

(1979) 05 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1635 of 1977

Shanti Swarup Bhatnagar

APPELLANT

Vs

Rent Control and Eviction Officer and Others

RESPONDENT

Date of Decision : 17-05-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12 , 16(1)
Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12 , 16(1)
Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12 , 16(1)

Citation : (1979) AWC 428

Hon'ble Judges : V.K. Mehrotra, J;K.N. Singh, J

Bench : Division Bench

Advocate : L.P. Naithani, S.P. Gupta, R.N. Bhalla, S.C. Khare and Chand Kishore,
for the Appellant; Dhruva Narain and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.N. Singh and V.K. Mehrotra, JJ.—This petition under Article 226 of the Constitution claims a relief for the issue of a writ of mandamus directing the Rent Control and Eviction Officer, Allahabad, to decide the Petitioners' objection on merits before deciding the release application of the landlord.

2. Briefly, the necessary facts giving rise to this petition are as follows: Smt. Sarwar Jahan Begum is the owner and landlord of building No. 22-A, Sarojini Naidu Marg, Allahabad, which was in the tenancy of Sri Asif Ansari since 1960. The building in dispute was used as office for the purpose of practice in law by late Sri Asif Ansari as well as by the Petitioner Sri Shanti Swarup Bhatnagar. In 1973, Ambrish Kumar Sharma also joined the office of Sri Asif Ansari and as he was his ward he resided with Sri Ansari. In February, 1977, late Sri Asif Ansari

was elevated to the Bench of this Court. Sri Ambrish Kumar Sharma moved an application on 28-2-1977 before the Rent Control and Eviction Officer for allotment of the premises in dispute. An enquiry was held on the application of Sri Sharma and the Rent Control Inspector submitted his report that in the eye of law there was vacancy in the premises and it was available for allotment. During the enquiry Sri Ansari had given in writing that he was likely to vacate the premises 22-A Sarojini Naidu Marg in which he was having his office jointly with Sri Shanti Swarup Bhatnagar and Sri Ambrish Kumar Sharma. Sri Ansari further stated in his note that Sri Ambrish Kumar Sharma was his ward and he was living with him also. Proceedings for allotment remained pending with the Rent Control and Eviction Officer and the same were adjourned on a number of dates on some ground or the other. On 2nd May, 1977, arguments were heard on behalf of Sri Sharma and 10-5-1977 was fixed for orders, but on that date no orders were passed and proceedings were further adjourned. On 10-5-1977 Sri Sharma was present while none appeared on behalf of the landlord, but no order was passed, instead the proceedings were adjourned. On 12-5-1977 the District Magistrate summoned the relevant file for his perusal and the same was received back by the Rent Control and Eviction Officer on 30-8-1977. Immediately thereafter Smt. Sarwar Jhan Begum made an application u/s 16(1)(b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, (hereinafter referred to as the Act) before the Rent Control and Eviction Officer for the release of the premises on the ground that she required the same for her own use and occupation. Sri Shanti Swarup Bhatnagar, the Petitioner, moved an application on 29-8-1977 before the Rent Control and Eviction Officer that there was no vacancy in the accommodation and as such no order either of allotment or release could be passed. He further made a prayer that before considering the question of allotment and release, the issue relating to vacancy should be decided. Sri Bhatnagar has asserted that the Rent Control and Eviction Officer observed that the Petitioner's application was not maintainable and he refused to consider the questions raised in the application, instead he fixed 29-9-1977 for passing orders on the release application. The Petitioner then filed this petition for the issue of a writ of prohibition and also for the issue of a writ of mandamus directing the Rent Control and Eviction Officer, Allahabad, to decide the Petitioner's objection on merits before deciding the release application or allotment application.

3. Learned Counsel for the Petitioner firstly urged that the Petitioner along with late Sri M. Asif Ansari has been holding office in the premises jointly since 1960, and this had been within the knowledge of the landlady as well as her brother Sri Atiq Ullah Khan who resides in the adjacent building. In support of this contention it was further asserted that the rent of the premises was being paid jointly by the Petitioner and late Sri Ansari and this could be verified from the Income Tax returns. Sri Ansari and the Petitioners carried on their legal profession in the same office and in support of this claim reliance was placed on the latter-pads, office files bearing the names of the Petitioner as well as Sri

Ansari and the telephone directory and Income Tax papers and correspondence record. Learned Counsel further urged that even if the premises in dispute had been exclusively let out to Sri Ansari he had inducted the Petitioner as a joint tenant in the premises where both of them carried on their legal profession and held their office with the knowledge and consent of the landlord. He further urged that the deeming provisions u/s 12 did not apply and the accommodation could not be treated vacant. Reliance was placed on a Division Bench decision of this Court in *Allied Products Distributors and Others Vs. Arun Kumar and Others*, .

4. We do not consider it necessary to express any opinion about the Petitioner's claim that the accommodation in dispute was under the joint tenancy of late Sri Ansari and the Petitioner, as in our opinion, this question should be determined by the Rent Control and Eviction Officer on the material placed before him by the parties concerned.

5. We would, however, like to observe that if the Petitioner's assertion is found to be correct and if it is proved that he had been residing or holding office jointly with late Sri Ansari in the premises in dispute to the knowledge of the landlady, there could be no vacancy under the deeming provision of Section 12 of the Act and in that event the building cannot be released in favour of the landlord or allotted to Sri Sharma or anyone else. These matters, however, must be determined by the Rent Control and Eviction Officer before the building is released in favour of the landlord or allotment is made in favour of any prospective allottee. Since the Rent Control and Eviction Officer did not issue any notice to the Petitioner nor was the Petitioner given any opportunity to contest the question of vacancy, the Petitioner is entitled to get the question of vacancy determined first. If the Petitioner's contention is found to be correct, the landlord's application for release would not be maintainable as there would be no vacancy. For this reason also it is necessary that the Rent Control and Eviction Officer should decide the objection of the Petitioner either before passing final orders on the release application or along with it.

6. Learned Counsel then urged that Smt. Sarwar Jahan Begum is the wife of an I.A.S. Officer and her father is a Minister of State in the Central Government and that therefore the Rent Control and Eviction Officer and the District Magistrate were highly interested in releasing the accommodation to her. Learned Counsel referred to various paragraphs in the writ petition to support the plea of bias and malafides. It is not necessary to consider this plea as the then District Magistrate as well as the Rent Control and Eviction Officer have both been transferred. This fact is admitted by the counsel for the parties. Now the District Magistrate and the Rent Control and Eviction Officer are different persons and there can be no reason as to why they will not decide the Petitioner's objection in a bona fide manner.

7. In view of the above discussion we allow the petition and direct the Rent Control and Eviction Officer to hear and decide the Petitioner's objection either before deciding the release application or along with it. Parties shall bear their

own costs.