

(1997) 05 AHC CK 0081

In the Allahabad High Court

Case No : C.M.W.P. No's. 14156 and 14157 of 1997

Smt. Parveen Azad

APPELLANT

Vs

Ist Additional District Judge, Badaun and others

RESPONDENT

Date of Decision : 20-05-1997

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 16(1)

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 — Rule 10, 11, 8, 8(2), 9(3)

Citation : (1998) 1 AWC 519

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Ashok Khare and Vivek Chaudhary, for the Appellant; S. C., for the Respondent

Judgement

Sudhir Narain, J.—There are common questions of law and fact in these two writ petitions and they are being disposed of jointly.

2. The dispute relates to house No. 397, Civil Lines, Mal Godam Road, Badaun. One Jalaluddin was owner of this property and Ramesh Chandra Gupta was its tenant. He was transferred and on his transfer the building was declared as vacant in the year 1990. After declaration of vacancy, it was allotted to Sri P. C. Agarwal on 20th February, 1991. Jalaluddin, owner of this property, sold the house in question to Mishri Lal and his son Yogendra Pal by registered sale deeds dated 5th March, 1993 and 20th March, 1993. Sri P. C. Agarwal was in Government service. He was transferred to another district. On 24.1.1994, the landlords filed application for release of the disputed accommodation on the allegation that P. C. Agarwal has vacated this house on his transfer to another district. The accommodation in question be treated as vacant. They need the accommodation bona fide for their residential purpose. One Suresh Kumar also filed an application for its allotment.

3. The Rent Control and Eviction Officer, Badaun asked for a report from the Rent Control Inspector. The Rent Control Inspector submitted report on 18th November, 1995 that Ramesh Chandra Gupta was in its occupation. He had already vacated it and thereafter in the year 1990 it was declared as vacant and later on allotted to P. C. Agarwal on 20th February, 1991. He was in unauthorised occupation. On 21.11.1995 Smt. Parveen Azad, the petitioner filed application for allotment of the house in question on the allegation that she is residing in the village and has no accommodation in the City. She requires the accommodation to live in city. Shri Ramesh Chandra Gupta filed an objection on 28.11.1995 that though he has been transferred to another district but he has not been given accommodation in the district where he has been transferred and the accommodation should not be treated as vacant, The Rent Control Inspector again submitted a report on 29.11.1995 that the accommodation should be treated as vacant. The landlord filed another application for release on 30th November, 1995.

4. The Rent Control and Eviction Officer considering the objection of Sri Ramesh Chandra Gupta held that the house in question had already been declared as vacant as he was transferred, he cannot agitate that there was no vacancy. His objection was rejected by order dated 8.12.1995. The Rent Control and Eviction Officer by the same order rejected the application of the landlord for release of the disputed accommodation on the finding that he had sufficient accommodation and by the same order he allotted the disputed accommodation to the petitioner. The landlord filed Revision No. 1 of 1996 against the order rejecting his release application and Revision No. 2 of 1996 against the order allotting the accommodation to the petitioner. Respondent No. 1 took the view that the Rent Control and Eviction Officer illegally rejected the release application. He was not given any notice as provided under the proviso to Section 16 of the Act and further by a composite order, he was not justified in passing the order rejecting the release application of the landlord and allotting the house in question to the petitioner. The petitioner has filed Writ Petition No. 14156 of 1997 against the order passed in Civil Revision No. 2 of 1996 for setting aside the allotment order and Writ Petition No. 14157 of 1997 against the order passed by respondent No. 1 In Civil Revision No. 1 of 1996, allowing the revision of the landlord against the order of rejection of application for release and remanding the matter to the Rent Control and Eviction Officer.

5. Sri Ashok Khare, learned counsel for the petitioner urged that respondent No. 1 illegally held that the landlord was entitled to a notice under the proviso to Section 16 of the Act. Proviso to Section 16(1) of the Act provides that in the case of vacancy referred to under sub-section (4), the District Magistrate shall give an opportunity to the landlord or the tenant, as the case may be of showing that the said section is not attracted to the case before making an order under clause (a). The landlord himself having filed an application for release on the ground that the accommodation was vacant, he was not required to be given a separate notice under this proviso.

6. Proviso to sub-section (1) of Section 16 of the Act is applicable when an application is filed by the tenant or any person stating that the accommodation is vacant. The landlord in that case is entitled to be heard as held in *Yogendra Tiwari v. District Judge, Gorakhpur and others* 1984 (2) ARC 7. In this case, however, the landlord himself says that the accommodation in question is vacant and files an application for release, a separate notice is not required before declaration of vacancy by the Rent Control and Eviction Officer. The landlord has filed application and he has participated in the proceedings for declaration of vacancy. In *Rajendra Singh and others v. District Judge, Kanpur and others* 1986 (1) ARC 116, it was held that when the tenant participated in proceedings for allotment and had an opportunity to file objection, he cannot complain of non-compliance of Rule 8 of the Rules framed under the Act. Similarly, if the landlord has filed an application for release on the ground that there was vacancy and in those proceedings, the question of vacancy is determined, he is not required to be given a separate notice by the Rent Control and Eviction Officer.

7. The next question is whether the application for allotment or release can be considered on the date the objection regarding its vacancy is determined. The Rent Control Inspector on the release application being filed by the landlord asked for a report from the Rent Control Inspector. The Rent Control Inspector submitted a report that one Ramesh Chandra Gupta was in occupation of the said premises. Ramesh Chandra Gupta was later on transferred. The Rent Control Inspector submitted report on 18.11.1995 that as against him the order of vacancy had already been declared in the year 1990 and he cannot agitate that there was no vacancy. He has already been transferred. It appears that on the basis of the report of the Rent Control Inspector, the Rent Control and Eviction Officer declared the vacancy with a direction that the notice may be served to the parties concerned. Sri Ramesh Chandra Gupta filed objection on 28.11.1995 stating that he had not vacated the accommodation in question. He was transferred to another district but on transfer, he has yet not been given any accommodation. The Rent Control and Eviction Officer asked for another report from the Rent Control Inspector. The Rent Control Inspector submitted another similar report on 20.11.1995. The Rent Control and Eviction Officer by order dated 8.12.1995 rejected the objection of Ramesh Chandra Gupta and held that there was vacancy and after having held that there was vacancy, by the same order he rejected the application of the landlord for release and further allotted it to the petitioner.

8. Sub-rule (2) of Rule 8 provides that on inspection of a building, the conclusion of the inspection report shall be pasted on the notice board of the office of the District Magistrate for information of the general public, and an order of allotment may be passed not before the expiration of three days from the date of such pasting and if in the meantime any objection is revived, not before the disposal of such objection. The intention of the Legislature is that after the objection relating to vacancy is decided, the application for release or allotment should be considered. The Rent Control and Eviction Officer should fix a date for

considering the release/allotment application after taking decision on the question of vacancy. The purpose is that the parties can place their case for release/allotment only when the question of vacancy is determined. Till the matter is decided on the question of vacancy, the party may not know whether his application for release/allotment will be considered on merits. The factual and legal aspects in all the stages are different. The Rent Control and Eviction Officer has to pass separate orders in regard to vacancy, release and allotment of a building. In *Shakti Padh Ray v. Annapurna Devi* 1977 UPRCC 121, it has been held that the allotment order cannot be passed on the date the vacancy is declared as it will be in violation of Rule 8 (2) of the Rules framed under the Act. In the instant case, the Rent Control and Eviction Officer on 8.12.1995 determined the objection on the question of vacancy and by the same order rejected the release application and passed the allotment order in favour of the petitioner. The procedure adopted by him was not in accordance with law.

9. The second question is whether the order on release and allotment application can be passed on the same day by the Rent Control and Eviction Officer. It is settled law that the Rent Control and Eviction Officer should not pass any order on the allotment application before the release application filed by the landlord u/s 16 (1) (a) of the Act is decided. The prospective allottee has no right to file the objection to the release application. In *Talib Husain and another v. Ist Additional District Judge, Nainital and others* 1986 (1) ARC 1, a Full Bench of this Court held that a prospective allottee has no right to file an objection to the release application. This view of the Full Bench has been upheld by the Hon'ble Supreme Court in *Vijay Kumar Sonkar v. Incharge District Judge and others* 1995 (2) ARC 1. The Rent Control and Eviction Officer, after the vacancy is declared, has to consider the release application independently without giving any right to the prospective allottee to contest the release application. It is only after the application of the landlord is rejected, the Rent Control and Eviction Officer has to consider the allotment applications. In case the release application is rejected, he is to fix a date for hearing of the allotment applications for which a notice is to be given to landlord as provided under Rule 9 (3) of the Rules framed under the Act which provides that he shall issue a notice to the landlord indicating the date fixed for considering the allotment applications. On the date so fixed the District Magistrate shall consider the case of all the applicants registered in the register mentioned in Rule 10 and shall pass an order u/s 16 in accordance with Rules 10 and 11. Rule 10 lays down the allotment procedure and Rule 11 gives the order of priority in allotment of residential buildings. The landlord can raise his objection in regard to the allotment applications only after his release application is rejected. He can take decision regarding filing of objection on allotment applications only after he comes to know that his release application has been rejected. In case objection has already been filed, to submit his arguments after the decision is taken on release application. The application for release of the building and allotment applications cannot be considered simultaneously. The two matters are totally independent. The Rent Control and Eviction Officer, therefore,

after release application filed by the landlord is rejected, must fix a date for hearing the allotment applications.

10. Respondent No. 1 has further recorded a finding that the Rent Control and Eviction Officer did not properly consider the release application in accordance with law and hence remanded the matter. The order passed by the Rent Control and Eviction Officer having been set aside, the allotment order passed in favour of the petitioner cannot be maintained.

11. There is no merit in these writ petitions. They are accordingly dismissed.