

(1999) 01 AHC CK 0063

In the Allahabad High Court

Case No : C.M.W.P. No. 586 of 1982, Connected with C.M.W.P. No. 3576 of 1982

Smt. Shakuntala Agrawal

APPELLANT

Vs

District Judge, Kanpur and others

RESPONDENT

Date of Decision : 06-01-1999

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(1), 16, 16(5), 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 13(4), 9(3)

Citation : (1999) 1 AWC 907

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Nikhil Chandra, Pradeep Chandra and Vijai Bahadur Singh, for the Appellant; S.C. and K.K. Tripathi, for the Respondent

Final Decision : Partly Allowed

Judgement

Sudhir Narain, J.—These two writ petitions are disposed of together as they relate to common questions of law and facts. The reference to the parties shall be taken from Writ Petition No. 3576 of 1982.

2. The facts, in brief, are that the petitioner is owner and landlady of premises No. 32/80 Ghumini Bazar. Kanpur. The ground floor consists of many shops and first floor consists of 9 rooms, latrine, bath room and kitchen, etc. Respondent No. 3 filed an application for allotment of the first floor premises consisting of 4 rooms on the allegations that one Sheo Das was tenant of the accommodation in question and as he had vacated the same, the accommodation should be deemed as vacant. The Rent Control and Eviction Officer asked the Rent Control Inspector to submit a report who submitted a report that one Sheo Das was tenant of the accommodation in question on the first floor and he having vacated the same, the accommodation should be treated as vacant. He recorded the statement of one Jai Narain son of Ram Narain and one Misri Lal, who had stated that Sheo Das was a tenant and he had left the accommodation. It was further indicated

that Smt. Shakuntala Devi, the petitioner was in its occupation but she had permitted it to be occupied by one Sukh Nandan. The petitioner filed objection and it was denied that Sheo Das was a tenant of the disputed premises. It was Stated that she had three Munims, namely Ram Ball. Sheo Nandan and Mukesh Prasad who were looking after her property and business. Respondent No. 2 after considering the material on record, came to the conclusion that Sheo Das was a tenant and after it was vacated by him the landlady unauthorized permitted one Sukh Nandan to occupy the accommodation in question and declared vacancy on 3.7.1981. After declaring vacancy, he passed an allotment order in favour of respondent No. 3 on 7.8,1981. The petitioner filed a revision against the said order before respondent No. 1 who has dismissed it on 18.1.1982, The petitioner filed an application for review of these orders before respondent No. 2 u/s 16 (5) of U. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act, 1972 (in short "the Act"). Respondent No. 2 rejected the application on 23.1.1982 on the ground that the revision filed by the petitioner having already been dismissed against the order declaring vacancy and allotment order by the District Judge, the - review application was not maintainable. The petitioner preferred a revision against that order before respondent No. 1 who dismissed It on 5.2.1982.

3. The petitioner has filed Writ Petition No. 586 of 1982 again., the order dated 3.7.1981 declaring vacancy, the order dated 7.8.1981 passing the allotment order in favour of respondent No. 3 and order dated 18.1.1982 dismissing the revision against the aforesaid order. Writ Petition No. 3576 of 1982 has been filed against: the orders which were already challenged in Writ Petition No. 586 of 1982 as well as the order dated 23.1.1982 passed on review application filed by the petitioner and the order dated 5.2.1982 dismissing the revision against the aforesaid order.

4. I have heard Sri Vijai Bahadur Singh, learned counsel for the petitioner and Sri K. K. Tripathi, learned counsel for the contesting respondents.

5. The main thrust of the submissions of the learned counsel for the petitioner is that respondent No. 2 passed the order declaring the accommodation in question as vacant on the assumption that one Sheo Das was a tenant of the accommodation in question but there was no cogent evidence to prove this fact. The petitioner had filed affidavit of one Sheo Nandan, who denied that Sheo Das was a tenant. Respondent No. 3 had filed a voters' list which indicated that Sheo Das was occupying the premises in question. From the voters' list, an inference was drawn that Sheo Das was residing in the premises in question. It is a matter of assessment of evidence. Secondly the petitioner had herself stated that the premises in question was in occupation of her three Munims namely, Ram Ball, Sheo Nandan and Mahesh Prasad. The petitioner, however, failed to show that these Munims were required for carrying on her business. She did not produce any document or any other evidence to show that any business was being carried on by the petitioner and in that connection, these persons were engaged as Munims. In absence of such evidence, respondent No. 2 as well as respondent

No. 1 rightly held that the accommodation should be treated as vacant. Admittedly, the landlady was not in its personal occupation. The building, if is in possession of a person, who is not a member of the family as defined u/s 3 (g) of the Act, the same shall be deemed as vacant u/s 12 (1) (a) of the Act. The petitioner could have permitted her servant and employees to occupy the building on her behalf but this fact has to be established by cogent evidence by the petitioner. The respondent No. 2 has recorded a finding that the accommodation in question was occupied by persons who were not shown the employees or members of the family, the accommodation in question shall be deemed as vacant. This finding does not suffer from any illegality.

6. The next submission of the learned counsel for the petitioner is that the accommodation was declared as vacant by respondent No. 2 on 3.7.1981 and thereafter it was allotted to respondent No. 3 on 7.8.1981 without any notice to her as required under sub-rule (3) of Rule 9 of the Rules framed under the Act which provides that the District Magistrate shall issue a notice to the landlord intimating the date fixed by him for consideration of allotment applications.

7. Respondent No. 3, in para 12 of the counter-affidavit, has stated that the notice was given to the petitioner before the allotment order was passed by respondent No. 2. It is mentioned that the order-sheet shall be produced at the time of the arguments. The petitioner has neither produced a copy of the order-sheet nor it has been annexed with the counter-affidavit. It has not been indicated as to whether the notice was issued to the petitioner by registered post or It was served through process server and if so what was his report. There is no material to establish that the petitioner was served with a notice of the date fixed for hearing on the applications for allotment. The petitioner was entitled to a notice of the date fixed for hearing on the allotment applications. If an accommodation is declared as vacant, the Rent Control and Eviction Officer shall proceed to decide the allotment applications. In case the landlord files an application for release, it is the duty of the Rent Control and Eviction Officer to consider the release application. Sub-rule (4) of Rule 13 provides that no allotment in respect of the building covered by an application under the Rules shall be made unless the release application has been rejected. The landlord can otherwise also raise an objection in respect of the allotment applications which may have been submitted before him for the purpose of the allotment of the building. Sub rule (3) of Rule 9 specifically provides that he shall issue a notice to the landlord intimating him the date fixed for allotment. In *Smt. Praveen Azad v. 1st Additional District Judge, Budaun and others*. 1997 (2) ARC 448, considering this Rule, it was held that the Rent Control and Eviction Officer is required to issue notice to the landlord fixing a date for disposal of the applications for allotment and further release and the allotment applications cannot be disposed of simultaneously.

8. Learned counsel for the respondents urged that this controversy was not raised before the" revisional authority. Respondents have not disclosed the name

of the counsel who argued the matter Indicating that this point was not urged before the revisional authority. In any case, this plea was taken in the writ petition and the respondent No. 3 was fully aware of this fact. He has not placed any material or made necessary averments which could show that respondent No. 2 had issued notice to the petitioner regarding the date of considering of allotment applications.

9. In view of the above, both the writ petitions are partly allowed. The writ petition against the order declaring vacancy dated 3.7.1981 is hereby dismissed. Writ Petition against the order of allotment dated 7.8.1981 and subsequent orders upholding the said allotment order, are hereby quashed.

10. In the facts and circumstances of the case, the parties shall bear their own costs.