

(2006) 01 AHC CK 0209

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6727 of 1988

Smt. Vimla Devi

APPELLANT

Vs

Ist Additional District Judge and Others

RESPONDENT

Date of Decision : 31-01-2006

Acts Referred:

Hindu Succession Act, 1956 — Section 8
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 3

Citation : (2006) 3 AWC 2351

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Rajeev Gupta and O.P. Singh, for the Appellant; R.S. Mishra and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

S.U. Khan, J.—This is tenant's writ petition arising out of orders passed by R.C. & E.O./Additional City Magistrate V Kanpur Nagar in case No. 116 of 1984 u/s 16 of U.P Act No. 13 of 1972 dated 18.4.1985 declaring the vacancy of the accommodation in dispute, dated 6.5.1985 releasing the accommodation in dispute in favour of original landlords respondents 3 to 5 and order dated 29.1.1987 rejecting review/recall application of the petitioner. The review/recall application was registered as case No. 109 of 1986. Aforesaid orders were challenged through Rent Revision No. 16 of 1987. I Additional District Judge, Kanpur Nagar dismissed the revision on 1.4.1988. Said order is also challenged through this writ petition. During pendency of writ petition landlords respondents 3 to 5 sold the property to Jai Narayan and others who have been impleaded as respondents 6 to 8.

2. Property in dispute is numbered as 29/8-A, Dwarika Danish Road Kanpur Nagar which is commercial accommodation/shop comprising of two rooms and one storeroom. The rent is Rs. 17.18/- per month.

3. Petitioner is daughter of late Jagannath who left behind him two sons Mangali Prasad and Suraj Prasad apart from the petitioner. According to the landlords, Mangali Prasad was the tenant while according to the tenant, Jagannath was the tenant. However for the purposes of decision of the controversy in between the parties this fact is wholly irrelevant. Proceedings were initiated before R.C.& E.O on allotment application wherein it was alleged that the tenant of the accommodation in dispute had died and it was in unauthorized occupation of one Kamtaguru. According to the petitioner, after the death of her father Jagannath who was the original tenant, Mangali Prasad inherited the tenancy who died unmarried in 1982 and thereafter tenancy was inherited by Suraj Prasad who also died unmarried on 22.12.1983 and thereafter tenancy was inherited by the petitioner. It was further pleaded by the petitioner that she was carrying on the business of Halwai with the help of Kamtaguru who was servant in the shop since the time of Jagannath.

4. The R.C.& E.O in its order dated 18.4.1985, declared the vacancy and held that the petitioner was unauthorized occupant of the premises in dispute, after the death of her brothers Mangali Prasad and Suraj Prasad. The R.C.& E.O held the possession of the petitioner to be unauthorized on the ground that she being married sister of Mangali Prasad and Suraj Prasad was not included in the definition of family of her brother, R C.&. E.O also held that in any case she should have either got the shop allotted in her favour after the death of her brothers or should have obtained the consent of the landlord.

5. In my opinion, the aforesaid view of the R.C.& E.O is clearly erroneous in law. In respect of commercial building after the death of tenant, tenancy devolves upon his heirs by virtue of definition of tenant provided u/s 3(a)(2) of U.P Act No. 13 of 1972. u/s 8 of Hindu Succession Act 1956, property of a male Hindu devolves firstly upon the heirs specified in class I of the schedule and in their absence upon the heirs specified in class II of the schedule. Mangali Prasad on his death neither left any heir of class 1 nor father nor son's daughter's son, nor son's daughter's daughter hence his property including the tenancy of the shop in; dispute devolved upon his brother, Suraj Prasad under class II Clause (ii)(3) of the schedule of Hindu Succession Act, 1956. Similarly Suraj Prasad on his death neither left behind any heir of class I nor father, son's daughter's son, son's daughter's daughter, brother hence on his death petitioner inherited his property including tenancy right in the accommodation in dispute under class II Clause (ii) (4) of the said schedule.

6. Accordingly I am of the opinion that R.C. & E.O wrongly held the petitioner to be unauthorized occupant. R.C. & E.O clearly held that petitioner was in occupation of the property in dispute.

7. In this view of the matter there can not be said to be any vacancy. Order declaring vacancy is therefore liable to be set-aside. If vacancy declaration order is set-aside then consequent release order automatically vanishes.

8. Writ petition is therefore allowed. All the four impugned orders are set-aside.
9. I have held in *Khursheeda v. A.D.J.* 2004 (2) ARC 64 that while granting relief to the tenant against eviction in respect of a building covered by Rent Control Act, writ court is empowered to enhance the rent to a reasonable extent.
10. Property in dispute consists of three rooms, is commercial in nature and is situate in Kanpur, which is most expensive city of Uttar Pradesh. Rent of Rs. 17.18/- per. month is virtually as well as actually no rent.
11. Accordingly, it is directed that with effect from February 2006 onwards, petitioner shall pay rent to the landlord respondent at the rate of Rs. 2000/- per. month inclusive of water tax and other permissible taxes. No further amount shall be payable by the tenant towards taxes etc.