

(1996) 08 AHC CK 0136
In the Allahabad High Court
Case No : C.M.W.P. No. 44916 of 1993

Smt. Brij Bala Jain

APPELLANT

Vs

Smt. Amarjeet Kaur and Others

RESPONDENT

Date of Decision : 05-08-1996

Acts Referred:

Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 — Order 22
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 12(2), 16(1), 3

Citation : (1996) 3 AWC 1624

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Atul Dayal and K.M. Dayal, for the Appellant; S.C. and K.L. Grover, for the Respondent

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 14.12.1993 passed by the Rent Control and Eviction Officer declaring vacancy.

2. The dispute relates to shop No. 76/281 Latouche Road, Kanpur. Smt. Balwant Kaur was its erstwhile owner. She let out the said shop to the Petitioner on 6th May, 1972 and a rent note was executed by the Petitioner, a copy of which has been annexed as Annexure 1 to this writ petition. The Petitioner started business in the shop in the name and style of M/s. Ajai Rubber Company. She had taken Subhash Chandra, brother of her husband, as partner. A partnership deed was executed on 18th October, 1972, wherein a mention was made that the deed was effective from 1st day of June, 1972. The business was being carried on in the firm's name. Sometimes in 1978-79. another business was started in the name of Diamond Sales Corporation but within a year it was closed and the business of M/s. Ajai Rubber Company continued.

3. The erstwhile landlady sold the property to Smt. Amarjeet Kaur and Manjeet Singh, Respondents No. 1 and 2, by registered sale deed on 29.5.1988. The

Respondents gave a notice on 27.9.1988 intimating the Petitioner that they had purchased the disputed property. In the year 1991, Respondents filed application for release of the shop u/s 16(1)(b) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) on the allegation that the Petitioner had inducted Subhash Chandra Jain, her brother-in-law, as a partner and after the enforcement of the Act it shall be taken as vacant u/s 12(2) of the Act. They required the shop in question for personal need.

4. The Rent Control and Eviction Officer by order dated 27th June, 1992, declared the vacancy on the ground that the Petitioner had taken Subhash Chandra Jain as partner in the firm who is not a member of the family as defined u/s 3(g) of the Act. The Petitioner filed writ petition No. 23088 of 1992 against the said order. The writ petition was allowed and the Rent Control and Eviction Officer was directed to decide as to since when Subhash Chandra Jain was taken as partner by the Petitioner in the firm. The Rent Control and Eviction Officer has passed the impugned order dated 14.12.1993 holding that the partnership business of the firm commenced after 5th July, 1972 and, therefore, the accommodation should be treated as vacant u/s 12(2) of the Act.

5. I have heard Shri K. M. Dayal, learned Counsel for the Petitioner, and Shri K. L. Grover, learned Counsel for the Respondents.

6. The main thrust of the submissions of learned Counsel for the Petitioner is that the premises in question was taken on 6th May, 1972, and the Petitioner had taken Subhash Chandra Jain, her brother-in-law as partner on 1st June, 1972. The Rent Control and Eviction Officer held that the business of the firm commenced after 5th July, 1972, and, therefore, partnership shall be treated to have come into existence from the date of commencement of the business.

7. The view taken by the Rent Control and Eviction Officer is erroneous. The execution of the partnership deed is not necessary for admitting a person as partner in the business. The contract of partnership may be oral and the partnership deed may be executed later on. The business may be started from a different period after the necessary resources are available for carrying on partnership business. The partnership deed was admittedly executed on 18th October, 1972 but the partnership deed itself makes a mention that it was effective from 1st day of June, 1972. The Rent Control and Eviction Officer was required to record a finding as to when the contract of partnership was entered into between the Petitioner and Subhash Chandra Jain. The mere fact that the document was executed on 18.10.1972 was itself not conclusive. The version of the Petitioner was that for the purpose of registration with the Income Tax Department a partnership deed was necessary and with that view the partnership deed was executed on 18th October, 1972. The Rent Control and Eviction Officer should have considered that shop in question was taken on 6th May, 1972 by Smt. Brij Bala Jain. She intended to carry on business in partnership with some one. Later on she entered into partnership with her husband's brother.

8. The Rent Control and Eviction Officer took the view that the partnership business commenced after 18th October, 1972 and for that purpose he relied upon the survey done by the Sales Tax Officer as Form "C" was taken by the Petitioner for the purpose of business on 5th December, 1972 and the first sale transaction had taken place on 13th October, 1972. These documents may establish that the business started subsequent to the date of entering into the partnership but the fact as to when the business commenced was not relevant. It is always possible that the parties may enter into partnership contract but they may be unable to carry on business for want of resources. The Rent Control and Eviction officer without recording the finding as to when the contract partnership was entered into, cannot hold that the Petitioner had admitted her brother-in-law in partnership after the enforcement of U.P. Act No. XIII of 1972 merely on the basis that the partnership business commenced after 12th October, 1972. There is no dispute that prior to the enforcement of the said Act, a tenant could have taken a person as partner in the business vide *Seth Laxmi Chand v. Nathu Mal Dull Chand* 1965 ALJ 1000. Section 12(2) was held not to be retrospective in the Full Bench decision of this Court in *Smt. Kesar Bai v. District Judge Mathura and Ors.* 1980 ARC 223.

9. There is another aspect of the matter. The shop in dispute is situate in House No. 76/281, Latouche Road, Kanpur. The erstwhile landlady Smt. Balwant Kaur, was residing in a portion of this building. She was fully aware of the fact that the business was being transacted in the name of Ajai Rubber Company in the premises in question. She had never raised any objection regarding admission of Subhash Chandra Jain as partner in the firm. Learned Counsel for the landlord-Respondents urged that the erstwhile landlady might not be knowing as to who were partners of the firm. It is a question of fact which could have been considered by the Rent Control and Eviction Officer. It is not disputed that the erstwhile landlady was residing in the same building where the shop in dispute is situate. In case, the landlady had consented such admission of a partner for fairly long period of 16 years without any objection and further by the landlord-Respondents three years after the purchase, it will be deemed that they have consented to admission of the partner.

10. In case the tenant had taken any person as partner after enforcement of the Act, who is not a member of the family, the Petitioner could have taken steps for declaration of vacancy for violation of Section 12(2) by the tenant. It is true that there is no limitation for taking such steps either by the landlord or by the Rent Control and Eviction Officer. Where the Act does not provide for specific limitation for taking such action, the Court has held in various decisions that it should be within a reasonable time. In *Mansaram Vs. S.P. Pathak and Others*, wherein the landlord had permitted to occupy the person in violation of Order XXII of Central Provinces and Berar Letting of House and Rent Control Order, 1949, their Lordships of the Supreme Court held that when the power is conferred to effectuate a purpose, it has to be exercised in a reasonable time and made the following observation:

Exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time. Undoubtedly, no limitation is prescribed in this behalf but one would stand against that a landlord to some extent in pari delicto could turn the tables against the person who was in possession for 22 years as a tenant. In such a situation, even though the House Allotment Officer was to reach an affirmative conclusion that the initial entry 22 years back was an unauthorised entry and that failure to vacate premises till 9 years after retirement was not proper, yet It was not obligatory upon him to pass a peremptory order of eviction in the manner in which he has done. In such a situation, it would be open to him not to evict the Appellant.

11. What should be taken as reasonable time for initiating the proceedings under a Statute, when it does not provide for any limitation, will depend upon various factors, viz., the mischief sought to be removed, the remedial measures to be taken against an action or the nature of the benefit conferred on the parties under the Statute. In any case, twelve years period should be taken as reasonable time for initiating the proceedings under the Statute from the date cause of action arises for taking action. The period may be extended in exceptional circumstances which has to be proved by the person who initiates the proceedings after twelve years.

12. The Rent Control and Eviction Officer on the facts and circumstances of this case was also required to consider as to whether the erstwhile landlady had knowledge of the admission of Subhash Chandra Jain by the Petitioner to her partnership business. These aspects have not been considered by the Rent Control and Eviction Officer. The impugned order dated 14.12.1993 is hereby quashed and the Rent Control and Eviction Officer is directed to decide the matter afresh keeping in view the observations made above and in accordance with law.