

(1999) 08 AHC CK 0044
In the Allahabad High Court
Case No : C.M.W.P. No. 10220 of 1982

Shanker Lal (Dead.) through L.Rs.

APPELLANT

Vs

Rent Control and Eviction Officer, Aligarh and others

RESPONDENT

Date of Decision : 02-08-1999

Acts Referred:

Hindu Succession Act, 1956 — Section 15
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(1), 12(4), 3, 3(1)

Citation : (1999) 3 AWC 2642

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : M.K. Gupta, for the Appellant; V.P. Singh, for the Respondent

Judgement

J.C. Gupta, J.—By means of this writ petition, the order of Rent Control and Eviction Officer dated 30.8.82 (Annexure-15) has been challenged.

2. The dispute relates to a shop situate at Hira Building. Poorana Adda Hathras, Aligarh, of which respondent No. 2 is the landlady. It is not in dispute that in the said shop, one Bishambher Dayal was tenant on behalf of the landlady and was doing Homoeopathic practice. The proceedings started on an application moved by landlady for the release of the said shop in her favour on the ground that the shop had been sublet by Bishambher Dayal and he has substantially removed his effects from the said shop and. therefore, a vacancy had come into existence. It further appears that a report was called for from the Rent Control Inspector who by the report dated 25.5.77 reported that tenant Bishambher Dayal was found in occupation of the shop at the time of his visit and the said shop was not in occupation of any third person. Landlady filed her affidavit alleging therein that the shop was first let out to one Ram Prasad and thereafter to Sarvesh Kumar. She also got filed affidavits of Ram Prasad and Sarvesh Kumar, the alleged sub-tenants wherein they stated that they were let out projection of the shop in question by the then tenant Bishambher Dayal. It also appears that before the

said affidavits could be rebutted or controverted, Bishambher Dayal died on 16.12.77. His real brother Shanker Lal filed an application for substitution stating therein that he has inherited tenancy rights and was entitled to defend the proceedings initiated against Bishambher Dayal. This substitution application was first rejected on 21.9.78 by a cryptic order but was subsequently allowed. The R. C. and E. O. allowed the objections of Shanker Lal and rejected the landlady's application of release by the order dated 14.12.78 holding that there existed no vacancy. The landlady challenged the said Order In revision and the revisional court by the order dated 31.8.79 upheld the order of the R. C. and E. O. so far as question of substitution was concerned but remanded the case to the R. C. and E. O. for a fresh decision on the question of vacancy by observing that the R. C. and E. O. would examine the question whether or not Bishambher Dayal had ceased to be tenant within the meaning of Section 12 of the Act. during his lifetime and permitted both the parties to adduce fresh evidence. Consequently, the parties filed further evidence before the R. C. and E. O. and by the impugned order, the R. C. and E. O. has declared vacancy. Aggrieved by this order, Shanker Lal has filed this writ petition before this Court- During the pendency of writ petition, Shanker Lal expired and his legal representative has been brought on record under the order of this Court dated 13.11.98.

3. Sri M. K. Gupta learned counsel for the petitioner and Sri V. P. Singh learned counsel for the landlady-respondent have been heard, Record has also been perused.

4. Learned counsel for the petitioner firstly argued that the order declaring vacancy is not sustainable inasmuch as the R. C. and E. O. while declaring vacancy has proceeded on an erroneous view of law that with the death of Bishambher Dayal, tenancy rights had ended and Shanker Lal could not acquire any rights in himself. It was further contended that the affidavits filed on behalf of the landlady have been misread and the affidavits filed on behalf of Shanker Lal have been excluded from consideration by the R. C. and E. O. absolutely on no valid ground and lastly it was argued that even if affidavits filed on behalf of the landlady are taken at their face value, the shop in question could not be declared vacant.

5. It is an admitted fact that Bishambher Dayal was tenant in the shop in question. It is also an undisputed fact that Shanker Lal was his real brother and Bishambher Dayal was a bachelor. The R. C. and E. O. declined to accept the claim of Shanker Lal on the ground that he was not in occupation of the shop in question during the life-time of Bishambher Dayal and, therefore, did not acquire any tenancy rights. Sri M. K. Gupta learned counsel for the petitioner invited the attention of the Court to the definition of "tenant" as given in Section 3 (a) of U. P. Act No. XIII of 1972. which is reproduced as under:

"3. Definition.--In this Act, unless the context otherwise requires :

(a) "tenant", in relation to a building, means a person by whom its rent is

payable, and on the tenant's death :

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) In the case of a non-residential building, his heirs ;"

6. Under the old Act, there was no such definition and, therefore, many a time a controversy arose whether tenancy rights were heritable or not. However, under the new Act, the expression "tenant" has now been defined.

7. A plain reading of the above definition clearly shows that only those heirs would be entitled to inherit the tenancy rights in respect of a residential building who were normally residing with the tenant, while in the case of non-residential building, on the death of tenant, his all heirs would inherit the tenancy rights irrespective of the fact whether they were in actual occupation with the tenant or not. The question as to who are heirs of the deceased-tenant has to be decided in accordance with the personal law governing the tenant, as the present Rent Control Act does not lay down the list of heirs on whom the tenancy should devolve. Since Bishambher Dayal was admittedly a Hindu, the rule of succession would be governed by Section 15 of the Hindu Succession Act. 1956 and under the said provision, it cannot be disputed that Shanker Lal was an heir of the deceased Bishambher Dayal, as he was a bachelor and died issueless. The Legislature has not thought it fit to impose any pre-condition for the devolution of tenancy rights in respect of a non-residential building which condition we find as far as devolution of tenancy in respect of residential building is concerned. There is weight in the submission of the learned counsel for the petitioner that Shanker Lal acquired tenancy rights by inheritance as per the provisions of Section 3(1)(a) of the Act and was, therefore, entitled to defend the proceedings initiated by the landlady against late Bishambher Dayal. Learned counsel for the respondents, however, argued that the definition given in Section 3 (1) (a) is controlled by the definition of the word "family" as given in Section 3 (2) of the Act. This argument of the learned counsel for the respondents is wholly misconceived, as would appear from the definition itself which says that the word "family", in relation to a landlord or tenant of a building would mean, his or her spouse, male lineal descendants, and others. Even this definition uses the word "tenant" and the same meaning to this word will have to be given as spelled out in Section 3 (1) (a) of the Act. It is well-settled law that if the language used in the definition of a word is clear and unambiguous, it has to be read in the same manner and the Courts cannot add to or subtract any word from the said definition. If the words of the definition are in themselves precise and unambiguous, nothing more is necessary than to expound those words in their natural and ordinary sense. It is not permissible to the Court to add or subtract any word nor to hold that what the Legislature has provided was redundant. A legalisation ordained by the Legislature cannot be wiped out by the Court.

8. It may also be not out of place to mention here that after the death of Bishambher Dayal. Shanker Lal was allowed to contest the proceedings by the R. C. and E. O. and this order of R. C. and E. O. was upheld in the revision filed by the landlady and the only question which was required to be considered by the R. C. and E. O. after the remand was whether during the life-time of Bishambher Dayal, a vacancy had arisen by legal fiction under the provisions of Section 12 (4) of the Act?

9. Under the impugned order, vacancy has been declared on the ground that Bishambher Dayal had sub-let the shop in question to Ram Prasad and then to Sarvesh Kumar. This finding is solely based on the consideration of the affidavits of Ram Prasad and Sarvesh Kumar. A plain reading of these affidavits, whose copies have been annexed as Annexures-13 and 14, would show that Ram Prasad and Sarvesh Kumar, the alleged sub-tenants had merely stated that they were allowed to occupy only projection of the shop by Bishambher Dayal on rental basis and it was nowhere stated that they had come in exclusive occupation in any part of the shop in question. Sri Gupta learned counsel for the petitioner, therefore, rightly contended that even if these affidavits are accepted at their face value, only the projection of the shop could have been declared vacant and not the whole shop as Section 12 (1) Itself says that tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if he has allowed the building or any part thereof to be occupied by any person who is not a member of his family. In the absence of any finding that the projection formed part of the shop or that the shop as a whole could not be put to any use if tenancy of projection was separated, the order declaring the whole shop vacant cannot be sustained.

10. There is yet another reason for not upholding the impugned order of vacancy. Shanker Lal had filed evidence before the Rent Control and Eviction Officer after the remand in the form of his own affidavit (Annexure-10) as well as affidavits of Kamal Kumar Sharma, Genda Lal Jain and Trilock Chandra (Annexure-9, 11 and 12) who were patients of late Bishambher Dayal and they all stated that Bishambher Dayal himself was carrying on his profession in the shop in question and no portion of the same was let out to any third person. All these affidavits have been excluded from consideration merely on the ground that they were not filed during the life-time of Bishambher Dayal. It may not be out of place to mention here that Bishambher Dayal had died during the hearing of the case and before he could produce evidence. The revisional court had also permitted the parties to adduce evidence and in these circumstances, the non-consideration of the affidavits filed on behalf of the sitting tenant for the reason assigned by the R. C. and E. O. was a manifest error of law committed by the R. C. and E. O. and for this reason also, the impugned order of vacancy cannot be sustained.

11. It would further appear that there was a specific allegation of the landlady that Bishambher Dayal was carrying practically no profession in the shop in question and had substantially removed his effects therefrom and on account of

this, a deemed vacancy had come into existence under the provisions of Section 12 (1) (a) of the Act. However. no finding on this aspect of the matter has been recorded by the learned R. C. and E. O. Since the question of declaration of vacancy is to be decided afresh, it will be open for the respondents to press the aforesaid plea before him and lead evidence in support thereof and the R. C, and E. O. shall decide the same in accordance with law after giving due opportunity to both the sides.

12 For the reasons stated above, the impugned order of vacancy cannot be sustained and the R. C. and E. O. Is directed to decide the question of vacancy afresh in accordance with law and in the light of the observations made above.

13. Since the matter has become quite old. the R. C. and E. O. Is directed to decide the question of vacancy afresh within a period of two months from the date a certified copy of this order is produced before him.

14. With the above observations and directions, this writ petition is disposed of.

In the circumstances, no order as to costs is made.

Parties are directed to appear before the Rent Control and Eviction Officer on 31st of August, 1999.