

**(2012) 08 AHC CK 0076**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 4057 of 1985

Smt. Saida Bano

APPELLANT

Vs

VII Additional District Judge, Gorakhpur and others

RESPONDENT

**Date of Decision :** 09-08-2012

**Acts Referred:**

Provincial Small Cause Courts Act, 1887 — Section 25  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —  
Section 20(4)

**Citation :** (2012) 10 ADJ 312 : (2013) 4 AWC 3576

**Hon'ble Judges :** Sudhir Agarwal, J

**Bench :** Single Bench

**Advocate :** Kailash Narain and Arun Kumar, for the Appellant; Abhishek Srivastava, Shashi Nandan and S.C., for the Respondent

**Final Decision :** Allowed

## Judgement

Hon'ble Sudhir Agarwal, J.—Heard Sri Arun Kumar, learned counsel for the petitioner and learned Standing Counsel for the respondent Nos. 1 and 3. The list has been revised but none has appeared on behalf of respondent No. 2 though names of Sri Abhishek Srivastava and Shashi Nandan Advocates are shown as counsel for the respondents in the cause list. The writ petition is directed against the allotment order dated 14.4.1983 (Annexure 11 the writ petition) passed by Respondent No. 3, Rent Control and Eviction Officer, Gorakhpur (hereinafter referred as to "R.C.E.O.") and the revisional order dated 18.1.1985 passed by VIIth Additional District Judge, Gorakhpur dismissing revision of the petitioner landlord.

2. It appears that the premises in dispute namely House No. 8(8/1) Mohalla Bulaqipur, Gorakhpur was earlier in tenancy of one Abdul Halim Khan. The petitioner, Smt. Saida Bano filed suit No. 7 of 1981 against Abdul Halim Khan for ejectment and recovery of arrears of rent and damages for use and occupation. The suit was decreed on 29.7.1982. He (erstwhile tenant Abdul Halim Khan)

came to this Court in Civil Revision No. 581 of 1982 wherein an interim order was passed on 12.10.1982 restraining his ejectment from the premises in dispute subject to deposit of decretal amount within a period of one month and to continue to pay current monthly damages by 15th of every month. Ultimately, the said revision was dismissed on 23.9.1985.

3. In the meantime, it appears, that, respondent No. 2 moved an application before R.C.E.O. for allotment of the house in dispute whereafter he (R.C.E.O.) directed for inspection. The Inspector submitted report on 25.3.1983 whereupon R.C.E.O. declared vacancy and ultimately allotted the building in dispute to respondent No. 2 by order dated 14.4.1982.

4. Learned counsel for the petitioner submitted that entire allotment proceedings are fraudulent inasmuch as when revision was pending before this Court and an interim order was passed, there could not have been any occasion to R.C.E.O. to declare the premises in dispute vacant and go on with allotment proceedings. Moreover, the petitioner/landlord was never informed of the aforesaid proceedings, no notice was ever served and rules 8 and 9 were never followed.

5. The facts placed before this Court and as evident from the records are as under:

6. The petitioner Smt. Saida Bano, wife of Sri S.M. Ali Dabeer is the landlady of house No. 8 situated in Mohalla Bulaqipur, Gorakhpur City. She is a Pardanasin Muslim lady and her husband looked after the property in dispute. The house was let out to one Abdul Halim on 18th September, 1972. Sri Abdul Halim committed default in payment of rent resulting in suit No. 462 of 1977 filed by the petitioner for claiming arrears of rent and ejectment of the said tenant. The said suit was dismissed since the tenant Abdul Halim deposited various dues in Court and got the benefit of Section 20(4) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction), Act 1972 (hereinafter referred as to "Act No. 13 of 1972"). Again he committed default whereupon petitioner/landlady filed suit No. 7 of 1981 for recovery of Rs. 2,985/- towards arrears of rent and damages and also for ejectment of the said tenant. It was decreed by the Judge, Small Causes Court (4th Additional District Judge, Gorakhpur) vide judgment dated 29.7.1982 and relief of eviction of tenant and recovery of Rs. 2,392/- towards the arrears of rent/damages etc. was allowed. The tenant Abdul Halim thereafter filed revision u/s 25 of the Provincial Small Causes Court Act before this Court registered as Revision No. 581 of 1982. While admitting the aforesaid revision, on 12th October, 1982, this Court passed an interim order permitting revisionist-tenant to deposit the entire decretal amount including damages at the rate awarded by the Trial Court up to the month of September, 1982 within a period of one month and further that he shall go on depositing damages at the rate awarded from October, 1982, by 15th of each succeeding month. The aforesaid interim order dated 12th October, 1982 was confirmed by this Court on 16th May, 1983.

7. Since, the tenant committed default in payment of subsequent damages, the

petitioner treated the interim order as automatically vacated, filed an Execution Application No. 1 of 1983 on 31st January, 1983 before Trial Court. The Executing Court, appointed an Advocate Commissioner for getting the house vacated from the aforesaid tenant but when the Commissioner visited the house in question, respondent No. 2 was found in possession of the said premises. He (respondent No. 2) produced an allotment order dated 14th April, 1983 passed by R.C.E.O. allotting the said premises to him. He further claimed that he was in possession of the accommodation in question since 18th April, 1981, and, handed over a letter dated 15th May, 1983 to the Advocate Commissioner stating that he is not bound by decree and cannot be evicted. A report was submitted by Advocate Commissioner to the Executing Court who took the view that since, there is no decree against respondent No. 2, therefore, he cannot be directed to deliver possession to petitioner.

8. Having, no knowledge of the alleged allotment proceedings, the petitioner made inquiry and came to know that an application was filed by Ajaj Ahmad Khan i.e. respondent No. 2 before R.C.E.O. for allotment of house in question to him. The R.C.E.O. called for a report from House Inspector who is said to have made inspection on 21st March, 1983 and submitted report on 26th March, 1983 whereafter the vacancy was notified by R.C.E.O. vide order dated 30.3.1983 and on 14th April, 1983 allotment letter was issued in favour of respondent No. 2.

9. It is interesting to notice that at the time of alleged inspection by the House Inspector, respondent No. 2 was found in possession of the house in question and in his letter dated 15th May, 1983 which was handed over to the Advocate Commissioner, appointed by the executing Court, respondent No. 2 claimed his possession on the property in dispute since 18th April, 1981. Respondent No. 2 also claimed that Abdul Halim vacated the premises in question on 3rd January, 1983/31st January, 1983 but whom it was handed over has not been specifically stated.

10. The petitioner thereafter preferred a revision No. 351 of 1983 against order dated 14th April, 1983 passed by R.C.E.O. which has been rejected by the impugned order dated 18th January, 1985.

11. There are some subsequent events also. When the petitioner filed revision before the District Judge, Gorakhpur i.e. revision No. 351 of 1983, it appears, respondent No. 2 filed an application for staying his eviction but the same was rejected by 6th Additional District Judge, Gorakhpur who was seized of the aforesaid revision. Respondent No. 2 thereafter filed a writ petition No. 11132 of 1984 in which an interim order was passed on 29th August, 1984, staying his eviction but the said writ petition was ultimately dismissed on 14th December, 1986. In the meantime, Civil Revision No. 581 of 1982 filed by erstwhile tenant Abdul Halim was also dismissed on 21st December, 1985 and the interim order granted was vacated, as already said.

12. The facts stated above make it evident that on the date when application was

made by the respondent No. 2 before R.C.E.O. for allotment, the building in dispute was not lying vacant since the dispute was pending before this Court in Civil Revision No. 58 of 1982 and the interim order dated 12th October, 1982 was operating. It is true that the petitioner Smt. Saida Bano presuming that the interim order dated 12th October, 1982 has come to an end automatically, filed an Execution Application on 31st January, 1983 but that by itself would not mean that the premises was vacant particularly when the erstwhile tenant's revision was pending and this Court was seized of the matter for considering correctness of the judgment dated 29.7.1982 passed by the trial Court directing for ejectment of the erstwhile tenant.

13. Moreover, it is also evident from record that respondent No. 2 filed an application sometime in January, 1983 (the exact date has not been disclosed). The revisional Court's order says that R.C.E.O. passed order on 30th January, 1983 for notifying vacancy and calling concerned parties for hearing. It also refers to a paper No. 10 said to have been written by erstwhile tenant Abdul Halim dated 15.4.1982 giving information to R.C.E.O. that he had vacated the disputed accommodation and ceased to be a tenant. The revisional Court order further says that the accommodation was vacated by erstwhile tenant on 3 January, 1983. Thus, findings recorded in the revisional Court's order are perverse and self contradictory. Paper No. 10 is said to have been written on 15th April, 1982 by erstwhile tenant, states that he has already vacated premises but in the next very sentence the revisional Court says that the accommodation was vacated by him on 31st January, 1983. Even if I treat this date of 15.4.1982 as 15.4.1983, that would only mean that by the time information was given by erstwhile tenant to R.C.E.O., application of respondent No. 2 was already entertained by him and inspection was ordered, inspection report was obtained, and an allotment order was already passed on 14th April, 1983 i.e. a date earlier to the date when paper No. 10 was written. Moreover when erstwhile tenant was already contesting the matter, no order for his eviction could have been passed by Small Causes Court in April, 1982. This Court finds no occasion for erstwhile tenant to communicate existence of vacancy in the premises in dispute on 15th April, 1982. At the pain of repetition, it is said that the Small Causes Court's judgment is dated 29th July, 1982 decreeing the landlord's suit No. 7 of 1981 for eviction of erstwhile tenant Abdul Halim Khan but thereafter an interim order was passed by this Court on 12th October, 1982, restraining his eviction in the Civil Revision filed by erstwhile tenant. Hence, the question of existence of vacancy in April, 1982 is wholly beyond comprehension and shows nothing but a forged and fictitious record, if any, and also shows a total non-application of mind on the part of the respective authorities, namely R.C.E.O. as well as revisional Court.

14. Further, respondent No. 2 has claimed that he was staying and occupying the premises in question since 18th April, 1981, when, admittedly it was not vacated by erstwhile tenant at all. All these facts go to show without any manner of doubt that there was a clear collusive action/proceedings at the behest of erstwhile

tenant, respondent No. 2. It is also unfortunate that the revisional Court has not appreciated all these facts and in a sheer reckless manner has decided the revision against the petitioner. Interestingly, within 20 days and odd the allotment proceedings have been completed by R.C.E.O. and nothing has been placed on record to show that in this process the landlord was ever informed of the aforesaid proceedings by him complying the requirement of Rules 8 and 9 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter referred as to the "Rules 1972").

15. This Court repeatedly has held that before allotment of an accommodation the procedure laid down in Rules 8 and 9 of Rules 1972 is mandatory. In *Kailash Chand and another v. Kailash Narain*, 1982 ARC 285, considering Rule 8 (2), the Court said that it is incumbent upon the Inspector to make efforts to contact landlord at the time of his inspection and in absence of any material to indicate that it was not possible for him to do so, his report given on the basis of such report, inspection i.e. in the absence of landlord, would be in the teeth of rule 8 of Rules, 1972. The Court followed its earlier decision in *Mohd. Naseem v. A.R.O./ R.C. & E.O.*, 1980 AWC 186. In view of the above discussion impugned orders cannot sustain. The writ petition is allowed. The allotment order dated 14.4.1983 passed by Respondent No. 3 and revisional order dated 18.1.1985 passed by respondent No. 1 are hereby set aside. The petitioner shall be entitled to cost of Rs. 50,000/- which shall be paid and borne proportionately by respondent Nos. 2 and 3.