

(1978) 01 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4200 of 1975

Ratna Prasad

APPELLANT

Vs

Addl. District Judge, VIII, Allahabad and Others

RESPONDENT

Date of Decision : 23-01-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 16, 34

Citation : (1978) 01 AHC CK 0049

Hon'ble Judges : M.P.Saxena, J

Final Decision : Dismissed

Judgement

M.P. Saxena, J.

This is a writ petition under Article 226 of the Constitution of India arising out of proceedings under Section 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction Act, 1972 (hereinafter called the Act).

Briefly stated the facts giving rise to this petition are that Late Sri T. Prasad, husband of the petitioner was retired Income Tax Officer and was living with his family in House No. 34/62 Jawahar Lal Nehru Road, Allahabad. That house was allotted to him and was in his occupation since December 27, 1958. The landlord of the said house obtained a release order against Sri Prasad on March 27, 1974. The latter filed an appeal under Section 22 of the Act in which a compromise was arrived at according to which the landlord agreed to give some time to Sri Prasad to vacate the premises. It was done so that he may find out suitable accommodation for himself. Accordingly on December 24, 1974 Sri Prasad applied for allotment of House No. 6C situate in Beli road in the town of Allahabad belonging to Sri Sitaram Jaiswal, opposite partv No. 5 as it was likely to fall vacant. In column No. 5 of this application he gave the name of his wife and children who were to live with him. As Sri Prasad was crippled and disabled

due to Arthritis he sought the help of his relation. Sri Y.N. Verma, I.A.S. (Retired Member, Board of Revenue, Allahabad, to recommend his case to the District Magistrate to consider his application on priority basis as required by the rules. He also gave another application to the District Magistrate specifying the circumstances in which he desired that the allotment order should be passed immediately. This application was forwarded by Sri Y.N. Verma on December 21 1974 with a covering letter for due consideration. On December 27, 1974 the District Magistrate, Allahabad, passed the following order on the application of Sri Prasad:

"R.C. and E.O. may please allot, if possible, under the rules." On December 23, 1974 Sri Vinod Pehari Verma, opposite party No. 4 moved an application for allotment of premises No. 6D situate in Beli road in the town of Allahabad and also owned by opposite party No. 6. On this application the District Magistrate passed the following order on the same day:

"May be allotted a suitable house if permissible under the rules."

On December 24, 1974 the opposite party No. 4 wrote a personal letter (Annexure I) to the District Magistrate stating that in the allotment application dated December 23, 1974 he had by mistake mentioned number of the house to be allotted as 6D instead of 6C. He, therefore, prayed that 6D instead of 6C. He also gave out that he was enclosing consent of the landlord for allotment of House No. 6C to him. Annexure II to the petition is a copy of the letter by the landlord to the District Magistrate stating that as House No. 6C will be vacated by Sri T.S. Srivastava on December 31, 1974 and Sri Vinod Behari Verma is willing to take it on a rent of Rs. 450 per month it may be allotted to him.

On the application of Sri Verma dated November 24, 1974 praying that House No. 6D, mentioned in his application for allotment, be read as 6C the District Magistrate passed the following order on December 28, 1974:

"On file please."

On the same day it appears to have reached the Rent Control and Eviction Officer who passed the following order:

"K.O. file" (keep on file).

On December 26, 1974 the landlord opposite party No. 5 also moved an application for release of the premises in question namely, 6C Beli road on the ground that he bona fide required it for his own use. He even gave an undertaking that he would never let it out to any one. On this application the Rent Control and Eviction Officer asked for a report from the Rent Control Inspector by January 13, 1975. On February 4, 1975 the landlord withdrew this application and it was accordingly dismissed on February 7, 1975 and February 13, 1975 was fixed for considering the application for allotment. On February 7, 1975 Sri Prasad suddenly fell seriously ill and was admitted in a local hospital where he expired on February 10, 1975. On February 13, 1975 the Rent Control

and Eviction Officer allotted this house to Sri Verma. Opposite party NO. 4. On February 26, 1975 the present petitioner moved an application for substitution of her name on behalf of herself and her children as an heir of Late Sri Prasad but, it was rejected by the R C and F.O. with, an order that the order of allotment had already been passed. Feeling aggrieved by this order the petitioner preferred an appeal under section 18 of the Act as it existed at that time, but it was dismissed on the Ground that she had no locus standi to present it Hence this writ petition for quashing the allotment order dated February 13, 1975 and the order dated March 21, 1975 passed by the learned District Judge rejecting her appeal.

The learned counsel for the petitioner has impugned the validity of the allotment order dated February 13, 1975 (Annexure IV). On a number of grounds. The first contention is that the allotment order could not be passed unless heir of Sri Prasad were substituted. In this connection reliance has been placed on certain provisions of the Act and the rules framed thereunder. I have carefully gone through them and in my judgment they do not assist the petitioner at all. Section 34(4) is the only provision in the entire Act which relates to substitution of heirs. It reads:

"where any party to any proceeding for the determination of determination of standard rent of or for eviction from a building dies during the pendency of the proceeding, such proceeding may be continued after bring on record:

- (a) in the case of the landlord or tenant, his heirs or legal representatives;
- (b) in the case of an unauthorised occupant, in any person claiming under him or found in occupation of the building."

The provision makes it clear that substitution of heirs is permitted only in two cases, viz., in proceedings for the determination of standard rent or for eviction of Sri Prasad from any building. Therefore, substitution of heirs could not be claimed under Section 34(4).

Reliance has also been placed on Section 34(8) which says:

"For the purposes of any proceedings under this Act and for purposes connected therewith the said authority shall have such other powers and shall follow such procedure, principles of proof, rules of limitation and guiding principles as may be prescribed."

The words "any proceedings" no doubt include allotment proceedings also but the subsection itself makes it clear that in this connection only such procedure or guiding principles will be followed "as may be prescribed". The words "other powers" used in this subsection clearly mean powers other than those given in Section 34 but those powers must be prescribed under the Act or the rules. These powers are given in rule 22 of the Act and nowhere contemplate substitution of heirs of a person who makes an application for allotment of a building. Although Section 151, C.P.C. applies to these proceedings but substitution cannot be done under it because there is a special provision in

Section 34 (4) of the Act for substitution of heirs and the established principle is that aid of Section 151, C.P.C. cannot be taken where there is any specific provision for any purpose. Even if it be said that there is no provision for substitution for heir of a person who applies for allotment aid of Section 151 cannot be invoked because it is a personal right and does not survive to the heirs. If the scope of section 151 was so wide there was no necessity to enact Section 34(4) for this purpose because substitution in every case could be done under Section 151, C.P.C.

The learned counsel for the petitioner has also invoked the aid of rule 25 but in vain. This rule states: "Bringing legal representatives on record: (Section 34(4)

" (1) Every application for substituting the names of the heirs or legal representatives, the claimants or occupants) of any persons who was a party to any proceedings under the Act and died during the pendency of the proceedings shall be preferred within one month from the date of death of such person.

(2) The application shall contain the names and addresses and other details of the heirs or legal representatives and their relationship with the deceased and be accompanied by an affidavit in its support, and thereupon, the application shall be decided after a summary inquiry by the authority concerned."

As the marginal note indicates, this rule has its connection with substitution of heirs contemplated by Section 34(4) of the Act. It prescribes period of limitation of presenting an application for substitution. Therefore even on the basis of this rule heirs of late Sri Prasad could not be brought on the Record

I am fortified in the aforesaid view for one more reason. Section 16 of the Act relates to allotment and release of vacant buildings. Subclause (a) of Section 16(1) says that subject to the provisions of this Act the District Magistrate may by an order 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, to any person specified in the order. Obviously the words "any person" in this section refer to the applicant for allotment. S. sec. (8) of this section says that the allottee shall be deemed to become tenant of the building from the date of allotment. It means that till he is only an applicant for allotment of a building it is his personal right and the moment an allotment order is passed in his favour becomes a tenant as defined in Section 3(8). It is only after allotment that an applicant becomes tenant and can claim the rights of such a person. Before that, it is purely his personal right which dies with him and the question of substitution of his heirs does not arise. In this connection reference may be made to the case of V. Devaru v. State of Mysore (A.I.R. 1958 S.C. 293.) in which claim with which the plaintiff came to the court was that he was wrongly excommunicated and that was an action personal to him, on the principle of *actio personalis moritur cum persona*. When he died the suit was held to abate. In the instant case also it was personal right of Sri Prasad to apply for allotment and on his death the application became non est. Even if he had applied for allotment of the premises in order to live with his

wife and children, the nature of his right could not change. If the allotment order was passed in his favour and he had entered into possession of the building, the position would have been different because in that case he would have acquired the status of a tenant as defined in the Act. In the instant case he died before the allotment order was passed and his application lapsed.

Before going into the merit of other infirmities pointed out more point may be disposed of. He has urged that failure to substitute heirs has resulted in depriving the members of the family of the deceased from the benefit of priorities provided in rule 11. Even on the basis of priority the petitioner has no case because the opposite party No. 4 had applied for allotment on December 23, 1974 while Sri Prasad had applied on December 24, 1974. It is true that in the original application the opposite party No. 4 had mentioned house No. 6D but it is evident from the material on the record that 6D was neither vacant nor was likely to fall vacant and no application for its allotment could be moved. The opposite party No. 4 realised this mistake on December 24, 1974 and immediately gave an application for correction of his application by saying that 6D be read as 6C. It is wrong to say that it was not an application for amendment. There is no force in the contention that the amendment was not allowed because the houseowner gave his consent in favour of opposite party No. 4 on Dec. 24, 1974 about house No. 6C and the Rent Control and Eviction Officer treated it as an application for allotment of house No. 6C and directed allotment order to be issued in respect of it. The amendment shall relate back to December 23, 1974 and in that case the application of opposite party No. 4 would be deemed to be prior to the application given by Sri Prasad.

The learned counsel for the petitioner has pointed out some more infirmities in the allotment proceedings but they do not carry much weight. It is said that the vacancy was not notified and in its absence the allotment order could not be passed. The counteraffidavit filed by the opposite party No. 4 makes it clear that the vacancy was notified on February 7, 1975. The report given by the Inspector to the effect that the building had not fallen vacant was not believed. It is also argued that on December 27, 1974 the District Magistrate had passed an order on the application of Sri Prasad that the house may be allotted to him if permissible under the rules. It amounted to an order of allotment. I am reluctant to subscribe to this view because certain procedure as provided in the rules before passing of allotment order has to be followed. In this case the District Magistrate had not followed that procedure but had sent the application to the Rent Control and Eviction Officer for considering the application for allotment according to rules. Hence the order dated December 27, 1974 does not at all amount to allotment order.

The next contention is that the application of opposite party No. 4 was not in Form A prescribed by the rules nor it was registered as required by rule 10(3) and in its absence allotment order could not be passed in his favour. In this connection also there is the counteraffidavit of opposite party No. 4 to the effect

that his application was in the prescribed Form. There is nothing on record to warrant that his application was not registered under rule 10 (3). Even if it was not entered in any register it would not take away right of opposite party No. 4 to have the house allotted in his favour.

There is nothing on record to warrant that the District Magistrate had given any oral instructions to the Rent Control and Eviction Officer to allot this house to Sri Prasad. Even if he had done so, no benefit could be derived from it unless the allotment order was actually passed in his favour. It is further contended that the allotment order was passed against a dead person and the needs of the members of the family of the deceased and opposite party No. 4 were not compared. When Sri Prasad died before allotment order there remained only one application for allotment of this house and that was of opposite party No. 4. The allotment order had not been passed against any dead person because on the date it was passed Sri Prasad was not in the picture. As regards hearing at the stage of allotment, it has been held by their Lordships of the Supreme Court in *Trilok Singh v. D. M. Lucknow and others* (1976 (U.P.) R.C.C. 138) that the Act does not provide for a hearing at the stage when the D.M. passes an order of allotment or release. Similarly in *Prahlad Rai v. Third Additional District Judge, Muzafarnagar* (1976 (U.P.) R.C.C. 243) it has been held that at the time of making allotment it is not necessary to compare the needs of prospective allottees and all that is necessary is to consider the priorities given in rule 11. In the instant case the opposite party No. 4 being the only applicant on the date of allotment, this rule was not at all contravened order passed in his favour cannot be impugned on any ground.

In the result, the writ petition has no force and is dismissed. Costs on parties.