
(2000) 07 AHC CK 0020
In the Allahabad High Court
Case No : C.M.W.P. No. 3295 of 2000

Smt. Malini Agrawal

APPELLANT

Vs

Rent Control and Eviction Officer (I), Allahabad and others

RESPONDENT

Date of Decision : 14-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16, 3

Citation : (2000) 3 AWC 2566

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Anil Dayal and K.M. Dayal, for the Appellant; S.C. and A.K. Malviya, for the Respondent

Judgement

R.H. Zaidi, J.—By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 29.12.1999 passed by the Rent Control and Eviction Officer, Allahabad, respondent No. 1, whereby House No. 26/28, Mahatma Gandhi Marg, Allahabad, a residential building, was declared vacant and notices were directed to be Issued to the concerned parties.

2. Counter and rejoinder-affidavits have already been filed. The writ petition is, thus, mature for hearing. As desired by learned counsel for the parties, this petition was heard and is being disposed of finally at this stage.

3. The relevant facts of the case giving rise to this petition. In brief, are that one Sri S. D. Shah, father of the petitioner, was the tenant of the building in question. Sri S. D. Shah used to live in the building in question with his wife. On the death of his wife, Sri S. D. Shah shifted to Varanasi after handing over possession to one Sri K. K. Shah, who happened to be a cousin of Sri S. D. Shah. The landlord thereafter gave an intimation of the vacancy to the Rent Control and Eviction Officer and also nominated respondent No. 3 as his tenant. On the basis

of intimation given by the landlord, proceedings u/s 16 read with Section 12 of the U. P. Act No. XIII of 1972 were initiated. The Rent Control Inspector Inspected the building and thereafter submitted his report to the effect that the building in question was in actual occupation of Sri K. K. Shah who was not a member of the family of Sri S. D. Shah, therefore, according to him, the building in question was vacant. On the receipt of the report and after hearing the parties, the building in question was declared vacant on 7.9.1993 by the Rent Control and Eviction Officer. Challenging the validity of the said order, Sri S. D. Shah filed Writ Petition No. 32540 of 1993. The writ petition filed by him was ultimately allowed and the order dated 7.9.1993 was quashed by this Court by judgment and order dated 10.1.1994. Consequently Sri S. D. Shah continued to occupy the building in question. It was on 21.9.1994 that Sri S. D. Shah died at Varanasi. The landlord thereafter intimated the vacancy to the Rent Control and Eviction Officer and again nominated respondent No. 3 as his tenant. On receipt of the intimation, proceedings for allotment were initiated. The Rent Control Inspector was again asked to inspect the building and submit the report to the Rent Control and Eviction Officer. The Inspector inspected the building on 7.10.1994 and submitted his report on 10.10.1994 to the effect that the building in question was in occupation of the petitioner who, being a married daughter, was not a member of the family of late S. D. Shah. Consequently, the building shall be deemed to be vacant. On the basis of the said report, notices were issued to the concerned parties by the Rent Control and Eviction Officer. The petitioner on receipt of the notice filed her objections claiming that she being the daughter of late S. D. Shah has been residing in the building in question before and after his death lawfully, as she was the only heir and legal representative of Sri S. D. Shah. On the other hand, respondent No. 3 filed an objection pleading that the petitioner permanently shifted to Varanasi. She has been living at Varanasi with her husband after she was married in the year 1981. On the date of death or prior thereto, the petitioner never resided with Sri S. D. Shah normally and permanently. It was also pleaded that she used to visit Sri S. D. Shah off and on, therefore, she was legally not entitled to occupy the building in question. The building in question was actually in occupation of Sri K. K. Shah who used to carry on his business In the name and style of M/s. S. A. International, therefore, the building in question was liable to be declared vacant. The Rent Control and Eviction Officer after hearing the parties and after perusing the material on record and relying upon the admissions made by Sri S. D. Shah, declared the building in question as vacant by the Judgment and order dated 29.12.1999. Hence, the present petition.

4. It was on 20.1.2000, the present petition was filed by the petitioner in this Court. Notices were directed to be issued to the respondents and the writ petition was directed to be listed for admission on 17.2.2000. In the meanwhile, operation of the Impugned order was also stayed till the next date of listing. On receipt of the notices from this Court, respondent Nos. 2 and 3 have filed their counter-affidavits controverting the allegations made In the writ petition and

reiterating the facts which are stated before the Rent Control and Eviction Officer by the respondents. The petitioner, in reply to the counter-affidavits of respondent Nos. 2 and 3, filed her rejoinder-affidavits controverting the facts stated in the counter-affidavits and reiterating and reaffirming the facts stated in the writ petition. Along with the writ petition and the affidavits, relevant documents which were filed before the Rent Control and Eviction Officer, have been annexed as annexures.

5. Learned counsel for the petitioner vehemently urged that respondent No. 1 has misread, misconstrued and also ignored the material evidence on record from which it was proved that the petitioner had been normally residing in the building in question after the death of Sri S. D. Shah and erred in law in declaring the said building as vacant, therefore, the impugned order was liable to be quashed. On the other hand, learned counsel for respondent Nos. 2 and 3 supported the validity of the impugned order. It was contended that the said order was concluded by findings of fact which are based on relevant evidence on record and cannot be challenged before this Court under Article 226 of the Constitution of India. The writ petition was, therefore, liable to be dismissed.

6. I have considered the submissions made by learned counsel for the parties and carefully perused the record.

7. Clause (a) of Section 3 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U. P. Act No. XIII of 1972) (for short. "the Act") defines "tenant" as under :

"3. Definitions.--In this Act, unless the context otherwise requires :

(a) "tenant", in relation to a building, means a person by whom its rent is payable and on the tenant's death :

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death :

(2) In the case of a non-residential building, his heirs ;

Explanation.--An occupant of a room in a hotel or a lodging house shall not be deemed to be a tenant."

8. The building in question is admittedly a residential building and the petitioner is the heir of the deceased tenant Sri S. D. Shah, being the only adopted daughter of the deceased tenant, therefore, the only question which is required to be decided is as to whether the petitioner normally resided in the building in question with Sri S. D. Shah at the time of his death. The burden of proof of the fact that she used to normally reside with her father in the building in question was upon the petitioner. The petitioner in support of her case relied upon the receipts of payment of electricity charges, telephone bills, etc. along with her affidavit. It is also not disputed that the petitioner was a married daughter of the deceased, therefore, does not come within the definition of family as defined in

clause (g) of Section 3, which reads as under:

"3. Definitions--In this Act, unless the context otherwise requires :

(g) "family", in relation to a landlord or tenant of a building, means, his or her :

(i) spouse.

(ii) male lineal descendants.

(iii) such parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her.

and includes, in relation to a landlord, any female having a legal right of residence in that building :"

But, being the only heir, she could take advantage of clause (a) of Section 3 provided she proved that she normally resided with him at the time of his death. The Rent Control and Eviction Officer after perusing the entire evidence produced by the parties and relying upon the admissions made by the deceased which are contained in the Writ Petition No. 32540 of 1993 filed by the deceased tenant himself and the statement of fact made in the plaint of Suit No. 73 of 1993 as well as the fact that the children of the petitioner were admitted in educational institutions at Varanasi and the fact that Sri S. D. Shah also died at Varanasi, came to the conclusion that the petitioner did not normally reside with her father in the building in question at the time of his death.

9. Learned counsel appearing for the respondents invited the attention of this Court to the admissions made by Sri S. D. Shah In the earlier proceedings and which have been noted by the Rent Control and Eviction Officer in the impugned order on pages 173 and 174 of the writ petition, which are reproduced below:

"Para 7.--The deponent has got one daughter who is married but she generally comes to the deponent along with her husband and live with the deponent in the house in dispute.

Para 30.--The deponent has got one daughter who generally comes to her father with her family.

Para 4.--That wife of the petitioner expired about a year ago and thereafter the petitioner has been residing all alone in the said premises.

Para 19.--. . . .As the deponent was residing in the house in dispute with his wife and he is living there even after her death.

Para 20.--. . . .The age of the deponent is only 73 years and not 76 years, it is an Act of God that the deponent became widower after the death of his wife. The Almighty desired that the deponent should pass the remaining life alone without companion and the deponent is to fulfil the desire of bed and line alone.

.....

"The wife of the deponent has died so the deponent alone reside in the premises in question".

10. Attention of this Court was also invited to the judgment of this Court dated 10.1.1994, Annexure-RA 1 to the rejoinder-affidavit filed by petitioner, filed in reply to the counter-affidavit of Kripa Shanker Singh, wherein It was observed as under:

"The petitioner occupied the disputed portion of the premises No. 26/28, M. G. Marg, Allahabad for his residential purpose purely. The petitioner's wife expired a year before the date of filing of the present writ petition. Since after the death of the petitioner's wife, he lived in the accommodation alone."

Admission is the best evidence that a party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous as ruled by the Apex Court in Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, . In the instant case, the admissions were never withdrawn by Shri S. D. Shah nor were proved erroneous by the petitioner. Therefore, the Rent Control and Eviction Officer was right in relying upon the aforesaid admissions.

11. Learned counsel for the petitioner failed to show any document on record from which it was proved that the petitioner was normally residing with her father in the building in question at the time of his death. I have also perused the material evidence, the ration card dated 1.10.1982, gas connection dated 21.7.1990. High School certificate dated 30.6.1977, certificate of B.A. Part I, 1980, etc. From none of the aforesaid documents or other documents, it is proved that the petitioner normally resided with her father at the time of his death. The Rent Control and Eviction Officer has also referred to and relied upon the other documentary evidence filed by the parties and rightly came to the conclusion that from the evidence on record, it was not proved that the petitioner normally resided with her father at the time of his death in the accommodation in question. The findings recorded by the Rent Control and Eviction Officer are findings of fact which are based on the relevant evidence on record. I do not find any misreading, misconstruction or ignorance, of the material evidence, as contended by learned counsel for the petitioner, by the Rent Control and Eviction Officer. For the abovenoted reasons, the findings recorded by the Rent Control and Eviction Officer cannot be challenged before this Court under Article 226 of the Constitution of India. The writ petition has got no merits, therefore, the same is liable to be dismissed.

12. The writ petition falls and is dismissed but without any order as to costs.