
(2007) 04 AHC CK 0326
In the Allahabad High Court

Shanti Swaroop Tripathi and Others

APPELLANT

Vs

IIIrd A.D.J. and Others

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Citation : (2008) 1 AWC 852

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Judgement

Rakesh Sharma, J.—Heard Sri Avadhesh Kumar learned Counsel for the petitioner and Sri Ashish Misra, learned Counsel for the opposite parties.

2. The petitioner has assailed the order dated 7.12.1987 passed by the IIIrd Additional District Judge, Lakhimpur Kheri, allowing the revision of the widow-landlady Smt. Rajeswari Devi and ordering for release of the rented accommodation under the tenancy of petitioner, Sri Shanti Swaroop Tripathi.

3. It emerges from record that a release application was submitted by Smt. Rajeshwari Devi before the prescribed authority under the relevant rent control laws at Lakhimpur Kheri on 6.9.1982 for release of a house situate in Mohalla Mahraj Nagar, in the main city of Lakhimpur Kheri. It was indicated in the release application that earlier tenant Sri Raziuddin Siddiqui had vacated the disputed premises and the landlady wanted the recommendation for her personal need and requirements. She was having a large family comprising 12 members who had no adequate accommodation. She had also filed an affidavit and these facts find place in the rent control inspector's report which was placed as paper No. 71 before the prescribed authority.

4. According to the size and requirement of each of the family members for personal use, the landlady had urgently required the accommodation. The family members were facing great difficulty in residing in the house. Her two grandsons Arun Kumar and Anuj Kumar were married and now they had their children. During course of litigation, as per Rent Control Inspector's report submitted on

18.2.1983, one Atma Ram Awasthi was occupying the accommodation. The petitioner Shanti Swaroop Tripathi had moved an application in the Court of Rent Control and Eviction Officer for allotment of the disputed premises. The landlord had filed objection to this application.

5. Both the parties had adduced the evidence in support of their cases. The prescribed authority vide order dated 9.4.1983 had rejected the application for release and by the same order, the disputed premises was allotted to Sri Shanti Swaroop Tripathi against which a Rent Control Revision No. 1 of 1984, was preferred by the landlady in the Court of District Judge, Lakhimpur Kheri. The revision was allowed on 21.8.1984 and the case was remanded back to the Rent Control and Eviction Officer, Lakhimpur Kheri. The Rent Control Officer was directed to issue directions for inspection of the premises and then the matter may be heard. The case was again decided by the Rent Control and Eviction Officer on 1.1.1986. The application of landlord for release of the disputed accommodation was rejected and the aforesaid accommodation was again allotted to Sri Shanti Swaroop Tripathi who has alleged himself to be a journalist of District Kheri. Smt. Rajeshwari Devi preferred a revision against the said order. The revisional court considering the pleadings of the parties and the material on record, allowed the revision by passing a detailed judgment and order on 7.12.1987, which has been assailed in this writ petition.

6. Sri Avadhesh Kumar, learned counsel for the petitioner has submitted that the petitioner's application for allotment was rightly allowed by the Rent Control and Eviction Officer after considering the objections of the landlady. The Rent Control Officer on two occasions, i.e., on 9.4.1984 and 1.1.1986 has upheld the order of allotment passed in favour of the petitioner. The prospective allottee has a right to contest the release application. The judgment and order passed by the revisional court on 7.12.1989 is illegal. The landlady was already living in a double-storeyed building with her family. The details of an accommodation have been given in the writ petition. She was having sufficient accommodation to accommodate each and every member of her family.

7. Sri Avadhesh Kumar, has further submitted that the revisional court has misinterpreted the authority cited before it and it has wrongly come to the conclusion that the authority concerned is only to look into the bona fide requirement of the landlord and not of any other prospective allottee. The revisional court has failed to appreciate that Smt. Rajeshwari Devi's need was not bona fide and the accommodation did not deserve to be released. As per petitioner, the details of family members given by the landlady were not correct; in fact they were not members of her family. The judgment was a non-speaking order. The Commissioner's report was not properly considered and appreciated by the revisional court. The petitioner had no other accommodation in the city. The petitioner was never an unauthorized occupant; he was not illegally occupying the house.

8. Sri Avadhesh Kumar has further submitted that during pendency of the

revision, Smt. Shanti Devi had died and decree has been passed in favour of the dead person. This is not permissible under law. The revisional court has also ignored the fact that the landlady had other alternative accommodations. The judgment of the revisional court is wholly erroneous.

9. Sri Ashish Misra, learned Counsel for the respondent-landlady has submitted that during her lifetime landlady Smt. Rajeswari Devi, a widow had sought release of her house for the residential purposes for her family comprising 12 to 14 members. The details of family members have been given in Para 2 of the counter-affidavit and the same also find place in the record of courts below. The grandsons had also got married who needed separate accommodations for themselves. The release application was wrongly rejected by the prescribed authority by passing a non-speaking and non-reasoned order. He has laid much stress on the fact that Shanti Swaroop Tripathi had no right to contest the release application submitted by the landlady as he was merely a prospective allottee. The rent control authority by the same order had released the accommodation and allotted the same in favour of Shanti Swaroop Tripathi. This has been done with a pre-determined mind and prejudging the issues. The revisional court has considered the report of the Rent Control Inspector submitted on 23.12.1985. It was indicated in this report that the family members of late Sri Rajeshwari Devi were occupying a house in which a temple situates on the first floor. There were three rooms of 7 x 8 feet area dimension with a latrine and kitchen. These three rooms are wholly insufficient to meet the requirements of 14 members of Smt. Rajeswari Devi's family. As far as locus standi of a perceptive allottee is concerned, Sri Ashish Misra, further submits that composite order rejecting the release application and making allotment vitiates the entire proceeding and placed reliance on 1990 ARC 1.

10. He further submits that the Court is required to deal with the bona fide need of the landlord only and placed reliance on 1985 ARC 424.

11. Learned Counsel for the respondents has submitted that rent control laws forbids a person to live in vacant house without having a proper allotment order and in support of this submission, he has placed reliance on 2006 (24) LCD 1479.

12. It is the duty of the Rent Control Officer to measure the extent of landlord's need and he should have firstly dispose of the application for release before passing the allotment order in favour of any other person seeking allotment. He has placed reliance on Rent Control and Eviction Officer, Allahabad Vs. Dr. M.M. Laloraya and Others,

13. The revisional court has taken into account that father of Sri Atma Ram Awasthi had filed an affidavit that he was not occupying the disputed accommodation.

14. As per learned Counsel for the respondents, the Additional District Judge has not committed any error in holding that the evidence led by prospective allottee cannot be considered and that he had no locus standi to contest the application

for release. The District Judge, after scrutinizing the evidence available on the record has allowed the application for release. It has been submitted before the Court that the petitioner-Shanti Swaroop Tripathi was occupying the building illegally without paying any rent for the use and occupation of the building. In Para 13 of the counter-affidavit, it has been submitted that Sri Shanti Swaroop Tripathi claiming himself to be a journalist had illegally occupied the building of one Smt. Laxmi Devi wife of Mathura Prasad occupying the building unauthorized. He has not paid any rent for use and occupying of the building being a journalist. It has been indicated in Paras 13 and 14 with being Journalist he is exercising influence over the Rent Control Authority and now he is causing damage to the building under his sufferance under rent control had not implemented the order of release nor they had implemented the earlier directions given by this Court in Writ Petition No. 6598 of 1985. The judgment and order was just and proper. The Court has recorded below findings of fact and as such no interference is required under writ Jurisdiction of this Court.

15. I have heard learned Counsel for the parties and perused the record.

16. There is force in the submissions of learned Counsel for the respondent-landlady, Sri Ashish Misra. It is noteworthy that the landlady a widow having a joint family of 14 members had sought release of the own house on 6.9.1982. The matter has remained pending and the prescribed authority had rejected her application on 1.1.1986. Interestingly by the same composite order, the Rent Control Officer had allotted the house to the petitioner Shanti Swaroop Tripathi, a local journalist.

17. A bare perusal of this order reveals that the Rent Control Officer has acted with a pre-determined mind to somehow allot the house in favour of Shanti Swaroop Tripathi. As per scheme of Act, firstly, the release of the accommodation is ordered. After the vacancy has arisen, applications are invited and after following due procedure as per rules made under Act 13 of 1972, the allotment order is issued. The landlord's no objection is also considered before making allotment of the accommodation in favour of the aspirants. The petitioner's case is fully covered by the decisions cited by Sri Ashish Misra, learned Counsel for the petitioner, i.e., Ram Narayan Sharma Vs. Shakuntala Gaur,

18. The order of the prescribed authority was wholly erroneous. The revisional court, i.e., 3rd Additional District Judge has committed no error in refusing to consider the evidence led by the prospective allottee i.e., Sri Shanti Swaroop Tripathi, a local Journalist who had submitted an application for release of the premises. There was no question of assessing bona fide need, comparative hardships etc. of a prospective allottee not a tenant. There was no relationship of landlord and tenant between Smt. Rajeswari Devi and Sri Shanti Swaroop Tripathi who was merely a prospective allottee. While considering the application for release by the prescribed authority, the requirement of the prospective allottee need not to be considered and there cannot be any comparison of requirements of the prospective allottee and that of landlord. From this angle

also, the impugned Judgments and order does not suffer from any error apparent on the face of record.

19. The learned court below has recorded findings of facts based on documentary evidence and other materials and placed on record that Smt. Rajeswari Devi had a large family of 14 members. Her sons were already married and having their children. Now, the grandsons have also got married having families and are having their own children. It cannot be imagined that such a large family can live in three rooms having 8 x 7 feet area. A prospective allottee cannot force them to do what he has suggested in this writ petition. Every Adult member of the family may require at least one room and other facilities.

20. The revisional court can decide the case by applying its own mind and considering the evidence brought on record. In the present case no one has complained that opportunity of hearing was not afforded to him. The submissions of the learned counsel for the petitioner that the matter may be remanded by this Court for reconsideration is wholly misconceived. The petitioner, in the matter of release, has no locus standi nor any good reason to persuade the Court to do so. The matter is pending disposal since 6.9.1982. More than twenty four and a half years have passed. Now at this stage, the matter cannot be remanded back for fresh adjudication vide G.C. Kapoor Vs. Nand Kumar Bhasin and Others, and Mohd. Arif v. A.D.J. 2005 (2) ARC 793 : 2006 (2) AWC 1075.

21. As far as death of landlord is concerned here was a case of release of accommodation for the benefit of family members of widow-Smt. Rajeswari Devi. The heirs/legal representatives are parties to this case. Moreover this was a simple matter of release of accommodation for the benefit of the family members not for the old widow alone who had died awaiting release of her own house.

22. In view of above, the petitioner's case is squarely covered by the decisions cited record by Sri Ashish Misra, learned counsel for the respondent-landlord.

23. Accordingly, there is no illegality or infirmity in the judgment and order passed by the revisional court. The writ petition is dismissed.

24. The petitioner shall immediately vacate the premises in dispute within one moth from today. The Rent Control Officer/District Magistrate, Kheri is directed to get the premises vacated within the stipulated period, if necessary by using police force. The Court has noted that the petitioner-tenant has not paid any rent to the landlady for the last several years. He has been depositing a meagre amount of Rs. 50 per month without paying electricity and water charges in the Court as rent admittedly occupying two rooms, courtyard, latrine-bathroom, verandah lawn etc. in mohalla Mahraj Nagar in the city of Lakhimpur Kheri. The Court has been informed that the house will fetch rent of Rs. 500-1,000 per month.

25. In view of this, the petitioner shall pay an amount of Rs. 60,000 as arrears of rent for use and occupation of the premises in question to the heirs of the

landlady. In addition, he shall also pay Rs. 35,000 as costs, damages, compensation and costs incurred by the landlady and her family members in pursuing the litigation for the last more than 24 years from District Lakhimpur Kheri to Lucknow.

26. The aforesaid amount of Rs. 60,000 and Rs. 35,000, total Rs. 95,000 arrears of rent, costs/litigation expenses, compensation, etc. shall be deposited in the Registry of this Court within six weeks from today. This amount shall be released in favour of the landlady or her representative.

27. If the order of this Court is not complied with by the petitioner within the stipulated period, the Rent Control Officer/District Magistrate, Kheri, shall immediately take appropriate action of sealing the property after removing all the incumbents from the premises in question and shall handover its peaceful possession to the landlady or her representative.

28. The order has been passed in the presence of the learned Counsel for the parties. The petitioner shall after handing over the vacant and peaceful possession of the premises to the heirs of the landlady-respondents and shall file an affidavit to this effect in the Registry of this Court within 10 days of such handing over possession of the premises.

29. It is open for the respondents to withdraw the amount from this Court as and when the same is deposited.