
(2007) 05 AHC CK 0356
In the Allahabad High Court

Ravi Nath Misra

APPELLANT

Vs

City Magistrate/R.C. and E.O. and Others

RESPONDENT

Date of Decision : 07-05-2007

Acts Referred:

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

Citation : (2007) 3 AWC 2951

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

Bench : Single Bench

Final Decision : Disposed Of

Judgement

S.U. Khan, J.—Heard Sri A. N. Sinha, learned Counsel for the petitioner and Sri V.K.S. Chaudhary, learned senior counsel assisted by Sri V. C. Nayak, learned Counsel for the respondents, legal representatives of deceased respondent No. 3 Sri Har Narain Vyas and Shrimati Hemant Vyas widow of late Har Narain Vyas, who filed impleadment application.

2. This writ petition is directed against the order dated 5.9.2002, passed by respondent No. 1 declaring vacancy of the accommodation in dispute and order dated 30.9.2002, releasing the accommodation in dispute in favour of landlord u/s 16 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act"). Accommodation in dispute is situate at first floor consisting of two rooms, latrine and bathroom. There is one more portion in the accommodation in dispute, which is described as Kitchen by the landlord and as storeroom by the tenant-petitioner. Accommodation in dispute is numbered as 24/93 and is situate at Patkapur, Kanpur Nagar.

3. This writ petition was dismissed in default on 29.11.2005. Application for setting aside the said order was filed on 1.5.2006 and the writ petition was restored to its original number. On 1.5.2006 the petitioner had been dispossessed. On restoration application on 4.5.2006, an order was passed staying the eviction of the petitioner till 19.5.2006, if he had not already been

evicted. Petitioner filed an application on 18.5.2006, alongwith affidavit. In paragraphs 4 and 8 of the said affidavit it was stated that on 1.5.2006, partial ejectment took place behind the back of the petitioner. However, extent of partial possession and partial dispossession was not given. During arguments, learned Counsel for the landlord stated that complete possession had been taken on 1.5.2006.

4. Proceedings before Rent Control and Eviction Officer were initiated on the allotment application of respondent No. 2 Ram Lakhan. Thereafter release application was also filed by the landlord. In this writ petition, respondent No. 3 was described as follows:

3. Sri Har Narain Vyas adult son of late Laxmi Narain Vyas (unsound mind), through Shrimati Hemant Vyas, adult wife of Sri Har Narain Vyas, resident of Premises No. 26/32 Patkapur, Kanpur Nagar.

5. Respondent No. 4 in the writ petition is Siddharth Vyas son of Har Narain Vyas. Har Narain Vyas died in June, 2004, leaving behind his wife Shrimati Hemant Vyas, his son Siddharth Vyas and four other children as his heir and legal representative. Substitution application was filed by tenant-petitioner on 10.11.2005. In Para 3 of the affidavit filed in support of substitution application it was mentioned that Sri Har Narain Vyas was of unsound mind and represented by his wife Shrimati Hemant Vyas, who was arrayed as opposite party alongwith her one son Siddharth Vyas, hence only they-heirs of Har Narain Vyas should be substituted at his place. Sri V.C. Nayak, learned Counsel has filed vakalatnama on behalf of the other four proposed heirs. Sri Nayak has also filed an impleadment application on behalf of Shrimati Hemant Vyas. Learned Counsel for the landlord has argued that Shrimati Hemant Vyas should have been sought to be substituted Independently. Absolutely no difference will be made in either of the two contingencies, i.e., whether Shrimati Hemant Vyas is independently added as one of the legal representatives of Har Narain Vyas or she is treated to be already impleaded as respondent No. 3 in the writ petition. Accordingly, substitution application as well as impleadment applications bearing No. 131783 of 2006 are allowed. it may be mentioned that Shrimati Hemant Vyas In her application had also raised five preliminary objections.

6. The matter was registered before Rent Control and Eviction Officer/City Magistrate, Kanpur Nagar as Case No. 53 of 2000. Ram Lakhan v. Ravi Nath Misra. Rent Control and Eviction Officer through order dated 5.9.2002, declared the vacancy holding that the accommodation in dispute was let out for residential purposes with effect from 1.6.1981 and was assessed for the house tax for the first time in 1983. Rent Control and Eviction Officer further held that wife of the tenant-petitioner had purchased another residential house on 6.7.1987 bearing No. 198 situate at Safipur-II, Kanpur Nagar. Rent Control and Eviction Officer ultimately held that in view of purchase of the house by wife of the tenant, vacancy came into existence in view of Section 12 (3) of the Act, which is quoted below:

(3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy:

Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.

7. There was a very serious controversy between the parties regarding the purpose for which the house In dispute was let out. Landlord asserted that It was let out for residential purpose. Tenant asserted that it was let out for commercial purpose and was never used for residential purpose. Rent Control and Eviction Officer held that it was residential accommodation, let out for residential purpose and used for residential purpose. I do not propose to decide this controversy in this writ petition. I am neither confirming nor setting aside the said findings of Rent Control and Eviction Officer for the reason that I do not consider it necessary to Judge the validity of the said finding.

8. A plain reading of Section 12 (3) of the Act indicates that it is prospective. It has been held by a five Judges Full Bench of this Court in *Mangi Lal v. Additional District Judge, and Ors.* 1980 ARC 55 (FB), that the said section is prospective. If tenant or his family member has acquired a house before the Act becomes applicable on the tenanted accommodation then Section 12 (3) of the Act will not apply in the instant case, the Act became applicable on the house in dispute In 1993. Wife of the tenant acquired another residential house in 1987, hence the aforesaid section is not applicable. Learned Counsel for the respondents has vehemently argued that by virtue of proviso to the aforesaid section vacancy came into existence after one year from the date on which Act became applicable to the building In dispute. Learned Counsel has argued that the words "commencement of the Act" used In the aforesaid proviso shall be read as the date on which Act becomes applicable to a particular building and not on 15.7.1972, when the Act was enforced. Firstly In the aforesaid Full Bench the said words have been Interpreted to mean 15.7.1972. Secondly exactly similar words are used in Section 39 of the Act. Initially the view of this Court as in *R. D. Ram Nath and Co. and Anr. v. Girdhari Lal and Anr.* 1975 ALJ 1 , (consistently followed thereafter) was that the words "commencement of the Act" meant the date on which the Act became applicable to a particular building. However, Supreme Court did not approve the said view. The Supreme Court held that commencement of the Act means the date on which the Act came into force, i.e., 15.7.1972. Supreme Court took this view In several cases, the last case being *Shri Kishan @ Krishan Kumar Vs. Manoj Kumar Etc. Etc.*, In my opinion the same Interpretation will have to be given to the words "commencement of the Act" used In the aforesaid proviso, as has been given by the Supreme Court u/s 39 of

the Act.

9. Sri V.K.S. Chaudhary, learned senior counsel for the respondents, argued that the Section 12 (3) and its proviso operate in different fields and the words commencement of the Act refer to the date on which Act becomes applicable to a particular building. Learned Counsel has further argued that the Act applies to every building and by virtue of Section 2 (2) of the Act, the application of the Act is suspended for certain period. The oral arguments have been supplemented by written arguments, which are placed on record.

10. However, in view of aforesaid authority of Supreme Court in Shri Kishan @ Krishan Kumar Vs. Manoj Kumar Etc. Etc., , I am unable to agree with the contention of the learned senior counsel for the respondents.

11. Moreover in the Full Bench authority of Mangi Lal (supra), it has also been held that the words used in the proviso to Section 12 (3) are "had built" hence the proviso does not apply to purchase of building (Paragraphs 15 and 16). In the instant case also wife of the tenant has only purchased a house and not built any house.

12. It had also been argued on behalf of the respondents that principle of purposive interpretation should be applied. In my opinion, applying the said principle will not in anyway change, the Interpretation of the words "commencement of the Act" given by the Supreme Court.

13. Accordingly, I hold that no vacancy came into existence on the ground that wife of tenant purchased a house in 1987.

14. Accordingly writ petition is allowed. Both the Impugned orders declaring the vacancy and releasing the property are set aside.

15. As release order has been set aside, hence the landlords shall deliver possession of the property In dispute to the tenant within three months falling which they shall be liable to pay damages @ Rs. 1,000 per month to the tenant until delivery of possession. Apart from it, tenant will also be entitled to pursue such remedies, which are open to him for taking possession.

16. I have held in Smt. Khursheeda Begum and Others Vs. Additional District Judge and Others, that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act, writ court is empowered to enhance the rent to a reasonable extent. Accordingly, it is directed that from the date on which the possession is delivered by landlord, the tenant shall be liable to pay rent @ Rs. 1,000 per month.