
(2007) 08 AHC CK 0276
In the Allahabad High Court

Smt. Nasima Begum and Others

APPELLANT

Vs

Abdul Hannan and Others

RESPONDENT

Date of Decision : 13-08-2007

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 8(2)

Citation : (2008) 1 AWC 640

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri K. K. Tripathi, learned Counsel for the petitioner and Sri Som Narayan Mishra, learned Counsel for the caveator respondents.

2. This writ petition has been filed against the orders dated 11.9.2006 (Annexure-4 passed by Rent Control and Eviction Officer) by which the vacancy in the accommodation in dispute has been declared order dated 20.12.2006 (Annexure-6 passed by the Rent Control and Eviction Officer) which is the release order passed by the Rent Control and Eviction Officer and order dated 4.6.2007 (Annexure-13 passed by Additional City Magistrate (Acquisition) Kanpur Nagar) issuing Form D for possession of the landlord in pursuance of the aforesaid orders.

3. The contention of the learned Counsel for the petitioners is that in spite of their objection, vacancy was declared by the order dated 11.9.2005 against the evidence on record, i.e., without considering the rent receipts filed from 1954 onwards. The order dated 20.12.2006 has been assailed on the ground that the compliance of Rule 8 (2) read with Rule 9 (3) of U. P. Act No. 13 of 1972 was not complied with before passing of the release order and that since she is living in the house in dispute since the time of her father-in-law alongwith her family, who was a tenant of the house in dispute, issuance of Form D in the circumstances is illegal and without application of mind.

4. The case of the petitioner is that Abdul Gani father-in-law of petitioner No. 1, Smt. Nasima Begum, and grandfather of petitioner Nos. 2 to 6 was a tenant on monthly rent of Rs. 20 of one room 10/25 of House No. 79/23 Bans Mandi, P.S. Anwarganj, District Kanpur Nagar. The tenancy was given to Sri Abdul Gani, father-in-law as far back as in the year 1944 by the then owner of the house M/s. Khushal Chandra Narayan Das. After the death of Abdul Gani, father in law of petitioner No. 1, her husband inherited the tenancy.

5. According to learned Counsel for the petitioner, the proceedings for declaration of vacancy u/s 12C of the Act were initiated on the application of one Mohd. Yunus who filed an application for allotment of the accommodation which was inspected by the Rent Control Inspector. A report dated 23.2.2005 is said to have been submitted by him inter alia that petitioner is not residing in house in dispute and that the report has been submitted by the Rent Control Inspector without any notice to the petitioners in derogation of the procedure provided as provided u/s 8 (2) of the U. P. Act No. 13 of 1972.

6. After hearing the arguments of the learned Counsel for the parties and perusal of record, it appears that the Rent Control and Eviction Officer has reported that the petitioner is deliberately keeping the disputed premises in locked and has shifted her material effects to her own house just behind the house in dispute where she is living with her family. The courts below have also given a finding that provisions of Section 8 were complied with as the petitioners after refusal of notices initially, have been served by R.P.A.D. and thereafter by publication also had filed their objections in this regard.

7. The finding of the court below of Case No. 21 of 2005, is as under:

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8. Thus, the contention of the learned Counsel for the petitioners that the petitioners neither removed material effects nor was given notice before the Inspector u/s 8 of the Act, is incorrect.

9. The courts below have also found that the petitioner has not filed any evidence to establish that she was presently living in the house in dispute. It further appears that petitioner had been keeping the accommodation in dispute under lock and key though she was living with her sons, daughter and daughter-in-law etc. in another house which is situated behind the house in dispute.

10. In the circumstances, the courts below have rightly come to the conclusion and have given a finding of fact that legal vacancy exists and have released the one room accommodation in favour of the landlord. No illegality or perversity could be shown by the learned Counsel for the petitioners. The rent receipts filed

by the petitioners are of earlier period and the court below has not found it to be relevant as no rent receipts or any other document was filed by the petitioners before the courts below to establish that she was presently living in the house in dispute. Rather the evidence and spot inspection by the Rent Control Inspector shows that she is living elsewhere.

11. The courts below therefore, have rightly allowed the release application on the ground that need of the landlord is bona fide and he will suffer greater hardship than the tenant. It may also be mentioned that a certified copy of the order dated 5.7.2007 has been produced by Sri Som Narayan Mishra, learned Counsel for the caveators which shows that the landlord has been handed over the vacant possession of the room in dispute by the tenant in accordance with law, as such, any question staying operation of Form D issued to the petitioners for delivery of possession does not arise. For the reasons stated above, petition is dismissed.

No order as to costs.