P. Temple* 2004 (13) AIC 389 (SC)=2004 ACJ 204, has held that when the matter is pending for long remand must be avoided.

Accordingly, writ petition is allowed. Judgment and orders passed by the Courts below are set aside and release application of the petitioner is allowed."

26. This decision was relied upon in the subsequent decision in *Kelawati (Smt.) v. Additional District Judge/Special Judge and others* 2006 (63) ALR 418, wherein it was observed:

"After discussing several authorities of the Supreme Court I have held in *Mohd. Arif v. A.D.J.* 2005 (61) ALR 683. that when both the Courts below have rejected the release application and writ Court finds the judgments to be erroneous in law, it is not always necessary to remand the matter to Court below. In suitable cases particularly when the matter is pending for long, final relief may be granted to the landlord in writ petition itself. In the said authority I had particularly placed reliance upon an authority of the Supreme Court reported in *G. C. Kapoor v. N. K. Bhasin* 2001 (45) ALR 808 (SC), where release application was rejected by all the three Courts still Supreme Court out rightly allowed the release application without remanding the matter."

27. In the present case the release application was filed as far back as in 2001

and the orders impugned have been found to be illegal. In such circumstances, I do not consider it appropriate to remand the matter particularly when I am satisfied that the release application is liable to be allowed.

28. At this stage it needs to be mentioned that in an application filed for release under section 16 (1) (b) of the Act the lis is between the District Magistrate and the landlord and the prospective allottee does not have any right to object. In fact, the prospective allottee comes into picture only after the application filed by the landlord under section 16 (1) (b) is rejected. This is what was observed by the Full Bench of this Court in Talib Hasan and another v. 1st Additional District Judge, Nainital and others 1986 (12) ALR 113 (FB), which view was found to be correct by the Supreme Court in Vijay Kumar Sonkar v. Incharge District Judge and others 1995 (2) ARC 1, wherein it was observed:

"The distinction between the two orders envisaged in subsection (1) is well marked. In the case of an allotment order the result is brought about by a dialogue between the prospective tenant and the District Magistrate, thereafter, under whose orders the landlord is required to let any building to the prospective tenant. On the other hand, in the case of a release order the dialogue takes place between the District Magistrates and the landlord and the prospective tenant does not figure in it at all. The allotment order and the release order, as the case may be, being mutually exclusive, have separate areas of operation permitting no encroachment of one over the other. The mere fact that the focal point is the District Magistrate from whom flow the respective orders is of no consequence. It is on this understanding of the law that the High Court relying on its Full Bench decision in the case of Talib Husain v. 1st Additional District Judge 1986 (12) ALR113 (FB), rejected the prayer of the prospective tenant that he had a right to be heard in a release application of the landlord based as it was on the provisions of subsection (2) of section 16 on ground of bona fide requirement. On the allowing of the release application the premises in question ceased to be allotable and since the District Magistrate, thereafter would have no jurisdiction to make an allotment thereof and the prospective tenant consequently has no right to resist the landlord in release proceedings. The view of the High Court seems to us to be correct in the circumstances of the case as also in law because as of today no allotment order subsists in favour of the appellant and yet he continues to be in possession."

(Emphasis supplied)

29. This Court in Ved Prakash v. VIIth Additional District fudge, Ghaziabad and others 1993 (21) ALR 595, in view of the Full Bench decision of this Court in Talib Hasan (supra), further observed that the status of a prospective allottee would not improve merely because the premises have been allotted to the prospective allottee after the rejection of the release application of the landlord. In this case, after rejection of the release application of the landlord, the Rent Control and Eviction Officer passed an order on 11th April 1998 allotting the premises to the petitioner Ved Prakash. The landlord filed a Revision under section 18 of the Act

for setting aside the said order. The Revision was allowed and the premises were released in favour of the landlord. Ved Prakash then filed a writ petition. This Court found that there was no justification to interfere at the instance of the petitioner whose status so far as the proceedings for release of the accommodation under section 16 of the Act are concerned was not above that of an authorized occupant or a prospective allottee. The relevant portion of the judgment is quoted below :

"In the circumstances, therefore, it is obvious that the mere fact that subsequent to the rejection of an application for release the Rent Control and Eviction Officer passed an order of allotment in favour of a prospective allottee such an order of allotment can be of no avail so as to vest the prospective allottee with a right of being heard in the matter of release of an accommodation contemplated under section 16 of the Act which is taken up in revision under section 18 of the said Act. The Us between the District Magistrate representing the State and the landlord so far as the matter of release of the accommodation declared to be vacant is concerned becomes pending when the revising authority entertains the revision against the order rejecting the application for release and in this matter the prospective allottee cannot be deemed to be entitled to have any right of being heard and his position remains the same as it was prior to the passing of the order of allotment. The Full Bench was quite emphatic when it pointed out that the application for release under section 16 (1) (b) of the Act is a matter between the District Magistrate and the landlord in which the outgoing tenant or the prospective allottee does not have any right to object. Since the order of allotment has to fall with the reversal of the order rejecting the application for release, it is obvious that the position of a prospective allottee cannot improve simply because proceeding on the basis of an erroneous order rejecting the release application, the Rent Control and Eviction Officer has passed an order of allotment in favour of such a prospective allottee.

Having regard to the Full Bench decision of this Court and the other decisions to which a reference has been made above. I do not find any justifiable ground to interfere in the impugned order in the exercise of the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India at the instance of the petitioner whose status so far as the proceedings for release in question arising under section 16 of the U.P. Act No.13 of 1972 cannot be above that of an unauthorized occupant and a prospective allottee."

(Emphasis supplied)

30. Sri Ram Krishna, learned Standing Counsel, however, submitted that earlier the landlord had filed Writ Petition No. 22480 of 2006 as the application for production of additional evidence at the revisional stage was rejected and this Court by the judgment and order dated 25th May, 2006 while allowing the writ petition directed that the additional evidence produced by the landlord shall be accepted and kept on record but it shall be open to the respondents namely the Rent Control & Eviction Officer and the District Supply Officer, Agra to rebut the

evidence and demonstrate that the building was not in a dilapidated condition. The said observations made with respect to condition (b) contained in section 16 (2) of the Act cannot dilute the position of law as explained by the Full Bench of this Court in Talib Hasan (supra) and found to be correct by the Supreme Court in Vijay Kumar Sonkar (supra) while considering the case of the landlord for release of the building in respect of condition (a).

31. As noticed hereinabove, the release application filed by the landlord under section 16 (1) (b) of the Act specifically mentions that the building was bona fide required after demolition and new construction for the residential houses of the members of the Society which was in accordance with the main objects of the Society. There was no evidence before the District Magistrate which could have persuaded him to disbelieve the aforesaid averment made in the release application. This Court in Naubat Ram Sharma v. Additional District Judge, Moradabad and others 1987 (13) ALR 654, clarified that every owner of a building has a right to occupy his own building, and as such, the legislature contemplated that when the building is vacant or is likely to fall vacant and the landlord requires the said building for his bona fide need then the said building should be released to the landlord and that this is the sole consideration which has to weigh with the District Magistrate when he takes up the release application under section 16 for the Act.

32. Thus, for the reasons stated above, the application filed by the landlord under section 16 (1) (b) of the Act for release of the building on the ground that it was bona fide required after demolition and new construction deserves to be allowed.

33. In this view of the matter it is not necessary to examine whether condition (b) was satisfied or not though it needs to be mentioned that the Revisional Court has found as a fact that the provisions of Rule 17 of the Rules had been complied with by the landlord.

34. The landlord had filed an application under section 16 (5) (b) of the Act for putting it back into possession of the building since the order of allotment dated 29th January, 1998 passed in favour of the District Supply Officer, Agra was set aside by the Rent Control & Eviction Officer by the order dated 13th January, 2000 which order has attained finality.

35. The Rent Control & Eviction Officer rejected this application filed by the landlord on the ground that it would not be appropriate to give possession to the landlord when the allotment order was still to be passed.

36. The Revisional Court, however, allowed the application by the judgment and order dated 12th October, 2007 passed in SCC Revision No. 87 of 2004. The Revisional Court noticed that earlier the building was in the tenancy of the Chief Development Officer, Agra and after it was vacated, the order of allotment was passed in favour of the District Supply Officer on 29th January, 1998 but this order was set aside on 13th January, 2000 which order became final between the

parties. It, therefore, observed that the District Supply Officer, Agra was an unauthorized occupant and had no right to continue in possession. The Revisional Court then examined whether in such circumstances the landlord was required to be put in possession of the premises and concluded that the landlord was entitled to be put in possession of the premises under section 16 (5) (b) of the Act. The Revisional Court, accordingly, allowed the application and directed the District Supply Officer, Agra to vacate the premises within a period of one month from the date of the order.

37. This writ petition was presented before this Court on 15th November, 2007 and after granting time to the parties to exchange the affidavits the Court passed the following order:

"In the facts and circumstances, by way of an interim arrangement it is provided that the petitioners shall not be dispossessed provided they deposit reasonable damages for use and occupation from 29.1.1998.

Shri V.K. Singh submits that the building will easily fetch rent at the rate of Rs. 10/ per sq. ft. On his own admission the building is not in a good condition and thus, the presumptive damages for use and occupation appear to be unreasonable. I find that at this stage taking into principles applied by Hon"ble Supreme Court in Atma Ram Property's case, the petitionertenant should deposit damages for use and occupation at the rate of Rs. 1/ per sq. ft., i.e. Rs. 15,600/ per month w.e.f. 29.1.1998 till 31st October, 2007. The question of interest on this amount will be considered at the stage of final hearing.

The petitioners, consequently, shall not be dispossessed from the premises, provided it deposits the entire damages for use and occupation from 29.1.1998 at the rate of Rs. 15,600/ per month with the Registrar General of this Court, within a period of six weeks from today. At this stage the respondentlandlord shall not be entitled to withdraw the amount. In case the respondentlandlord files a writ petition, the same shall be tagged with this writ petition and will be heard together."

38. This order was, however, subsequently vacated by a detailed order dated 13th February, 2008 as the terms and conditions stipulated in the order were not complied with.

39. Sri Ram Krishna learned Standing Counsel has submitted that the landlord could have moved the application for obtaining possession only under the provisions of section 16 (4) of the Act and not under section 16 (5) (b) of the Act and, therefore, the landlord cannot be delivered possession of the premises. He has further submitted that the District Supply Officer, Agra did not take possession of the premises from the landlord and, therefore, the landlord cannot claim possession of the premises.

40. Learned Senior Counsel appearing for the landlord, however, submitted that the application filed by the landlord under section 16 (5) (b) of the Act was

clearly maintainable and the landlord was liable to be put in possession in view of the decision of this Court in *Triloki Nath Trivedi v. Rent Control and Eviction Officer, Ballia* and another 1983 (9) ALR 394.

41. The first contention of the learned Standing Counsel cannot be accepted. The provisions of section 16 (4) of the Act are applicable only when the landlord wants to obtain possession on the basis of a release order but in the present case the landlord wants possession as the order of allotment in favour of the District Supply Officer, Agra has been set aside.

42. Section 16 (5) (b) of the Act stipulates that when the order of allotment is set aside, the District Magistrate shall put or cause to be put the applicant, if already evicted, back into possession of the building, and may for that purpose use or cause to be used such force as may be necessary. Section 18 (3) of the Act provides that where an order under section 16 of the Act is rescinded, the District Magistrate shall, on an application being made to him on that behalf, place the parties back in the position which they would have occupied but for such order or such part thereof as has been rescinded, and may for that purpose use or cause to be used such force as may be necessary. This provision is identical to the provisions of section 16 (5) (b) of the Act because under section 16 (5) (b) of the Act the District Magistrate can pass an order on the Review Petition filed against the order of allotment whereas under section 18 (3) of the Act, the District Magistrate can pass an order after the allotment order is cancelled in a Revision filed under section 18 of the Act.

43. This Court in *Triloki Nath Trivedi (supra)* after analyzing the provisions of section 18 (3) of the Act observed:

"Even without going into the question I am of opinion that even if for the sake of argument it may be accepted that the petitioner was not in actual physical possession over the accommodation in question when possession thereof was taken by respondent No. 2 it would make no difference and section 18 (3) of the Act would still apply and the petitioner would be entitled to be put back in possession over the accommodation in question on the order of allotment passed in favour of respondent No. 2 under section 16 of the Act being rescinded.

It is settled law that on an accommodation being vacated by its tenant the landlord, as owner of the building is entitled to remain in possession over the said accommodation subject to any order of allotment being passed under the Act in favour of some other person. This would be so even if no order of release had been passed in favour of the landlord, inasmuch as on an accommodation being vacated by a tenant the said accommodation cannot be permitted to remain in the position of a no man's land till either an order of allotment or release is passed by the Rent Control and Eviction Officer. There is no provision in the Act reliance on which could be placed for creating such an anomalous situation. As already pointed out above it is by virtue of being the owner of the property that the landlord is entitled to remain in possession over it on its being vacated by the

tenant till an order of allotment is passed in favour of some person.

It is true that notwithstanding the actual physical possession of the landlord the accommodation in question would, unless an order of release has been passed in favour of the landlord, be available for allotment but this legal position in no way militates against the right of the landlord to remain in actual physical possession over his property on its being vacated by the tenant till an order of allotment or release, as the case may be, is passed by the Rent Control and Eviction Officer and on an order of allotment passed under section 16 of the Act being rescinded the Rent Control and Eviction Officer is under an obligation or duty to place the parties in the position which they would have occupied but for the order of allotment of an application is made to him in this behalf. Had the order of allotment dated 27th September, 1979 in favour of the respondent No. 2 which was subsequently rescinded not been passed, respondent No. 2 would not have been entitled to occupy the accommodation in question and the petitioner by virtue of being its owner was entitled to remain in its actual physical possession till an order of allotment or release, as the case may be, passed by Rent Control and Eviction Officer. On the facts of the instant case placing the parties back in the position which they would have occupied but for the aforesaid order of allotment, as contemplated by section 18 (3) of the Act would be to get the accommodation in question vacated from respondent No. 2 and put the petitioner in actual physical possession over the same and to allow him to occupy the same in his capacity of being the owner thereof till an order of allotment or release is passed. Of course, if an order of release is passed the landlord would necessarily continue in possession in pursuance of the order of release. However, if the application for release is dismissed and the accommodation is allotted in favour of some other person it is then and then alone that the petitioner will be required to vacate accommodation in question and handover its possession to the allottee. If authority were needed for the proposition of law referred to above, reference may be made to *Yogendra Sahai Raizada v. Rent Control and Eviction Officer, Mainpuri and others* 1982(8) ALR 384.; *Zaheer Ahmad v. Mohd. Askari and others* 1981 ARC 490.; *Smt. Saraswati v. IVth Additional District Judge* 1979 (UP) RCC 266., and *Girish Dutt Chandola v. The District Magistrate, Meerut and others* 1977 (3) ALR 554."

(Emphasis supplied)

44. The aforesaid decision clearly holds that on accommodation being vacated by the tenant, the landlord, as owner of the building, is entitled to possession over it subject to any order of allotment in favour of some other person even if the order of release is not passed in favour of the landlord and this would be the position even if the landlord was not in the actual possession of the accommodation when the possession was taken by the allottee.

45. In view of the aforesaid, it has to be held that there is no infirmity in the order passed by the Rent Control & Eviction Officer directing the District Supply Officer, Agra to vacate the premises within a period of one month.

46. It has been contended by the learned Senior Counsel for the petitioner that the petitioner is entitled for damages for unauthorised use and occupation of the premises by the District Supply Officer, Agra from the date he came in occupation of the building on 29th January, 1998.

47. The landlord has not specifically claimed such damages in the writ petition. It is, however, true that under the Revisional order dated 12th October, 2007 the District Supply Officer, Agra was required to vacate the premises within a period of one month from the date of the order. The District Supply Officer should have, therefore, vacated the premises on or before 11th November, 2007. This Court, however, granted a conditional interim protection to the District Supply Officer regarding dispossession on payment of damages for use and occupation at the rate of Rs. 15,600/ per month. The District Supply Officer took the benefit of this interim order and has continued to remain in possession till date. The District Supply Officer shall, therefore, be liable to pay damages for use and occupation of the premises at the rate of Rs. 15,600/per month w.e.f. 11th November, 2007 till the date the possession is handed over to the landlord. However, for the period between 29th January, 1998 and 10th November, 2007 it will be open to the landlord to claim damages for use and occupation in accordance with law in appropriate proceedings.

ORDER

48. Thus, for all the reasons stated above, the order dated 26th August, 2003 passed by the Rent Control & Eviction Officer and the judgment and order dated 12th October, 2007 passed in Revision No. 88 of 2004 are set aside and the release application filed by the landlord under section 16 (1) (b) of the Act is allowed. Writ Petition No. 61885 of 2007, therefore, succeeds and is allowed.

49. Writ Petition No. 56658 of 2007 is dismissed. The District Supply Officer, Agra shall pay damages to the landlord for use and occupation of the premises at the rate of Rs. 15,600/ per month w.e.f. 11th November, 2007 till the date the possession is handed over to the landlord. It shall, however, be open to the landlord to claim damages for the earlier period in accordance with law. The District Supply Officer shall now handover the possession to the landlord within a period of three weeks from today failing which the District Magistrate shall take such necessary steps as are available to him under section 16 (5) (b) of the Act for putting the landlord in possession of the premises within the next two weeks.

Writ Petition No. 61885 of 2007 Allowed.

Writ Petition No. 56658 of 2007 Dismissed.