
(2000) 01 AHC CK 0080

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35950 of 1998

Sardar Narendra Singh

APPELLANT

Vs

Rent Control and Eviction Officer/A.C.M.(VI) Kanpur Nagar
and Others

RESPONDENT

Date of Decision : 17-01-2000

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(1)(a)

Citation : (2000) 01 AHC CK 0080

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 2691988 passed by Rent Control and Eviction Officer, declaring the disputed accommodation as vacant.

2. The facts, in brief, are that respondents 2 and 3 purchased the building in dispute by registered sale deed dated 4121997. The father of the petitioner Sardar Rachpal Singh was one of the tenants in the building in question and thereafter his son, the petitioner, inherited the tenancy.

3. On 371998 respondents 2 and 3 intimated vacancy to the Rent Control and Eviction Officer stating that the petitioner was a tenant of the disputed premises but he had locked the house and removed his effects from it and, therefore, the disputed accommodation should be deemed as vacant. The Rent Control and Eviction Officer asked the Rent Control Inspector to submit the report. The Rent Control Inspector submitted the report that he inspected the premises but found it locked. He reported that the parties may be heard for deciding the question in controversy.

4. The Rent Control and Eviction Officer sent notice to the petitioner. The petitioner filed objection alleging that he had not vacated the disputed accommodation. The accommodation in question was let out for business

purpose of Tent manufacturing in the name of M/s Rajendra and Brothers and he is still carrying on business of Tent manufacturing. He denied that the effects have been removed from the disputed premises. One of the pleas was that Respondents 2 and 3 have purchased the property from its previous owner. The sale deed was void as it was obtained without any permission having been granted by the Ceiling Authority under the U.P. Urban Ceiling on Land Holdings Act and they cannot be treated as landlords in respect of the disputed premises.

5. The Rent Control and Eviction Officer declared the accommodation in question as vacant by order dated 26/9/1998 on the ground that the disputed premises was for residential purpose and the petitioner is residing in another House No. 63/7 The Mall, Kanpur. This order has been challenged in the present writ petition.

6. I have heard Shri L.N. Pandey, learned counsel for the petitioner and Shri Pankaj Bhatia, learned counsel for the respondents.

7. Learned counsel for the petitioner challenged the rights and title of Respondents 2 and 3 on the ground that they had purchased the property by registered sale deed on 4/12/1987 without any sanction being granted by the Ceiling Authority and, therefore, it should be treated as void. Admittedly, father of the petitioner was a tenant of the erstwhile owner. Respondents 2 and 3 purchased the property from him. The relationship of landlord and tenant will continue after the purchase of the property by them. The petitioner has challenged the title on the ground that they had not obtained the permission from the Ceiling Authority before the property was purchased. Firstly, the petitioner by his conduct admitted them as a landlord, they are stopped from challenging their rights and title as landlords. Secondly, the Ceiling Authority has held that the sale deed is not void. The petitioner, in these circumstances, cannot challenge their rights and title.

8. The next submission of learned counsel for the petitioner is that the Rent Control and Eviction Officer declared the accommodation in question vacant simply on the ground that the petitioner is residing in House No.63/7 The Mall, Kanpur and the disputed accommodation at 29A, A.M. Jaipuria Road, Cantt, Kanpur is also residential one. This was an assumption by the Rent Control and Eviction Officer. A perusal of the impugned order shows that the Rent Control and Eviction Officer took the disputed accommodation as residential one, because according to him the sale deed is in respect of residential building. The respondents have annexed copy of the sale deed as Annexure RA3 to the writ petition. In paragraph 7 of the sale deed the names of various tenants are given. The name of these tenants referred to in the sale deed are relevant which are as follows:

1. M/s Laxmi Ice Factory.
2. M/s Rajendra and Brothers.
3. M/s Sardar Rachpal.

4. S.K.Srivastava.

5. K.D.Srivastava.

6. Subrati.

7. Ram Bharose.

9. The father of the petitioner is Sardar Rachpal Singh. The tenancy is in the name of Sardar Rachpal Singh. The word 'M/s' preceding his name indicates that there was some business being carried on in the premises which was let out to him. The saledeed nowhere states that the entire building is residential one. Similarly, the tenant M/s Laxmi Ice Factory and M/s Rajendra and Brothers are also tenants. Their description indicates that they were using the accommodation in their tenancy for nonresidential purpose. The Rent Control and Eviction Officer misread the contents of the saledeed. Secondly, Respondent No. 1 took the view that the, burden of proof is upon the tenant to prove that it was let out for nonresidential purpose. Respondents 2 and 3 had filed application for declaration of vacancy. The burden was upon them to establish that for what purpose it was let out. They had not produced the vendors from whom they had purchased the property. They could have made the statement in regard to the purpose of letting.

10. The petitioner had stated that he was living in House No. 63/7, The Mall, Kanpur and was carrying on business in the premises in question. The Rent Control and Eviction Officer did not record any finding as to for what purpose the disputed premises was being used by the petitioner.

11. The Rent Control Inspector had submitted a report that the accommodation was found locked. The petitioner was not present when the Rent Control Inspector had visited the premises. He should have given notice to the petitioner before making the inspection. The mere fact that the shop was kept locked itself was not sufficient to deem the premises as vacant within the meaning of Section 12(1) (a) of U.P.AclNo.13of1972.

12. In view of the above the writ petition is allowed and the impugned order dated 26/9/1998 is hereby quashed. Respondent No. 1 shall decide the matter afresh possibly within two months in accordance with law, keeping in view the above observation.

In the circumstances of the case the parties shall bear their own costs.