
(2008) 07 AHC CK 0264

In the Allahabad High Court

Case No : C.M.W.P. No's. 27119 and 61621 of 2007

Shyamji Shukla

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2

Citation : (2009) 1 AWC 727

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Rajesh Dwivedi, for the Appellant; Saurabh Srivastava and S.N. Mishra and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard Shri Rajesh Dwivedi, learned Counsel for the tenant Petitioner Shyamji Shukla and Shri Saurabh Srivastava, learned Counsel for allottee, Raj Kumar Awasthi, Respondent No. 2 in the first writ petition and Respondent No. 4 in the second writ petition.

2. Initially accommodation in dispute was in occupancy of Anil Kumar Gupta. Vacancy was declared by Rent Control and Eviction Officer (R.C. & E.O.) on 30.11.2005. Petitioner claims that he is tenant of the accommodation in dispute since 20.7.2005, Smt. Kamla Devi and Sri Ashok Kumar Sharma, landlords Respondent Nos. 2 and 3 in the second writ petition support the case of the Petitioner. Proceedings were initiated on the application of Raj Kumar Awasthi before R.C. and E.O. Petitioner claims that accommodation in dispute was let out to him by the landlords on 20.7.2005 at the rent of Rs. 2,200 per month. Rent Control and Eviction Officer through impugned order dated 8.6.2007 allotted the accommodation in dispute to R. K. Awasthi. True copy of the order is Annexure-6 to the second writ petition. Vacancy had earlier been declared on 30.11.2005. Landlords' release application had been rejected on 29.9.2006. Against

allotment order, two revisions were filed. Rent Revision No. 33 of 2007 Parashnath Sharma v. Rent Control and Eviction Officer and Anr. and Rent Revision No. 70 of 2007 Shyamji Shukla v. Raj Kumar Awasthi and Ors. First revision was filed by an unsuccessful allottee and the second by tenant Petitioner. Both the revisions were dismissed by District Judge, Kanpur on 5.12.2007 giving rise to the second writ petition.

3. Accommodation in dispute in the release order is described as portion of House No. 3/18, Vishnupur, Kanpur Nagar consisting of three rooms, one store, latrine, kitchen, bathroom and courtyard on the ground floor. It is mentioned that the said portion is in unauthorised occupation of Shyamji Shukla, the Petitioner. In the allotment order, no rent has been fixed. True copy of vacancy declaration order dated 30.11.2005 is Annexure-C.A.5 to the second writ petition. Rent Control and Eviction Officer in the vacancy declaration order held that initially rent was Rs. 50 per month hence it could not be let out for Rs. 2,200 per month and it was let out on the said rent only to take the house out of the purview of Rent Control Act. Similar view was taken by the revisional court. Rent Control and Eviction Officer also observed that Rs. 1,95,000 was given to the previous tenant by the landlords for getting the building vacated. If about Rs. 2 lacs may be given by the landlord to the tenant to get the house vacated then it is amply proved that market value of the accommodation is much more than Rs. 2 lacs and it can be very well let out for more than Rs. 2,000 per month. Kanpur Nagar is the most expensive city of U.P. and a building on ground floor containing three rooms and other amenities can very well be let out for more than Rs. 2,000 per month. The Rent Control and Eviction Officer was not at all justified in holding that the rent could not be Rs. 2,200 per month. By virtue of Section 2(g) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 a building rent of which is more than Rs. 2,000 per month is beyond the purview of the Act.

4. Rent Control and Eviction Officers before allotting a building must determine its current rent. For the said purpose guidance shall be taken from the circle rates. Before allotting a building, Rent Control and Eviction Officer must record a finding that current rent of the building cannot be more than Rs. 2,000 per month. Without recording such finding, Rent Control and Eviction Officers have no jurisdiction to allot a building. This is also in accordance with Sections 16(9), 9(2) and 9(2A) of the Act which are quoted below:

16 (9). The District Magistrate shall, while making an order under Clause (a) of Sub-section (1), also require the allottee to pay to the landlord an advance, equivalent to,--

(a) where the building is situated in a hill municipality, one-half of the yearly presumptive rent ; and (b) in any other case, one month's presumptive rent, and on his failure to make or offer the payment within a week thereof, rescind the allotment order.

Explanation.--In this Sub-section the expression "presumptive rent" means an

amount of rent which the District Magistrate prima facie considers reasonable having regard to the provisions of Sub-sections (2) and (2A) of Section 9, provided that such amount shall not be less than the amount of rent which was payable by the last tenant, if any.

"9. Determination of standard rent.

9 (2). In determining the standard rent, the District Magistrate may consider--

(a) the respective market value of the building and of its site immediately before the date of commencement of this Act or the date of letting, whichever is later (hereinafter in this section referred to as the said date) ;

(b) the cost of construction, maintenance and repairs of the building ;

(c) the prevailing rents for similar buildings in the locality immediately before the said date ;

(d) the amenities provided in the building ;

(e) the latest assessment, if any, of the building ;

(f) any other relevant fact which appears in the circumstances of the case to be material.

(2A). Subject to the provisions of Sub-section (2), the District Magistrate shall ordinarily consider 10 per centum per annum on the market value of the building (including its site) on the said date to be the annual standard rent thereof, and the monthly standard rent shall be equal to one-twelfth of the annual standard rent so calculated.

5. It is to be noted that u/s 9(2) of the Act, current market value is mentioned at the top of the list and latest assessment at the bottom of the list. Accordingly, first consideration for determining rental value is current value in case of allotment. Assessment in case of old tenancy is almost meaningless as rents of old tenancies are very meagre and if a building is occupied by a tenant then in the House Tax Register assessment, only value will have to be determined and mentioned on the basis of actual rent paid and received and not the market value.

6. The argument of the learned Counsel for the allottee Sri R. K. Awasthi is that the action of the landlord, to let out the building for Rs. 2,200 per month, was mala fide as the intention was to take the building outside the purview of the Rent Control Act. Similar allegation may be levelled against the Legislature for inserting Section 2(g) in the Act w.e.f. 1995. There is no finding of Rent Control and Eviction Officer that either Petitioner is not paying Rs. 2,200 per month as rent or current rent cannot be more than Rs. 2,000 per month.

7. District Judge also held that it was mala fidely let out to Shyamji Shukla for a rent of Rs. 2,200 per month. This Court completely fails to understand that in case a landlord can let out the building for more than Rs. 2,000 per month and

he actually lets out that on such rent then what mala fides are involved. Every landlord is entitled to let out the building at the maximum possible rent. If in this process any malice is involved then the action of the Legislature in taking out the building fetching rent of more than Rs. 2,000 per month from the purview of the Rent Control Act also becomes malicious. Application of the Act is not ousted by the landlord by letting the building on more than Rs. 2,000 per month rent. The Act has been made inapplicable by the Legislature itself, if building can be let out for more than Rs. 2,000 per month rent. No landlord is supposed to let out the building which in open market can be let out for more than Rs. 2,000 per month at less than Rs. 2,000 per month so that the Rent Control Act may continue to apply on the said building. The authority in Jagannath Sahai Verma and another Vs. Rent Control and Eviction Officer (II), Allahabad and others, cited by learned Counsel for allottee has got no application to the facts of the case. Action of the landlord in letting the building for more than Rs. 2,000 per month may be objectionable, if it is found that actually building has not been let out for more than Rs. 2,000 per month but it is falsely shown to have been let out. In the instant case, there is no such allegation or finding. Kanpur is most expensive city of State of U.P. and a building situate on ground floor having more than three rooms and one store, latrine, kitchen, bathroom and open courtyard can certainly be let out for more than Rs. 2,000 per month.

8. Accordingly second writ petition is allowed. Allotment order and revisional orders are set aside. No further proceedings for allotment of the building in dispute shall be taken.

9. Raj Kumar Awasthi also started proceeding for punishment u/s 31 of the Act. Application was filed on 27.8.2005 before the District Magistrate which was dismissed as not pressed on 23.11.2006. However, thereafter recall application was filed and District Magistrate through order dated 15.1.2007 recalled the said order, which was passed in Case No. 5 of 2005. The said recall order has been challenged through first writ petition. As I have already set aside vacancy declaration order and allotment order hence first writ petition is also allowed and a writ of prohibition is issued to District Magistrate, Kanpur Nagar restraining him from proceeding further with Case No. 5 of 2005. Application dated 27.8.2005 is rejected.