
(2002) 05 AHC CK 0044
In the Allahabad High Court
Case No : C.M.W.P. No. 18077 of 2002

Sharda Nand "Anchal"

APPELLANT

Vs

IIIrd Additional District Judge, Ballia and Others

RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16, 9
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 10, 11, 8, 9

Citation : (2002) 3 AWC 2173

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Ashish Kumar Singh and Ravi Kiran Jain, for the Appellant; P.K. Rai, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—This writ petition has been filed by the petitioner under Article 226 of the Constitution of India challenging the order dated 18.4.2002, passed by Revisional Court in R.C.R. No. 2 of 1990. Annexure-11 to the writ petition, whereby the revision filed by the landlord has been allowed.

2. The facts leading to the filing of present writ petition are that respondent No. 2 is the son of daughter of Pooranmal, who was allotted Nazul land to raise a house over it with the condition that it will be let out only to the Government servants. Respondent Nos. 3 and 4 are the sons of respondent No. 2. It is stated that one Sri Girdhari Lal, Deputy Superintendent of Police was the last tenant in the accommodation in question. He was transferred to another district and after his transfer the petitioner, who is local M.L.A., applied for allotment of the building in question. It is alleged by the respondents-landlord that petitioner, who was a local M.L.A., exercised his political influence over the authorities and the Rent Control and Eviction Officer without complying with the procedure prescribed under law declared vacancy in the accommodation in question on

16.6.1990 and on 7.7.1990, the allotment order was passed in favour of the petitioner.

3. Aggrieved by the orders dated 16.6.1990 and 7.7.1990, landlord filed a revision but along with the revision, according to the allegation made by the petitioner, copy of the orders impugned were not filed. This revision was filed in the year 1990 and it remained pending when by the impugned order, the respondent No. 1 allowed the revision and set aside the allotment order holding that the same has not been passed after following the procedure prescribed under law. It has also been recorded in the aforesaid order that in terms of the lease, the building could not have been allotted to the" present petitioner who was not a Government servant. In any view of the matter, Sri Girdhari Lal, Deputy Superintendent of Police was the last tenant and now he has been transferred. The information of vacancy was received in the office of the Rent Control and Eviction Officer and once an application supported by an affidavit is filed for allotment of the building in question, the vacancy will have to be ascertained by the District Magistrate and for that purposes, Rule 8 of the rules framed under U. P. Act No. 13 of 1972 will have to be followed. It is also alleged that neither Rule 8. nor Rule 9 was followed, inasmuch as no notice whatsoever has been given to the respondent-landlord either before declaring the vacancy or passing of the allotment order. Thus, the provisions of Rules 8 and 9, referred to above, were not followed. Apart from that, immediately after the receipt of the intimation of vacancy of any building in the office of the District Magistrate, the vacancy shall be entered in a register, which shall be maintained in that office in that behalf and be notified for the information of the general public by pasting a copy of the list of the vacant buildings on the notice board of that office, specifying therein the date on which it was declared vacant. The law further enjoins the obligations on the part of the District Magistrate to Issue a notice to the landlord intimating him the date so fixed and on the date so fixed the District Magistrate shall consider the case of all applicants registered in the register maintained under Rule 10 and shall pass an order-under Section 16 of the Act in accordance with Rules 10 and 11 after giving an opportunity to the landlord to raise objection, if any. In the present case, finding has been recorded that neither Rules 8 and 9, nor Rules 10 and 11 have been complied with Inasmuch as no notice has ever been pasted either on the notice board, nor the same has been entered into the register maintained for the list or the vacancy in the building and also no notice has been issued to the landlord before issuing allotment order. The requisite order, i.e.. notice itself demonstrates that it is because of the political influence of the petitioner, who was a sitting M.L.A.. the allotment order was passed on 7.7.1990. The respondent No. 1 has further held that in the file, there are three papers, namely, the order declaring the vacancy : the order of allotment and the grounds of revision. From the above said facts, which have not been disputed, it has been held by respondent No. 1 that "thus, it appears that the District Magistrate has passed the allotment order in question hurriedly without following the provisions under the Act, which are mandatory in

nature, therefore, the allotment order dated 7.7.1990 passed by the District Magistrate is invalid and deserves to be quashed." Coming to the aforesaid conclusion, the allotment order has been set aside and it is further held by the respondent No. 1 that it will be open to the revisionist, namely! the landlord to apply before the trial court for being placed in possession of demised premises forthwith.

4. In terms of the process in Court, it is this order, which has now been challenged by the petitioner. Learned counsel for the petitioner Sri R. K. Jain, assisted by Sri A. K. Singh argued that the revision was incompetent and was liable to be dismissed on the ground that it had not been accompanied by the copy of the order, which was challenged by means of the revision. The another " ground taken by learned counsel for the petitioner is that It has been brought on the record by different correspondence that except the three documents, referred to above, there was no other document in the file and, therefore, the order of reconstruction of the file was passed, but the file has not been reconstructed and without reconstruction of file, the revision could not and should not have been decided. This argument that revisional court should not have entertained a revision, which was not accompanied by the order impugned, appears to have riot been argued before the revisional court. Learned counsel has not been able to cite any provision wherein it is necessary to file the copy of the orders along with the revision. It is admitted fact that when the revision was decided, the entire file would be placed before the revisional authority." including the impugned order against which the revision was filed before the revisional authority. In this view of the matter, since no provision has been brought to the notice of the Court by learned counsel for the petitioner that it is mandatory for the revisionist to file the copy of the order against which the revision was filed, in my opinion, the authority has not committed any illegality in deciding the revision. With regard to the file having not been re-constructed, suffice it to say that neither in the allotment order, nor in the order declaring the vacancy, which is on record, it is staled that the provisions of Rules 8, 9, 10 and 11 have not been complied with. Since these rules have been held to be mandatory from the record "available on the revision, it can easily be spelled out. In my opinion, has rightly been held by the revisional authority that the allotment order was passed by practising fraud and without issuing the notice as 1 contemplated under Rules 8 and 9 and in utter disregard of provisions of Rules 10 and 11 and the allotment order thus, in my opinion, was rightly set aside. Learned counsel for the petitioner has failed to argue that in view of the decision of this Court in the case of Ganpat Roy and Others Vs. Additional District Magistrate and Others, , in which it has been held that "a revision against the order declaring the vacancy is not maintainable." This view is observed by the Apex Court in the case of Achal Misra v. Rama Shanker Singh. 2000 (4) AWC 2960 (SC) : 2000 (2) ARC 446, and has doubted that the revision is not maintainable. In any view of the matter, since revision is directed against the allotment order dated 7.7.1990, even the aforesaid arguments dp not come to support the petitioner that revision is not

maintainable and is liable to be rejected. Learned counsel for the landlord rely upon the decision in *Adhyaksha. Zila Bhartiya Janta Party. Bareilly and another v. VIIth Additional District Judge, Bareilly and Ors.* 1996 (2) AWC 2.124 (NOC) : 1996 (1) ARC 378, wherein this Court has held that "The question of vacancy is a jurisdictional fact. The Rent Control and Eviction Officer has to give notice to the landlord twice. First, when he determined that the occupation in his possession was vacant for the purpose of allotment and second, after he comes to the conclusion that the accommodation is vacant, of the date fixed for consideration of allotment application as provided under Rule 9 (3) of the V. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Rules. 1972. The object and purpose of notice to the landlord regarding date fixed for allotment is to enable him to file his objection, if any. to the allotment proceedings or to make application for release of the premises as contemplated by Section 16 (1) (a) of the Act or to nominate the tenant of his choice and if he is in occupation of the portion of the building an allotment made without giving notice as required under Rule 9 (3) of the Act would be rendered illegal."

5. Learned counsel for the landlord relied upon another decision in *Ravindra Pratap Singh v. VIIIth Additional District Judge. Varanasi and Ors.* 1997 (1) AWC 545 : 1997 II ARC 264, for the same purposes. Learned counsel for the respondents has further contended that this is a case of house grabbing and has relied upon a decision in *Sanjai Singh 2001 (1) ARC 568: Jai Prakash Vashishth v. Additional District Magistrate IE) (Delegated Authority), Meerut and Ors.* 1995 (2) AWC 995 : 1995 (1) ARC 476 and *Smt. Chetan Atma Govil v. Rent Control and Eviction Officer. Saharanpur and Ors.* 1995 (2) AWC 1241 : 1995 (1) ARC 514. Learned counsel has further stated that in fact, the petitioner has no locus standi in the matters of allotment as he was never a prospective allottee, but, in my opinion, since the allotment has been made which is the subject matter in the writ petition in question, this argument is no more available for the learned counsel for the petitioner. This writ petition has no force and is liable to be dismissed and is hereby dismissed.

6. in view of what has been stated above, this writ petition is dismissed. The interim order, if any, stands vacated. However, in the facts and circumstances of the case, the parties shall bear their own costs.