
(2005) 12 AHC CK 0106

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 33836 and 33839 of 1997

Savitri Devi Rohtagi

APPELLANT

Vs

Vth Additional Distt.& Sessions Judge,Kanpur Nagar & Ors.

RESPONDENT

Date of Decision : 12-12-2005

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 16(9), 21

Citation : (2005) 12 AHC CK 0106

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

Final Decision : Allowed

Judgement

S.U. Khan, J.—Both these writ petitions are directed against judgment and order dated 2651997 passed by Vth Additional District Judge, Kanpur Nagar in three rent revisions being Rent Revision Nos. 39, 40, and 41 of 1996. Revision Nos. 39 and 41 were filed by the landlady petitioner Savitri Devi Rohatgi. First writ petition is directed against the judgment of the Revisional Court in Rent Revision No. 39 of 1996 and the second writ petition is directed against judgment of the Revisional Court in Rent Revision No. 41 of 1996. Revisions filed by landlady petitioner were directed against orders dated 1961996 and 216 1996 passed by R.C. & E.O. Through the first order release application of the landlady under Section 16 of U.P. Act No. 13 of 1996 had been rejected by R.C. & E.O. and through the second order building in dispute had been allotted to Laxmi Narain Tandon respondent No. 3 in the said writ petitions. Third revision before Vth A.D.J. i.e. Rent Revision No. 40 of 1996 was filed by one Rajendra Singh and was directed against allotment order in favour of the respondent No. 3 dated 216 1999. All the three revisions were decided by Vth A.D.J. by a common judgment. Sri Rajendra Singh was successful applicant for allotment. He has not pursued the matter further after the decision of Revisional Court in as much as he has not filed any writ petition against the judgment of the Revisional Court.

2. Building in dispute was initially allotted to respondent No. 3 through order of R.C. & E.O. on 3181991. The said order was subsequently challenged in revision

and thereafter in writ petition and ultimately, it was set aside and R.C. & E.O. was directed to reconsider the matter. Thereafter, the two impugned orders dated 1961996 and 2161996 were passed by R.C. & E.O. rejecting release application of the landlady and allotting the building in dispute again to respondent No. 3. In the first allotment order dated 3181991, property in dispute is described as a portion of house No. 144 (3) Canal Road Kanpur consisting of one hall, three rooms, kitchen, store rooms latrinebathroom covered verandah and garden in the shape of garage. In the order of R.C. & E.O./A.C.M. VI, Kanpur Nagar dated 1961996 rejecting the release application of the landlady also the property in dispute is described in the same manner i.e. a hall converted from garage, three rooms etc. In the second allotment order dated 2161996 also the allotted building is described in the operative portion as one hall, three rooms, kitchen, store room, latrinebathroom, covered verandah, Agan, Bageecha (garden) in the shape of garage. In view of this repeated description of the property in dispute by R.C. & E.O., I am unable to accept the contention of learned Counsel for the respondent No. 3 that hall was not allotted to him.

3. Initially portion in dispute was admittedly in the tenancy occupation of S.K. Chaudhary. After the first allotment, petitioner took possession direct from Sri Chaudhary on 3181991 i.e. on the same date on which allotment order was passed. In the allotment order no rent was fixed. Learned Counsel for the respondent No. 3 has argued that in one of the affidavits filed by the landlady before R.C. & E.O., it was admitted by her that out going tenant Sri Chaudhary was paying Rs. 272/ as monthly rent including tax hence it must be deemed that building in dispute was allotted to respondent No. 3 for the same rent i.e. Rs. 272/ per month. The argument is too far fetched to be accepted. There cannot be any tenancy without rent in view of Section 105 of T.P. Act. By virtue of Section 16 (9) of U.P. Act No. 13 of 1972, it is essential to fix rent in the allotment order. Allotment order is liable to be set aside only on this ground that no rent has been fixed therein. Such type of allotment order virtually amounts to compulsory acquisition of property and transferring the same to the allottee free of cost.

4. Allottee is not entitled to get possession directly from the outgoing tenant. Outgoing tenant must first deliver possession to the landlord thereafter landlord shall deliver possession to the allottee failing which R.C. & E.O. can direct delivery of possession from landlord to allottee. If possession has directly been taken by the allottee from out going tenant then this by itself is sufficient to vitiate the allotment proceedings.

5. The above points have been discussed by me in detail in the following authorities

(1) R.L Poddar v. A.D.J., 2003 (53) ALR 729.

(2) C.K. Nagarkar v. A.D.J. Gorakhpur, 2004 (56) ALR 651.

(3) Kusum Lata Yadav v. A.D.J., Moradabad, 2005(1) JCLR 728 (All) : 2004 (2)

ARC 789.

6. When the earlier allotment order dated 3181991 was set aside and matter was remanded, landlady filed application for possession under Section 18 (3) of the Act. The said application was rejected on the ground that until proceedings for release/allotment were finalized in pursuant of the remand order possession could not be delivered to the landlady. This view was also erroneous. When there is neither any allotment order nor release order it is only landlord who is entitled to possess the building in dispute.

7. Accordingly, allotment order dated 2161999 is utterly illegal and liable to be set aside. Respondent No. 3 being an unauthorised occupant having directly taken possession from the out going tenant was not entitled to allotment.

8. As far as release is concerned, the original landlady had stated that her daughter-in-law (who has not been substituted at the place of original landlady since after her death during pendency of the writ petition) required the accommodation in dispute for expansion of school which she was running in the adjoining portion of the same building of which, portion in dispute is a part. Such need cannot be said to be not bona fide. Learned Counsel for the respondent No. 3 prospective allottee has argued that for daughter in law release cannot be filed as she is not included in the definition of family. It was not disputed that daughter-in-law was residing with the original landlady. The Supreme Court in *K.V. Muthu v. A.A. Anmol*, AIR 1997 SC 628, has held that release application for nephew is quite maintainable even though he is not included in the definition of family. Even otherwise prospective allottee has got no right to oppose the release application under Section 16 of the Act as held by a Full Bench authority of this Court in *Talib Hasan v. 1st A.D.J.*, 1986 (12) ALR 113 (FB) and *R.N. Sharnia v. S. Gaur*, 2002 (48) ALR 230 (SC). Respondent No. 3 is further estopped from questioning the bona fide need of the landlady on the ground that he was unauthorized occupant and building could not be allotted to him.

9. The concept of bona fide need under Section 16 is slightly different in the concept of bona fide need under Section 21 of the Act. Under Section 16 there is no sitting tenant and prospective allottee has got no say in matter while under Section 21 there is a sitting tenant whose interest is to be safeguarded in a particular case need may not be grave enough for lease under Section 21 of the Act against sitting tenant but it may be quite sufficient for release under Section 16 of the Act.

10. Accordingly, both the writ petitions are allowed. Judgment and order dated 1961996 passed by R.C. & E.O. rejecting the release application of the landlady is set aside. Allotment order passed by R.C & E.O. dated 2161996 also set aside and impugned judgment and order passed by the Revisional Court is also set aside. Release application filed by the landlady stands allowed.

11. Property in dispute is situated in Kanpur and contains four rooms, storeroom covered verandah and garage. No rent was fixed by R.C. & E.O.

12. Accordingly, it is directed that since 3181991 when respondent No. 3 occupied the building in dispute till date he shall pay to the landlady rent/damages for use and occupation at the rate of Rs. 1000/ per month. If any part towards rent has been paid or deposited under Section 30 of the Act by respondent No. 3 then the same shall be adjusted from the above rent. The amount may be recovered under Rule 24 of the Rules framed under the Act.

13. Respondent No. 3 is granted six months time to vacate provided that : Within one month from today he files an undertaking before the R.C. & E.O. to the effect that on or before the expiry of aforesaid period of six months he will willingly vacate and handover possession of the property in dispute to the landladypetitioner.

14. For the period of six months which has been granted to the respondent No. 3 to vacate he is required to deposit Rs. 9000/ (at the rate of Rs. 1500/ per month) as damages for use and occupation. This amount shall also be deposited within one month before the R.C. & E.O. and shall immediately be paid to the landladypetitioner.

15. It is further directed that in case undertaking is not filed or aforesaid amount of Rs. 9000/ is not deposited within one month then respondent No. 3 shall be liable to pay damages at the rate of Rs. 2500/ per month since after one month till the date of actual vacation.

16. Similarly, if after filing the aforesaid undertaking and depositing the amount of Rs. 9000/ the property in dispute is not vacated on the expiry of six months then respondent No. 3 shall be liable to pay rent/damages for use and occupation at the rate of Rs. 2500/ per month since after six months till actual vacation.