

(1975) 02 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 6041 of 1974

Smt. Saran Bhatnagar (died) and after him Jagdish Narain
Bhatnagar and Others

APPELLANT

Vs

Additional District Judge and Others

RESPONDENT

Date of Decision : 25-02-1975

Acts Referred:

Transfer of Property Act, 1882 — Section 111(1)
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7, 7(2)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16, 20(1), 20(2), 21

Citation : (1975) AWC 225

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Advocate : R.N. Bhalla, for the Appellant;

Final Decision : Dismissed

Judgement

Hari Swarup, J.—This petition has been filed by the landlord against the appellate order arising out of proceedings u/s 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (hereinafter called the Act).

2. Sri R.P. Dangwal was posted as Additional District Magistrate (Judicial) at Bareilly. On 14-8-1970, the present accommodation was allotted to him by an order u/s 7(2) of the U.P. (Temporary) Control of Rent and Eviction Act, (hereinafter called the earlier Act). The allotment order contained the following condition:

...the allotment order in his name shall stand terminated on the expiry of 15 days from the date of making over charge of the post of ADM (J), Bareilly.

Sri Dangwal was transferred from Bareilly and an application was moved by the landlords for release of the accommodation in their favour u/s 16 of the Act. It was contended that the accommodation would be deemed vacant after the expiry

of 15 days of the date of Sri Dangwals" making over charge of the office on his transfer. Landlords gave evidence to establish that their need was genuine. The contention of the Respondent tenant was that there was no vacancy as the wife and children of the tenant were already in occupation of the building, and as there was no vacancy the application u/s 16 was not maintainable. The Rent Control and Eviction Officer held that allotment in favour of Sri Dangwal was only for a limited period and that the tenancy in his favour had come to an end on the happening of the event and therefore the vacancy had come to exist in the eye of law. He accordingly directed the release of the accommodation. The tenant went up in appeal. The appeal was allowed by the District Judge on the finding that the order of allotment could not be made for a limited period and accordingly tenancy could not be deemed on the basis of such an allotment order as being for a limited period. He also held that there was no vacancy so as to permit the maintainability of the application u/s 16. The appeal was allowed and the order passed by the District Magistrate was modified. The District Judge directed that the accommodation be released in favour of the landlords u/s 16 of the Act on the accommodation being actually vacated by Sri Dangwal. Landlords have now filed this writ petition challenging that order.

3. Learned Counsel for the Petitioners contended that the view taken by the District Judge is erroneous in law. The argument is that the Rent Control and Eviction Officer, u/s 7 of the earlier Act had jurisdiction to direct the creation of lease for a limited period or till the happening of a contingency, and as that contingency, had occurred, the tenancy had come to an end by reason of Section 111(b) of the Transfer of Property Act and therefore in the eye of law the building should be treated as vacant.

4. In view of the provisions of the present Act it is not necessary for me to go into the question as to whether under the old Act the allotment could be made for a limited period or for the period till a contingency occurs. Section 20(1) of the Act provides:

Save as provided in Sub-section (2), no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner.

Provided that nothing in this Sub-section shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for a fixed term was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in court or otherwise reduced to writing and signed by the tenant.

It is clear from the above that even though tenancy comes to an end the tenant will have a right to continue to remain in occupation till he was evicted in accordance with the Act. That is sufficient to show that under the Act the building cannot be deemed to be vacant in case it is in occupation of the tenant whose

tenancy has come to an end under the Transfer of Property Act. The property being in actual occupation of the tenant whose tenancy has come to an end is not deemed as a vacancy under this Act.

5. Section 16 of the Act contemplates two types of vacancies, viz., actual vacancy and deemed vacancy. There is actual vacancy when the tenant in occupation leaves the accommodation. There is deemed vacancy when one of the conditions mentioned in Section 12 of the Act is present. In the present case there is actual occupation and hence there is no factual vacancy. There is no finding that the tenant has moved his effects from the building or that he has allowed it to be occupied by a person who is not a member of his family or that he as well as members of his family have taken up residence elsewhere. The learned District Judge cannot therefore be said to have committed any error of law in taking the view that the building was not vacant.

6. Learned Counsel for the Petitioners then contended that the application should have been treated by the authorities as an application u/s 21 of the Act as the prayer contained in the application was for the eviction of the tenant in occupation or for possession after release. He has contended that the order of the District Magistrate should be restored treating the application as one u/s 21 of the Act. But in the present case neither the District Magistrate nor the District Judge has compared the needs of the landlords with those of the tenant. The order of the District Magistrate cannot therefore be treated as an order validly passed u/s 21. The remedy of the Petitioners is to move the District Magistrate u/s 21 of the Act. The application u/s 16 could not have been allowed except in terms of the order of the District Judge.

7. In the result, the petition fails and is dismissed with costs on parties.