
(1998) 02 AHC CK 0035
In the Allahabad High Court
Case No : C.M.W.P. No. 6840 of 1998

Smt. Kusum Lata Garg

APPELLANT

Vs

Singhai Ram Chandra Jain and others

RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 2 AWC 1367

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : B.N. Agarwal, for the Appellant;

Judgement

J.C. Gupta, J.—Heard petitioner's counsel.

2. This writ petition is directed against the order dated December 18, 1997, passed by the Rent Control and Eviction Officer, Jhansi, respondent No. 2, declaring the shop in question vacant.

3. The petitioner is the sitting tenant in the shop in question and an application was moved before the Rent Control and Eviction Officer that since the petitioner has allowed the shop in question to be occupied by one Ram Kumar Sahu who is not a member of the tenant's family, the shop has become vacant and is open for allotment or release. The petitioner filed objection before the Rent Control and Eviction Officer disputing the correctness of the allegations made in the said application. On appraisal of evidence, the respondent No. 2 in the impugned order has recorded a clear and categorical finding that the shop in question is in occupation of Ram Kumar Sahu and he is running his business therein. This finding of fact is based on appreciation of evidence and is not open for interference by this Court under Article 226 of the Constitution of India.

4. Learned counsel for the petitioner contended before this Court that the impugned order suffers from manifest error of law inasmuch as no finding has been recorded that the tenant has substantially removed his effects from the

shop in question.

5. There are three types of vacancies namely : (1) Actual, (2) Deemed and (3) Expected. The cases of deemed vacancy are covered by Section 12 II) of the Act. Section 12 (1) runs as under :

"12. Deemed vacancy of building in certain cases.--(1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if :

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere."

6. A bare perusal of the above provision would indicate that vacancy is deemed by a legal fiction in certain circumstances and those circumstances have been enumerated in clauses (a), (b) and (c) of Section 12 (1) of the Act. A tenant is deemed to have ceased to occupy the tenanted building or part thereof, if the case is covered by either of the three clauses (a), (b) and (c) aforesaid. It is not necessary that all the aforesaid clauses must co-exist together before the deeming provision as contained in Section 12 of the Act is attracted. There will be a cession of occupation even where the case is covered by clause (b) alone, i.e., the tenant has allowed the shop to be occupied by any person who is not a member of his family.

7. In the present case, respondent No. 2 has recorded a clear finding of fact that the shop in question has been allowed to be occupied by Ram Kumar Sahu and he is running his business therein. It was not the case of the petitioner that the said Ram Kumar Sahu is a member of his family or that he is carrying on his business on tenant's behalf and not independently.

8. In view of the above finding, provisions of Section 12 (1) (b) were fully applicable and the shop in question has rightly been held to be vacant.

9. For the above reasons, this writ petition must be dismissed and is hereby dismissed in limine.