
(2007) 10 UK CK 0041

In the Uttarakhand High Court

Case No : Writ Petition No. 786 of 2002 (M/S)

Shri Alok Shah

APPELLANT

Vs

District Judge, Nainital and Others

RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(1)(b)

Citation : (2008) 1 UC 303

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : K.N. Joshi, for the Appellant; K.P. Upadhyay, Addl. Chief Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.S. Verma, J.—This writ petition has been filed for quashing the impugned order dated 16-7-2002 passed by the Rent Control and Eviction Officer Nainital (for short R. C. & E. O.) (Annexure No. 9) as well as the order dated 10-10-2002 passed by the District Judge, Nainital (Annexure No. 12), whereby the release application of the landlord-Petitioner has been rejected by the Prescribed Authority and the revision preferred against the rejection order has been dismissed by the revisional court.

2. The sole ground raised by the Petitioner in this case is that the prospective allottee has no locus to contest the release application, which is a subject matter between the District Magistrate and the landlord alone.

3. In support of his contention, learned Counsel for the Petitioner has placed reliance upon the Full Bench decision of the Allahabad High Court in the case of Talib Hasan and Anr. v. 1st Additional District Judge, Nainital and Ors. 1985 Supreme Court and Full Bench Rent Cases 367 and the Apex Court judgment in the case of Vijay Kumar Sonkar v. Incharge District Judge and Ors. 1995 (2) ARC 1. In the case of Talib Hasan (supra) the Allahabad High Court in para No. 27 has

observed as under:

27. So far, therefore, as the scheme of the Act and the rules framed thereunder is concerned, the same, in our opinion, clearly points to the conclusion that a prospective allottee has no right of objection against the release application filed u/s 16(1)(b). As mentioned above, this right to have this application considered for allotment accrues only after the rejection of the release application. Indeed the consideration of the applications for allotment is taken up only after the rejection of the application u/s 16(1)(b). Neither the Act nor the rules framed thereunder thus postulate any right in a prospective allottee to file objection against the release application.

4. The Apex Court in the case of Vijay Kumar Sonkar (supra) while approving the verdict of Allahabad High Court in the case of Talib Hasan (supra) has held that the prospective allottee (tenant) has no right to contest, i.e. to be heard, the release application u/s 16(1)(b) of the UP. Act No. 13 of 1972 because that is a matter between the landlord and the District Magistrate and prospective allottee (tenant) does not figure in that proceeding.

5. I have perused the impugned order dated 16-7-2002 passed on the release application by the R.C. & E.O. (Annexure No. 9 to the writ petition). By a perusal of the said order, it reveals that earlier Sri R.K. Bhatnagar, District Supply Officer, was the tenant in the accommodation in question and the accommodation was allotted to Sri R.K. Bhatnagar in accordance with law. On his transfer, vacancy was notified and subsequent to that Sri P.S. Pangati made an application for allotment and he also contested the release application and opportunity was given to him by the R.C. & E.O. for being heard. After hearing the landlord and Sri Pangati, the application for release was rejected. Consequently, by a subsequent order the accommodation was allotted to Sri P.S. Pangati.

6. Learned Counsel for the Petitioner made a statement at Bar that Sri Pangati had already been transferred and after Sri P.S. Pangati, the disputed accommodation was further allotted to Sri T.N. Upadhyay, who had already been transferred. Now, there is no tenant in the accommodation in question and deemed vacancy is there.

7. Learned Counsel for the Petitioner further argued that the revisional Court rejected the revision on the ground that the High Court in Civil Misc. Writ Petition No. 259 of 2002 (MI S) protected the possession of Sri P.S. Pangati till the disposal of the release application. On that ground, in view of the order of the High Court that Sri Pangati was in possession, the revisional court has observed that Sri Pangati had a right to be heard in the matter. But in view of the Apex Court judgment in the case of Vijay Kumar Sonkar (supra), he had no locus to contest the release application. Only possession of Sri Pangati was protected under the order of this Court and by the orders passed by this Court, it does not mean that Sri Pangati was given a right of hearing to resist the release application.

8. In view of the decisions of the Apex Court as well as the Allahabad High Court, referred to above, the writ petition is liable to be allowed. The impugned orders are liable to be set aside. Considering the subsequent development, it would be in the fitness of things that the release application of the Petitioner be heard afresh independently without giving opportunity of hearing to the prospective allottee, if any and the same be decided after adopting the procedure in accordance with law on the same vacancy, which was notified on 2-5-2002 without being influenced by the order of this Court.

9. The writ petition is allowed. No order as to costs. The impugned orders, under challenge, are set aside. The Rent Control and Eviction Officer, Nainital shall proceed further in the matter to decide the release application of the landlord - Petitioner in accordance with law and in the light of the observations made above.

10. Lower Court Record be returned to the Rent Control and Eviction Officer concerned.