

(2001) 05 AHC CK 0068
In the Allahabad High Court
Case No : C.M.W.P. No. 20724 of 2000

Smt. Yoothika Bhadoria

APPELLANT

Vs

Upper Nagar Magistrate (V)/Prescribed Authority, R.C.E.O.,
Kanpur Nagar and others

RESPONDENT

Date of Decision : 17-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16, 2(1)

Citation : (2001) 2 AWC 1574 : (2001) AWC 1574

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : M.P. Srivastava, for the Appellant; Rajesh Tandon, S.N. Mishra, Atul Dayal and S.C., for the Respondent

Judgement

B. K. Rathi, J.—The premises in dispute is a shop situated in premises No. 3/119. Vishnupurl, Kanpur Nagar. The respondent Nos. 2 to 4 are the landlords of the premises, who purchased the same from the previous owner Smt. Mohini Tiwari by sale deed dated 17.6.1998. One Sri Nirankar Verma applied for the allotment of the shop. The Rent Control Inspector, on the basis of the application for allotment inspected the shop and submitted report on 30.10.1999. Annexure-4 to the petition : that the petitioner is unauthorised occupant of the said shop. Thereafter, a notice was issued to the petitioner which was served by publication. The petitioner did not file any objection in the proceedings. The shop was declared vacant by the respondent No. 1 by order, Annexure-9 to the petition on 10.4.2000. Thereafter, the respondents-landlords moved an application for release. Their release application was allowed and the premises was released in favour of the respondents by order dated 17.4.2000, Annexure-11 to the petition. The petitioner has made a request for quashing of the orders, Annexure-9 dated 10.4.2000 declaring vacancy and Annexure-11 dated 17.4.2000 of release in favour of landlords by means of this petition under Article

226 of the Constitution of India.

2. I have heard Sri M. P. Srivastava, learned counsel for the petitioner and Sri Rajesh Tandon. senior advocate assisted by Sri S. N. Mishra, learned counsel for respondent No. 3.

3. Firstly, it is contended that no notice before declaration of vacancy was served on the petitioner, who is in occupation of the shop. Therefore, the order declaring vacancy is illegal. This contention cannot be accepted. The premises was inspected by the Inspector and, therefore, it can be presumed that the petitioner came to know of the proceedings. A notice was also sent and was served by affixation as the petitioner was not available. Thereafter, the notice was published in the newspaper, Annexure-5 to the petition. Therefore, there was due service of the notice on the petitioner and the orders cannot be quashed for this reason.

4. The next contention of the learned counsel for the petitioner is that the premises is a new construction and its first assessment came into force from 1.4.1982 ; that the shop in dispute was given in the tenancy of the petitioner by the then landlady Smt. Mohini Tiwari in July. 1986 and at that time U. P. Act No. XIII of 1972 was, therefore, not applicable to the premises In suit and, therefore, there was valid tenancy : that, therefore, the petitioner is not an unauthorised occupant. In support of argument, the learned counsel for the petitioner has relied on the copy of the assessment, Annexure-2 to the petition. This assessment is of the year 1983 and it is mentioned that it came into force from 1.4.1982. However, it is pointed out that it has been mentioned in this assessment that correction has been made from 30.9.1982. The respondents have filed another assessment, Annexure-7 to the petition which shows that the shop was first assessed from 1.4.1979. In this assessment, Smt. Mohini Tiwari has been shown as landlady and five shops have been shown in the disputed premises and the names of the tenants of all the shops have also been shown. Therefore. the contention of the learned counsel for the petitioner cannot be accepted. Had the shop was constructed in the year 1982, there is no question of assessment, Annexure-7 to the petition and details of the shops and tenants. The first assessment is for the years 1978 to 1983 in which it is mentioned that the assessment came effective from 1.4.1979.

5. Learned counsel for the petitioner has also argued that Smt. Mohini Tiwari and others the previous owners filed Suit No. 2 of 1986 against Sri Ram Shanker and others tenants of the same house, the copy of the plaint is Annexure-3 to the petition in which it was pleaded that it was constructed in the year 1982. The suit was decreed on 7.2.1995. It is contended that issue No. 2 was framed in the suit "whether U. P. Act No. XIII of 1972 apply to the premises or not". This issue was decided and it was held that the premises in suit was constructed in the year, 1982 and was first assessed from 1.4.1982. The suit having been filed in the year 1986, the U. P. Act No. XIII of 1972 does not apply. It is, therefore, contended that the previous landlady alleged that the premises was constructed

in the year, 1982. This allegation is binding on the respondents as they have purchased the premises from Smt. Mohini Tiwari and others.

6. The argument of the learned counsel cannot be accepted. It appears that Smt. Mohini Tiwari and others filed a suit for eviction wrongly alleging that the premises is a new construction. It appears that they alleged wrong facts to avoid the mischief of U. P. Act No. XIII of 1972 and pleaded that the premises was first assessed from 1.4.1982. The tenant could not show that it was first assessed from 1.4.1979. Therefore, the suit was decreed. On the basis of that judgment, therefore, it cannot be accepted that the premises was first assessed from 1.4.1982 and was constructed in the year 1982.

7. On the other hand. Annexure-7 to the petition is the assessment for the years. 1978 to 1983 which show that the assessment of the building was first made from 1.4.1979. Therefore, the date of the completion of construction is 1.4.1979 according to Explanation I of Section 2 (1) of the Act.

8. The next question that arise for decision from the arguments of the learned counsel is whether the premises was taken on rent by the petitioner from July, 1986. It is contended that the rent receipts were issued which have been filed and are Annexure-1 to the petition. These rent receipts show that they are in the name of Ganga Singh Bhadoria and other persons. The rent receipts in the name of the petitioner were Issued from the year 1989. Therefore, it cannot be accepted that the petitioner took the premises on rent in the year 1986. In this connection, it may be mentioned that agreement of lease, Annexure-6 to the petition was also executed between the petitioner and the then landlady. This agreement of lease is dated 22.10.1989. On the face of this document, it cannot be accepted that the lease was given to the petitioner in the year 1986. On the other hand, it clearly shows that the lease was given in the year 1989.

9. The result, therefore, is that the premises was constructed in the year, 1979 and the first assessment became operative from 1.4.1979. It was given in the tenancy of the petitioner by the erstwhile landlady on 22.10.1989. Therefore, at that time U. P. Act No. XIII of 1972 was applicable to the premises. There is no allotment in favour of the petitioner. Therefore, the tenancy is illegal and the petitioner is an unauthorised occupant. The vacancy was rightly declared by the respondent No. 1.

10. As regards the release, it cannot be challenged by the petitioner who is an unauthorised occupant.

11. The petition is without merit and is hereby dismissed. The stay dated 3.5.2000 is vacated.