

(1991) 08 AHC CK 0002

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 11423 of 1991

Shyam Ratan Verma and Another

APPELLANT

Vs

Additional District Judge VIII and Others

RESPONDENT

Date of Decision : 01-08-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 AWC 179

Hon'ble Judges : S.K. Mookerji, J

Bench : Single Bench

Advocate : Kaushal Kant, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Mookerji, J.—Heard Learned Counsel for the Petitioners.

2. This writ petition has been filed by the landlords challenging the orders dated 8-5-1984, 20-3-1986 and 16-3-1991. The dispute relates to House No. 2/273, Nawabganj, Kanpur. The Rent Control and Eviction Officer by order dated 8-5-1984 declared the vacancy. Thereafter, the Petitioners applied for release of the accommodation, which was dismissed by the Rent Control and Eviction Officer on 20-3-1986. The Petitioner landlords, there-after, filed a revision, which was dismissed by the order and judgment dated 16-3-1991 by the VIII Additional District Judge, Kanpur Nagar.

3. The brief facts of the case are that R.K. Shukla and B.N. Bhard-waj, Advocates and several others applied for allotment of the House No. 2/ 273 Nawabganj, Kanpur. The Rent Control and Eviction Officer, after obtaining the report from the Inspector concerned, declared the vacancy by the order dated 8-5-1984. The Rent Control Inspector reported that Durga Dutt Joshi was the previous tenant and, thereafter, landlords also appeared and he furnished the intimation of vacancy dated 13-3-1980 and landlords also filed objection against the report of the Inspector and filed objection against the intimation of vacancy. Sri Trilok

Chand Joshi, holder of Power of Attorney from the landlords, filed an affidavit and also a copy of the Power of Attorney before the Rent Control and Eviction Officer. After hearing the parties and relying upon the statement of Durga Dutt Joshi and the report of the Rent Control Inspector, the Rent Control and Eviction Officer held that Durga Dutt Joshi was the tenant and, ultimately, by the impugned order, he declared the vacancy and passed the order notifying the vacancy. Thereafter, the landlords did not challenge the order of vacancy by filing any writ petition in this Court, but made an application for release of the accommodation in question. After hearing the parties and examining the materials on record, the Rent Control and Eviction Officer dismissed the release application of the landlords by his impugned order dated 20-3-1986. Aggrieved, the landlords filed a Rent Control Revision, which was also dismissed by the VIII Additional District Judge, Kanpur Nagar by his impugned order dated 16-3-1991.

4. Learned Counsel for the Petitioners has made a statement before me that he is questioning the impugned order dated 8-5-1984 only by which the vacancy was declared. He also stated that he is not questioning the order dismissing the release application of the landlords dated 20-3-1986. Learned Counsel for the Petitioners further stated that he was not also questioning the legality of the impugned order dated 16-3-1991 passed by the VIII Additional District Judge, Kanpur Nagar. Thus, the validity and legality of the question of vacancy dated 8-5-1984 only is before me.

5. Before entering into the question, it is necessary to point out that the Petitioner-landlords have taken a chance of failure and success by making application for release and, thereafter, preferring the Rent Control Revision. Thus, vacancy was impliedly admitted. Now in this writ petition, the landlords are challenging the order declaring vacancy. A person, who takes a chance of failure and success cannot, ordinarily, be given the discretionary relief under Article 226 of the constitution. The landlords made the release application and thereby they took chance that in case, the release application was allowed, the question of vacancy would have become an insignificant matter. The release application was dismissed and, thereafter, in this writ petition they are sticking to the relief mentioned in the writ petition to the order by which the vacancy was declared in 1984. In the original writ petition, they have challenged all the orders, as have been indicated above. There is yet another point worth mentioning that on 8-5-1984 the vacancy was declared. Thereafter, the landlords were pursuing their remedy by making the release application, but now after the expiry of about six seven years, the landlords are confining their relief in this writ petition to the question of vacancy only and have given up the relief in respect of the release application. This approach is certainly wrong. In case, the orders of release application are not questioned, it would be clearly inferred that the landlords had accepted that there was vacancy, which compelled them to apply for release. Unless there was vacancy, there was no question of any release application. Normally, the order of vacancy dated 8-5-1984 cannot be challenged in this writ petition, which was filed on 19-4-1991. The question of laches in

presenting this writ petition is also involved in this case. Petitioners have not explained the delay/laches in presenting the writ petition in the year 1991 by which now they are challenging the order of vacancy dated 8-5-1984. Even, on perusal of the order dated 8-5-1984, it is clear that the Rent Control and Eviction Officer, considering the materials on record, had come to the conclusion that Durga Dutt Joshi was the tenant and had left the accommodation and, thereafter, the vacancy was created. Learned Counsel for the Petitioners argued that the Rent Control and Eviction Officer has committed a grave error of law in not assigning the reasons for discarding the case of the Petitioners that Durga Dutt Joshi was living on the basis of Power of Attorney to look-after the property and he was not the tenant. This argument has no legs to stand in the writ petition. While deciding writ petition, the court is exercising its extra-ordinary powers and jurisdiction and certainly not sitting in appeal over the orders of the courts below. From a perusal of materials on record. If it is open to draw two inferences and the Rent Control and Eviction Officer has adopted one inference from the materials on record, then that finding of fact cannot be challenged on the ground that another inference was possible. On merits also the order dated 8-5-1984 declaring the vacancy is quite legal and the Learned Counsel for the Petitioners has not pointed out breach of any provision of law. No other points have been pressed before me.

6. In the result, this writ petition is dismissed with costs and the interim order passed by this Court dated 19-4-1991 is, hereby, vacated.