
(2005) 04 AHC CK 0233
In the Allahabad High Court
Case No : C.M.W.P. No. 14536 of 2002

Smt. Shanti Devi and Others	Vs	APPELLANT
Prescribed Authority and Another		RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 3 AWC 2083 : (2005) 2 AWC 2083

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : G.S. Srivastava and Sharad Kumar, for the Appellant; Y.S. Saxena, S.C., for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—This writ petition, by the petitioners under Article 226 of the Constitution of India, is directed against the order dated 10th January, 2002, passed by the prescribed authority under the provisions of U. P. Act No. 13 of 1972 (hereinafter referred to as "the Act"), whereby the prescribed authority has directed impleadment of only some persons as heirs of the deceased-tenant, Narain Das. It is stated by landlord that only some heirs were residing at the time of death of Narain Das in the accommodation in question, namely, the widow Smt. Shanti Devi, daughter Km. Mala and son Binod Kumar and refused to implead four more sons namely Jai Raj, Shanker Lal, Suresh Nath and Narendra Kumar. The wife and the heirs of the deceased Narain Das, therefore, filed this writ petition challenging the order passed by the prescribed authority dated 10th January, 2002, on the ground that the view taken by the prescribed authority is not correct and all the heirs of deceased Narain Das who were residing along with Narain Das in the accommodation in question at the time of his death are entitled to be substituted in place of Narain Das.

2. Learned counsel for the petitioner has submitted that it is not disputed that four sons who have been excluded are sons of Narain Das. The only ground for

their non-substitution taken by the prescribed authority is that they were not residing with Narain Das. This finding is perverse inasmuch as it has arrived at without taking into account material on the record. In paragraph 6 of the writ petition it has been categorically stated that the petitioners filed objection that all the five sons, daughter and widow have been permanently and continuously residing with their father deceased-tenant from the date of tenancy till the date of his death. They are members of Joint Family of the deceased-tenant. Therefore, they are entitled to be substituted in place of Narain Das. In paragraph 7 of the writ petition it is stated that the petitioner No. 1 has also filed her affidavit in support of her objection along with a photostat copy of ration card of the house in question wherein the names of all the persons are entered which is sufficient proof that all the sons of the deceased are living jointly in the house in question as joint family members since the time of the deceased father. In paragraph 8 of the writ petition it is asserted that the prescribed authority without giving proper opportunity of hearing and without perusing the material evidence on the record has allowed the substitution only for substitution of widow, one son and a daughter. In paragraph 9 of the writ petition it is categorically stated that respondent No. 1 while passing the impugned order has not considered the ration card and other material on the record whereas he has relied upon an affidavit filed by the respondent-landlord that these four sons were not living with the deceased-tenant at the time of death of the tenant. It is further asserted in paragraph 11 of the writ petition that the observation by the prescribed authority, namely, the tenant has not controverted the averments made in the affidavit of landlord is Incorrect. Annexure-5 to the writ petition is the counter-affidavit which they have filed before the prescribed authority which has not been looked into by the prescribed authority while passing the impugned order.

3. Learned counsel appearing for contesting respondent has relied upon a counter-affidavit filed by the respondent which is full of typing mistakes. Reply to paragraph 6 of the writ petition is given in paragraph 7 of the said counter-affidavit which is as under :

"7. That the contents of paragraph No. 6 of the writ petition are denied and it is stated that major sons and married daughters are not the members of the family, therefore, might be living with them but it is denied by the deponent that they were living with father but non members of the family and therefore, they are not the members of the joint family and therefore, they cannot inherit the tenancy right."

4. Reply to paragraph 7 of the writ petition is given in paragraph 8 of the counter-affidavit which runs as under :

"8. That the contents of paragraph 7 of the writ petition are denied and in reply it is stated that the ration card may indicate that these persons are living but it is not a proof nor legally permissible that these persons will be the legal heirs of the tenant."

5. In view of the aforesaid statement made in the counter-affidavit, which, as stated, is full of mistakes, the remaining four persons are also sons of deceased tenant. In this view of the matter the stand taken by the landlord deserves to be rejected.

6. At this stage learned counsel for the respondent, Sri Y. S. Saxena, stated that this Court may direct substitution of all the sons who have not been substituted and the prescribed authority may be directed to decide the controversy at an early date.

7. In the facts and circumstances of the case the order of the prescribed authority deserves to be quashed.

8. In view of what has been stated above this writ petition is allowed. The order dated 10.1.2002, is hereby quashed. The prescribed authority is directed to implead the following persons as heirs of deceased tenant, namely, the wife Shanti Devi, son Binod Kumar, daughter Km. Mala, Jai Raj, Shanker Lal. Suresh Nath and Narendra Kumar and decide the application in accommodation with law after giving opportunity to the parties.