

(2004) 11 AHC CK 0281
In the Allahabad High Court
Case No : Writ Petition No. 1969 (R/C) of 1988

R.P. Srivastava and Another

APPELLANT

Vs

Addl. District Magistrate (R.C.O.) (CA) and Others

RESPONDENT

Date of Decision : 02-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(1), 21(1)

Citation : (2005) 3 AWC 2395 : (2005) 2 AWC 2395

Hon'ble Judges : Kamal Kishore, J

Bench : Single Bench

Advocate : Umesh Chandra, M.A. Khan and S.C. Misra, for the Appellant; C.S.C., J.N. Pandey and M.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

Kamal Kishore, J.—This writ petition is directed against orders dated 28.10.1987 and 24.11.1987 passed by respondent Nos. 1 and 2 declaring vacancy in respect of the shop in question. The petitioners are the sitting tenant and the shop in question was let out to their father about more than forty five years by the father of respondent No. 3, the landlord. The respondent No. 3, the landlord, had earlier filed a release application u/s 21(1)(a) of U.P. Act XIII of 1972 against the sitting tenant which was rejected by the prescribed authority by an order dated 10.12.1976. Thereafter the respondent No. 3 preferred an appeal which was also dismissed by an order dated 31.10.1977 passed by the District Judge Lucknow. The deceased petitioner No. 2, mother of the present petitioners carried out business of foreign liquor in the shop in pursuance of licence granted by State Government. After introducing auction system for liquor trade, the liquor business was continued for about two years but heavy losses were suffered. The deceased mother of the petitioners, therefore, started commission agency business as an agent of Uttar Pradesh Industrial Corporation Association Ltd. an agency agreement dated 17.3.1982 was executed. The respondent No. 3 moved

an application u/s 16(1) of U.P. Act No. XIII of 1972 (Annexure V to the writ petition) before Additional District Magistrate (C.J.), Lucknow wherein the deceased mother of the petitioners was impleaded as opposite party No. 1 and U. P. Industrial Corporation Association Ltd. was impleaded as opposite party No. 2.

2. I have heard arguments of the parties counsel and have gone through the record.

3. It has been argued by the learned counsel of the contesting opposite-party that the present writ petition against the order declaring vacancy is not maintainable as the U. P. Act XIII of 1972 has not provided any relief for the same. This argument advanced by the learned counsel for the contesting opposite-party is not tenable. The above controversy has been decided by the Apex Court in the case of Ganpat Roy and Others Vs. Additional District Magistrate and Others, in which, it has been held that if the statutes does not provide any efficacious relief for tenant for challenging the findings regarding occurrence of deemed vacancy, writ petition under Articles 226 and 227 of the Constitution filed by the tenant would be maintainable. It is thus well settled that the writ petition is maintainable against the declaration of vacancy. The same view has been followed by this Court in the ruling Life Insurance Corporation of India v. Additional District Magistrate (E), Rae Bareli/R.C. and E.O., Rae Bareli and Anr. 2000 (1) ARC 276.

4. It has not been disputed in the instant case that the premises in question was declared vacant without giving opportunity of hearing to the sitting tenant. This is against the principle of natural justice and accordingly the impugned order declaring vacancy is bad in view of the rulings of this Court in Life Insurance Corporation of India v. Additional District Magistrate (E) Rae Bareli/R.C. and E.O., Rae Bareli and Anr. 2000 (1) ARC 276. In a case of like nature where the landlord obtained the order of vacancy surreptitiously without giving notice to the occupant, it has been held by this Court in the ruling Hari Om Agarwal v. IInd Additional District Judge, Rampur and Ors. 1999 (2) ARC 615, that such order declaring vacancy without affording opportunity of hearing to the occupant of the shop is illegal and is liable to be quashed.

5. The perusal of the inspection report shows that the inspection report was not proper and valid as required by law as there were no witnesses and the inspector had not contacted the sitting tenant. The impugned orders dated 28.10.1987 and 24.11.1987 do not disclose anything on the basis of which vacancy was ordered to be notified. These orders were passed without notice to sitting tenant. It is thus clear that the impugned orders were passed without following the prescribed procedure. On behalf of petitioners, reliance has been placed on the cases of Jagdish Vs. District Judge, Kanpur and Others, and Ram Sumer Vs. Ist A.D.J. and Others, . These decisions are fully applicable to the facts of the present case. It cannot be disputed that the impugned orders were passed without notice to the sitting tenant. The orders dated 28.10.1987 and 24.11.1987 are invalid and liable to be quashed.

6. Lastly, it has been argued by the learned counsel for the contesting opposite-party that in view of the agreement dated 17.3.1982 between sitting tenant and Uttar Pradesh Industrial Corporation Association Ltd. which is Annexure-IV to the writ petition, it will be presumed that there is deemed vacancy under U.P. Act 13 of 1972. This argument advanced by the learned counsel for the contesting opposite-party is not tenable. The perusal of the agreement dated 17.3.1982 (Annexure IV to the writ petition) between sitting tenant and Uttar Pradesh Industrial Corporation Association Ltd. shows that it does not create any right or interest in the premises or tenancy rights in favour of the corporation. It is simply an agency agreement. The said corporation is wholly owned by State Government. Clause 4 of the agreement provides that the corporation shall not be liable to pay any rent for the said premises and shall have no interest in tenancy rights. As per Clause 7 of the agreement the corporation is not liable for any taxes on the premises. The agreement dated 17.3.1982 does not create any vacancy or deemed vacancy as provided in U.P. Act XIII of 1972. In a case where there was an agreement between tenant and another for management of business, it has been held by Hon''ble Supreme Court in the ruling Md. Salim Vs. Md. Ali since Deceased through his Lrs. Md. Assim and Others, that where the agreement between the tenant and another person was only an agreement for management of the business of the tenant by the latter, the agreement could not be construed as an agreement of sub-tenancy. Consequently, another person would be bound by the decree of eviction passed against the tenant notwithstanding the fact that the landlord was one of the attesting witnesses to the said agreement.

7. The writ petition is allowed and the orders dated 28.10.1987 and 24.11.1987, as contained in Annexures 1 and 2 respectively, are hereby quashed.