

(1999) 08 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5605 of 1984

R.U.Khan and Others

APPELLANT

Vs

Special Judge, Nainital

RESPONDENT

Date of Decision : 13-08-1999

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 18

Citation : (1999) 08 AHC CK 0086

Hon'ble Judges : A.K.Yog, J

Final Decision : Allowed

Judgement

A.K. Yog, J.—This writ petition under Article 226 of the Constitution of India has been filed by Shri R. U. Khan and two others challenging the impugned order dated 19th September, 1981 and 29th March, 1984 whereby the Delegated Authority appointed under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short called the Act) U.P. Act XIII declared vacancy with respect to the premises known as Hawthorn don Cottage, Mallital, Nainital. The case of the landlord was that they have purchased the premises in question in April, 1967 wherein one Diwan Bhadur Daulat Ram was the tenant. The said tenant made default in payment of rent. A suit filed by the landlord in the Court of Judge. Small Causes Court, Nainital was decreed for eviction. The landlord obtained possession of the entire premises except one room wherein Daulat Ram was allowed to continue his license since he was too old. The case of the landlord is that the said Daulat Ram was neither tenant and was merely living in one room of the said premises by the grace of the landlord. The said Daulat Ram died in the year 1980 and thereafter certain applications for allotment were filed. According to the landlord, the petitioner's inspection was carried out by the Rent Control Inspector without notice to them. In delegated authority declared vacancy in view of Section 12 of the Act. The delegated authority allowed applications for allotment. Notice being received by the landlord, objections were filed on the ground that premises in question was subject to an order of release

and the same could not be subjected to allotment. The Delegated Authority/Rent Control and Eviction Officer declared vacancy by order dated 19th September, 1981 (Annexure5). The landlord challenged the said order by filing revision under Section 18 of the Act. The said revision has been dismissed vide judgment and order dated 29th March, 1984 (Annexure6).

2. The Revision is maintainable as held in the case reported in 1979 UPRCC 405. Earlier view taken in the case Trilok Singh's case, 1976 (2) ALR 362 (SC), does not hold good in view of the decision of the Hon''ble Supreme Court in the case Ganpat Roy's case, 1985 (II) ALR 42 (SC).

3. In view of the above, the order passed by the Revisional Court dated 29th March, 1984 (Annexure6) cannot be sustained. The case is being remitted to the respondent No. 1 with a direction to decide Rent Control Revision No. 171 of 1981 R. U. Khan and others v. Additional Magistrate/Delegated Authority, Nainital afresh in the light of the latest pronouncement of the Hon''ble Supreme Court as indicated above.

4. The writ petition stands allowed to the extent as indicated above.

No order as to costs.