

(1981) 03 AHC CK 0028
In the Allahabad High Court
Case No : Writ Petition No. 1608 of 1979

Smt. Rama Devi Shakya and Others

APPELLANT

Vs

Ist Addl. District Judge and Others

RESPONDENT

Date of Decision : 12-03-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(3), 12(4), 20, 23
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 10(6)

Citation : (1982) AWC 523

Hon'ble Judges : Satish Chandra, C.J.; T.S. Misra, J.; D.N. Jha, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

Satish Chandra, C.J.—Sri Srivastava, Respondent No. 2 was landlord of the accommodation in dispute. He applied for a declaration that the accommodation was vacant and that the same be released in his favour. The Rent Control Tribunal on July 27, 1977 passed an order dismissing the application. Aggrieved, Sri Srivastava went up in revision. The Additional District Judge held that S. R. Shakya was the tenant of the accommodation since 1958. The tenant died in May, 1973 leaving behind his widow and five sons. The tenancy devolved on the widow and her five sons. One of the sons, Dr. R.R.P. Singh applied for allotment of another house for himself and three of his brothers. The rent control authorities passed an order of allotment of that house in 1975. Dr. R.R.P. Singh obtained possession of the allotted house in June, 1975. He along with his own family and at least one of his brothers shifted to the allotted house. It was also held that Dr. R.R.P. Singh was normally residing with his father S. R. Shakya, the original tenant. Considering the definition of the term "tenant" in the Rent Control Act of 1972, the learned Judge held that Dr. R.R.P. Singh was an heir who was normally residing with him in the building at the time of the death of the

original tenant. Since he got another building allotted to himself the accommodation in dispute will be deemed to have become vacant u/s 12(3) of the Rent Control Act, 1972. Since the Tribunal had not recorded any finding on the personal need of the landlord, the matter was remanded to it for consideration of the release application.

2. Aggrieved, the widow and three sons of the erstwhile tenant have come to this Court under Article 226 of the Constitution. When the Writ Petition came up for hearing before the learned Single Judge, it was argued that allotment of another building under the Rent Control Act did not amount to "acquiring it" within meaning of Section 23. The learned Single Judge repelled this submission and, in our opinion, correctly.

3. Another submission made on behalf of the Petitioners was that a person can be deemed to be a member of the family of the tenant only if he was normally residing with the tenant and was also wholly dependent on the tenant. In the present case there is no finding that Dr. R.R.P. Singh was wholly dependent on the tenant. Hence because of his acquiring another accommodation, the tenanted accommodation could not be deemed to be vacant. In this connection, the learned Single Judge noticed a Division Bench decision of this Court in *Shri Nath Tandon v. Rent Control & Eviction Officer* 1979 ARC 351 in which it was observed that if a member of the tenant's family has not been normally residing with the tenant or that he has not been wholly dependent on the tenant, the deeming provision would not apply. The learned Single Judge felt doubtful as to the correctness of the view expressed in that case.

4. Another submission made on behalf of the Petitioners was that after the death of the original tenant Dr. R.R.P. Singh could at best be treated as member of the family of his mother who had become one of the tenant; but he also became a tenant in his own right as having succeeded to a share in the tenancy. On the death of the original tenant, the tenancy devolved on his widow and his five sons. Each one of them had a distinct share in the tenancy rights. They were all tenants in common. Hence by acquisition by way of allotment of another house by one of the co-tenants, namely, Dr. R.R.P. Singh, the tenancy rights of the other co-tenants, could not be adversely effected and the accommodation could not, in law, be deemed vacant. In support of this submission that co-tenants were tenants in-common and not joint tenants, reliance was placed upon *Budh Sen Vs. Sheel Chandra Agarwal and Others*, and *Ramesh Chand Bose Vs. Gopeshwar Pd. Sharma*, . The learned single Judge felt that these decisions did not take into consideration the Supreme Court decision in *Badri Narain Jha and Others Vs. Rameshwar Dayal Singh and Others*, and so they needed reconsideration. In this situation, the learned Single Judge referred to a larger Bench the following questions:

1. (a) Whether the view expressed in *Budh Sen Vs. Sheel Chandra Agarwal and Others*, and *Ramesh Chand Bose Vs. Gopeshwar Pd. Sharma*, to the effect that the heirs of a tenant are tenants-in-common and not joint tenants, is consistent

with the view expressed by the Supreme Court in *Badri Narain Jha and Others Vs. Rameshwar Dayal Singh and Others*,

(b) Do such heirs of a tenant become tenants in common inter se but remain joint tenants qua the landlord ?

(c) What is the effect of one such heirs acquiring another building as mentioned in Section 12(3) of U.P. Act No. 13 of 1972 ?

2. Whether the view expressed in *Sri Nath Tandon v. Rent Control & Eviction Officer* 1979 ARC 451 (DB) to the effect that a member of the family who acquires another building should both have been normally residing with the tenant and also been wholly dependant on him for Section 12(3) to be attracted, is consistent with Explanation (b) to Section 12(3) ?

5. We may take up the second question first. Section 12(3) reads:

(3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy.

Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.

The Amending Act No. 28 of 1976 added the following Explanation to Section 12(3):

Explanation - For the purpose of this Sub-section (a) a person shall be deemed to have otherwise acquired a building if he is occupying a public building for residential purposes as a tenant, allottee or licensee.

(b) the expression any member of family "in relation to a tenant, shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant.

Clause (a) of Section 3 defines a "Tenant". It says -

(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.

Clause (g) of Section 3 defines "family" as follows:

(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, grand parents, and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal dependent as may have been normally residing with him or her, and includes in relation to a landlord, any female having a legal right or residence in that building;

6. In view of the definition of the term "tenant", it is evident that such of his heirs as normally resided with him in the building at the time of his death, became a tenant after his death, in case of a residential building. An heir who was not normally residing with him will not, for purposes of the Rent Control Act, become a tenant; but nonetheless he would be a member of the family of the tenant if he falls within one of the sub-clauses of Clause (g). A son of a tenant who was not normally residing with him will not become a tenant after his death though he will be all the while a member of the family of the tenant.

7. Section 12 of the Act categorises the classes of cases in which an accommodation under tenancy will be deemed to have become vacant. Sub-section (3) deals with residential buildings. Under it such a building shall be deemed to have become vacant if the tenant or any member of his family builds or otherwise acquires another residential building.

8. In this sub-section, the phrase "any member of his family" refers to the family members of the tenant. Obviously they are not tenants themselves. If a person is a tenant as defined in Clause (a) of Section 3, he will be covered by the term "tenant" occurring in Sub-section (3). In such a case, it will not be necessary at all to consider whether he would fall within the phrase "any member of his family".

In the present case, it has been found that Dr. R.R.P. Singh was normally residing with his father, the tenant, at the time of his death. He himself became a tenant in view of Clause (a) of Section 3. Since he himself was one of the tenants (alongwith his mother and other brothers), it is obviously unnecessary to find whether he was a member of the tenant's family.

9. There is a conflict of opinion in this Court on the interpretation of Explanation (b). In *Triveni Pratap Singh v. Smt. Gauri Chkravarty* 1977 AWC 349, a learned Single Judge interpreted Explanation (b) to the effect that the twin requirements of neither normally residing nor being wholly dependent on the tenant must be satisfied before the benefit of this proviso can be availed of. On facts it was found that Sri Chakravarty was normally residing with his wife, the latter being the tenant. The tenant was held not entitled to claim benefit of the Explanation and wife was deemed to have ceased to occupy the building in her tenancy because the husband had acquired another building.

10. In *Srinath Tandon* (Supra) it was held that if a member of the family has not been normally residing with the tenant or that he has not been wholly dependent

on the tenant, the deeming provision would not apply. On facts, it was found that the son of the tenant was not wholly dependent on the tenant. There was also no finding that the son has been normally residing with the tenant in the residential building. The Division Bench observed that in the circumstances the accommodation cannot be deemed vacant. The decision was that before a vacancy can occur the member of the family who builds or otherwise acquires another residential building, should have also been wholly dependent on him. In other words, in Triveni Pratap Singh's case (Supra) it was held that if one of the conditions, namely, either the member of the family was normally residing with the tenant or that he was wholly dependent on the tenant, is present, there will be vacancy while in Sri Nath Tandon's case the decision was that vacancy will occur if both conditions co-exist.

11. Since there is a difference of opinion in this Court and since the learned Single Judge has specifically referred this question, it will be appropriate to settle the law on this point.

We may recapitulate Explanation (b). It says -

(b) the expression "any member of family" in relation to a tenant shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant.

12. It is difficult to imagine a more inartistic and confusing drafting. The draftman has used a double negative-"a person who has neither been normally residing with nor is wholly dependent on such tenant" shall not be a member of the family. To put it in positive terms, the phrase shall refer to a person who has either been normally residing with or is wholly dependent on such tenant. Reading it this way, it seems clear that if either of the two conditions exists, the person will be a member of the family of tenant. That is to say, if a person is normally residing with the tenant, he shall be a member of the family, if he is wholly dependent on such tenant, then also he will be a member of the family, even though he may not be normally residing with the tenant.

13. If a person who has been normally residing with the tenant builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city etc. the building under tenancy shall be deemed to have become vacant. Similarly, if a person who is wholly dependent on the tenant does the offending act, namely acquires etc. another residential building, the same result will follow. It is not necessary that a person should both be normally residing with the tenant as well as be wholly dependent on such tenant before his acquiring another building will cause vacancy.

14. The second question, as framed, needs to be re-framed. We will reframe it as follows:

Whether Explanation (b) to Section 12(3) of the Act requires that a member of the family who acquires another building should both have been normally

residing with the tenant and should also be wholly dependent on him ?

15. We answer this question in the negative.

16. In relation to the first question, the position is that Dr. R.R.P. Singh has been found to have been normally residing with his father, the tenant, at the time of his death. He, therefore, became one of the tenants as defined by the term "tenant" as used in Section 12(3). It was however, submitted that he was one of the six persons who had inherited the tenancy, the others being his mother and his other brothers. In law, they inherited as tenants in common, namely each co-tenant had a specific share in the tenancy rights. Since R.R.P. Singh had a specific share and since he had acquired another residential house by way of allotment, his share of tenancy alone should be deemed to have become vacant with the result that the share vesting in the other co-tenants namely, the mother and other brothers would not be adversely affected and their share of the tenancy cannot be deemed to have become vacant. In support of the proposition that the heirs of a tenant take as tenants in common and not as joint tenants, reliance was placed on the decision of this Court in *Budhsen v. Sheel Chandra Agarwal*, (Supra) and *Ramesh Chandra Bose v. Gopeshwar Prasad Sharma*, (Supra).

17. On the other hand, the Respondent landlord submitted that though the heirs among themselves may take as tenants in common but qua the landlord they are joint tenants. In support reliance was placed on *Badri Narain's* case (Supra).

In *Badri Narain's* case, the Supreme Court emphasized that several co-tenants in law constitute one person, each constituent part of which possesses certain common rights in the whole and is liable to discharge common obligation in its entirety. There is privity of estate between each co-tenant and the landlord in the whole of the lease hold and he is liable for all the covenants running with the land. In law, therefore, an inter se partition of the tenant's interest could not affect the integrity of the lease. Such partitions amongst several lessees inter se are usually made for the convenience of enjoyment of the lease hold but they do not in any way affect the integrity of the tenancy or make each holder of an interest in it as a separate holder of a different tenancy. A partition,, inter se, amongst the several tenants could not in any way, affect the integrity of the lease in the absence of a fresh contract. This decision is, therefore, an authority for the proposition that where there are more than one tenant, they are a dingle person qua the landlord. They are responsible, individually and collectively, to carry out the obligations and responsibilities under the lease qua the landlord. They are collectively responsible to pay the rent and to carry out the other terms and conditions of the lease. If anyone or more of them contravenes any condition or term of the lease, they all will be collectively liable. For instance, the Rent Control Act affords protection to the tenant, a term which includes the mentioned heirs of the tenant after his death. Section 20 of the Act, however, provides for the eviction of the tenant on certain grounds. On those grounds being established the protection of the Act ceases with the result that the tenant

becomes liable to ejectment. In relation to the landlord, the tenant is the person or persons who constitute the interest in the tenancy rights as defined by clause (a) of Section 3. If there are more than one person who are the tenants, they are collectively responsible to the landlord. If one of the co-tenants commits default of the kind which entails eviction, the tenant, namely, all of them together will fall. They will collectively be liable to ejectment though the default may have been committed only by one of them.

Co-ownership of property is, in law, of two variations. One is joint tenancy and the other is tenancy in common. They may be either in respect of co-ownership of property or of a lease-hold interest. Joint tenancy has four unities plus the right of survivorship. The right of survivorship is the main feature of joint tenancy. On the death of a joint tenant, his interest passes to the other joint tenant by right of survivorship. It does not go to his personal heirs. The four unities of a joint tenancy are unities of interest, possession, title and time. These unities indicate that each of the joint tenants has a right to each and every part of the property in respect of title, possession, interest and time. The unity of possession means that each of them is entitled to possession of each and every part of the land.

18. A tenancy in common has, however, different characteristics. Tenants in common hold the property in specified though undivided shares. There is no right of survivorship amongst them. When a tenant in common dies his interest devolves on his heirs or under his will. But though there is no unity of title in that sense, there is unity of possession amongst the tenants in common. Each tenant in common is entitled to possession of the entire land along with the other tenants in common. This is well settled law (see *Jahuri Sah and Others Vs. Dwarka Prasad Jhunjhunwala and Others*, *Mondial Girdhari Lal v. Gulamnabi Jamalbhai Motorwala* AIR 1973 Guj 131, *The Tata Iron and Steel Co. Ltd. Vs. Abdul Ahad and Others*, *Motilal v. Kartar Singh* AIR 1930 Lah 515 F.B. Mulla's *Transfer of Property Act*, 6th Edition, pages 222 and 639 and Woodfall on "Landlord and Tenant" 26th Edition, page 65. So far there is no difficulty.

19. In *Ramesh Chandra Bose v. Gopeshwar Prasad Sharma* (Supra) the problem was that the landlord had given notice to quit to Defendant No. 1 whom he thought was the only tenant. The finding was that, in fact and in law he was one of the co-tenants. The question that arose for consideration was whether the notice given to the first Defendant was sufficient to terminate the tenancy. The Court held that the notice Ex-1 goes to show that the Plaintiff had treated the Defendant alone as the tenant and had sought to terminate the relationship of landlord and tenant alleged to be existing between him and the Defendant. The court held that in fact and in law there were others who were co-tenants. There was no attempt made in the notice to terminate the tenancy of all the persons who were tenant in common in respect of the property. It was held that on the death of the original tenant his heirs take as the tenants in common and since they each have specified though undivided share in the lease hold interest, the

landlord must terminate the tenancy of all of them. Termination of the tenancy of one of the co-tenants was not, in law, sufficient. The Bench observed that since in the case of joint tenants each has unity of title, notice to one joint tenant may be sufficient to terminate the entire tenancy. But that principle cannot apply to tenants in common. In that case, the Bench however, made the following observations:

We are unable to accept that even though by operation of law the title in the lease hold right gets divided it remains a single unit so far as the landlord is concerned The lease itself as we have said, is subject to law of inheritance and if the law divides the unity of title, it becomes binding also on the landlord.

What is binding on the landlord is that instead of one tenant there are now several co-tenants. He is bound to recognise all of them as co-tenants. It does not mean that one tenancy is replaced by several tenancies qua the landlord. As observed by Supreme Court in Badri Narain's case qua the landlord the several tenants are collectively responsible. In this case the Bench disagreed with the views expressed by the Patna High Court in Tata Iron & Steel Co. Ltd. v. Abdul Ahad (Supra). In the Patna case, the problem was some what different. There it was found that the landlord had intended to terminate the entire tenancy. He had addressed the notice to all the co-tenants but the same had been served only on some of them. Untiwali, J. (as he then was) speaking for the Bench held that the leasehold property was inherited by the tenant's heirs, and undoubtedly inter se, as to be given to the heirs of Abdul Gani. He held -

I am also inclined to think that if one or more legal heirs of a deceased tenant was or were left out due to a bona fide mistake but if the intention is clear enough from the notice addressed to the other heir or heirs that the tenancy was sought to be determined as a whole omission to address the notice to one or more heirs in such circumstances will not make it invalid. One may conceive of a situation when a tenant dies leaving several heirs scattered in the country or even residing in various countries. It may not be possible for the landlord to know the existence or whereabouts of all the heirs. In such a situation if one or a few is or are left out due to a bonafide mistake, it is difficult to take the view that the notice which was given to the other heir or heirs with the clear intention of determining the whole of the tenancy, as Ext. 1 of this case clearly shows, will not bring about the determination.

20. This in our opinion, is a correct enunciation of the law. When there are several co-tenants the landlord has to determine the tenancy of all of them. There is no prescribed form or formula for determining the tenancy. In Harihar Banerji v. Rameshashi Roy AIR 1918 PC 102 it was pointed out that service of a notice to quit upon one joint tenant is prima facie evidence that it has reached the other joint tenants. In other words, service of notice on one of the co-tenants is sufficient to show that it reached the other addressee. The same view was taken in Vaman Vithal Kulkarni Vs. Khanderao Ramrao Sholapurkar, , Ramubai Vs. Jiyaram Sharma, , Bodardoja and Others Vs. Ajijuddin Sircar and Others, and

Mohan Lal v. Governor General in Council AIR 1945 Nag 255.

The confusion has arisen because in some of these cases, the phrase, "joint tenant" has been used while saying that service of notice on one joint tenant is prima facie evidence that it has reached the other joint tenants. They were not cases of joint tenants as technically known in law, namely co-tenants having a right of survivorship between them. They were co-tenants i. e. tenants-in-common. But they had a single face qua the landlord. In other words, they were collectively responsible to the landlord and the landlord was entitled to treat them as a collective single unit. It is in this sense, they were treated as joint tenants for indicating that service of a notice to quit on one was prima facie evidence that it has reached the rest of course, the notice had to indicate an intention that the tenancy of all of them was intended to be terminated. That is a matter of inference from the language and the context of the notice. The view taken in *Smt. Vishwati v. B.V. Chaudhary* 1969 ALJ 1131 that the notice need not be addressed to all known co-tenants does not appeal to us.

21. In the case of *Budhsen* (supra) it was found that on the death of the original sub-tenant, the sub-tenancy was inherited by all his heirs. The tenant, however, treated only one of the sons to be a sub-tenant. He gave notice of termination of the sub-tenancy to that person alone. The Bench held that the tenancy rights are heritable and devolve on all the heirs. It was hence necessary to terminate the sub-tenancy of all. It was clear on facts that the tenant had no intention of treating the other heirs as the sub-tenants. He hence did not intend to terminate the tenancy in which more than one person was the sub-tenant. On these facts it was rightly held that the notice given to one individual was ineffective to terminate the sub-tenancy which had been inherited by several persons. That was not a case in which the notice was addressed to all or was intended to terminate the tenancy of all the heirs. Consequently the question whether a notice intending to terminate the tenancy of all the co-tenants but served on only one of them effectively terminated the tenancy, did not arise for consideration in that case.

22. The problem in the present case is not of termination of tenancy by a notice to quit given by the landlord to the tenants. The question before us is if one co-tenant builds or otherwise acquires another residential building, will all the co-tenants be deemed to cease to occupy the building under tenancy. As we have seen above, the correct legal position is that among themselves the co-tenants as tenants-in-common may have a specified though undivided share in the leasehold interest, but they have unity of possession. There is privity of estate between them and the landlord. The mere fact of inheritance does not destroy the integrity of the lease, it remains a single lease. Each one of the co-tenants is equally responsible to the landlord for carrying out the terms and conditions of the lease and of the law in force. If any of the tenants in common commits breach or default the landlord is entitled to enforce his rights of terminating the lease and suing for ejectment. It is hence clear that where one of the co-tenants

builds or otherwise acquires another residential building within the meaning of Sub-section (3) of Section 12, the tenant, namely, the entire set of co-tenants shall be deemed to have ceased to occupy the building under his sub-tenancy. It cannot be that the share belonging to the co-tenant in default alone shall fall vacant.

23. Sub-section (3) of Section 12 emphasises acquisition of another building in a vacant state. Under it, the question of possession is the all important feature. If a building is acquired in a vacant state it is obviously available for being occupied. Section 12(3) frowns upon the tenant having two buildings for his occupation at the same time. Since co-tenants who take as tenants in common have unity of possession, they all will fall in the grip of Section 12(3) if one of them gets another residential building in a vacant state.

24. The rigour of Section 12(3) is considerably softened by proviso (b) to Rule 10(6) of the rules. This proviso reads:

In the case of a residential building under the tenancy of a person who shall be deemed by virtue of Section 12(3) to have ceased to occupy it by reason of his or any member of his family building or otherwise acquiring in a vacant state or getting vacated another residential building in the same local area, whether that other building is built or acquired or got vacated before or after the date of commencement of the Act, if the District Magistrate is satisfied that the two buildings are occupied by the tenant and a member of his family separately and that they are separate in messing, the Distt. Magistrate may re-allot the residential building deemed to be vacant u/s 12(4) to the said tenant or to the said member of his family, as the case may be.

25. Even though the acquisition of another building by the tenant or a member of his family may bring about vacancy, yet if the District Magistrate is satisfied that the two buildings are occupied separately and that there is separate messing, he may re-allot the building under tenancy to him. It is open to the present Petitioners to apply for re-allotment on the ground that they are living separately and have separate messing, even though the accommodation in their tenancy has fallen vacant u/s 12(3).

26. In this view, question 1 (a) really does not arise. As explained above, the two decisions in this Court and the decision of the Supreme Court in *Badri Narain* (Supra) were on different aspects and involved different considerations.

27. Our answer to question 1 (b) is that heirs of a tenant become tenants in common inter se but are collective tenants as explained above qua the landlord. Our answer to question 1 (c) is that the effect: of one of such co-tenants acquiring another building as mentioned in Sub-section (3) of Section 12 of Act 13 of 1972 has the effect of all the co-tenants to be deemed to have ceased to occupy the building under tenancy. Let the papers be placed before the learned single judge with this opinion and answer.