
(1990) 12 AHC CK 0091

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13118 of 1987

Smt. Zubaida Khatoon

APPELLANT

Vs

Rent Control and Eviction Officer and Another

RESPONDENT

Date of Decision : 14-12-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16, 16(1), 16(5), 18

Citation : (1991) 1 AWC 292

Hon'ble Judges : S.C. Verma, J

Bench : Single Bench

Advocate : Rajesh Tandon and M.A. Qadeer, for the Appellant;

Final Decision : Allowed

Judgement

S.C. Verma, J.—The order dated 30th June 1987 passed by the Rent Control and Eviction Officer, restoring the possession of the disputed premises to the former occupant/tenant, has been challenged in the present petition under Article 226 of the Constitution of India.

2. The Respondent No. 2 was the tenant of the disputed house on the basis of allotment order dated 7th August 1961. The landlord made repeated attempts for the dispossession of the tenant. Firstly, an application u/s 21 of the Act was filed for the release but the same was dismissed and thereafter appeal u/s 22 of the U.P. Act No. 13 of 1972 was also dismissed by an order dated 7th September 1982. The tenant apprehending the nefarious designs of the landlord obtained an injunction order dated 22nd December 1986 in Suit No. 221 of 1986 to restrain the landlord from interfering with the possession of the tenant and from demolishing the property in dispute. This order was confirmed by an order dated 20th December 1987.

3. In the meantime the landlord filed an application dated 10th December 1986 before the Rent Control and Eviction Officer for declaring vacancy of the disputed

premises alleging that the tenant, Tufel Ahmad, has left the house and has shifted to another house at Mohalla Katoratal, Kashipur. The report of the Rent Control Inspector was also obtained in this regard and according to the report dated 27th January 1987 it was found that the tenant had shifted to some other accommodation and the premises were lying locked. The Rent Control and Eviction Officer, thereafter issued a show cause notice to the parties. The said notice was treated to be served, on the tenant by refusal and the vacancy was declared by an order dated 6th May 1987. The premises in dispute were then released in favour of the landlord by an order dated 30th May 1987. In pursuance of the order of release the possession of the premises was delivered to the landlord on 30th June 1987 after completion of the formalities and by issuing notices in form "B", "C and "D" of the Rules.

4. Immediately after the possession of the disputed premises was delivered to the Petitioner on 30th June 1987, the tenant, Respondent No. 2, filed an application dated 30th June 1987 for restoration of the possession in his favour. This application was taken up for hearing and on the same date orders were passed to restore back the possession to the tenant Respondent No. 2.

5. This order has been challenged in the present petition on various grounds and it has been alleged that without setting aside the orders dated 6th May 1987 declaring the vacancy and the order dated 30th May 1987 releasing the accommodation in favour of the landlord, the order directing for the restoration of possession to the tenant is illegal, void and without jurisdiction. Moreover the Rent Control and Eviction Officer, has no power to recall the order or to review its own order.

6. The case set up by the Respondent No. 2 was that an application u/s 16(5) of the U.P. Act No. 13 of 1972 has already been filed on 6th July 1987 and the same has not been disposed of so far. It has also been alleged that the correct and complete facts were not brought to the notice of the Rent Control and Eviction Officer before the orders dated 6th May 1987 and 30th May 1987 were passed. The injunction order dated 22nd December 1986 and the order confirming the same dated 20th December 1987 are still in operation. It was further alleged that the Petitioner has filed a revision u/s 18 of the Act before the District Judge and has obtained an interim order staying the operation of the order dated 30th June 1987 passed by the Rent Control and Eviction Officer. The said revision is still pending and as such present writ petition is not maintainable.

7. I have heard learned Counsel for the parties. As regards the pendency of the revision u/s 18 of the Act, the learned Counsel for the Petitioner has stated in the rejoinder affidavit that the same was dismissed as withdrawn by an order dated 11th August, 1987. At this stage I refrain from expressing any opinion with regard to the validity of the orders dated 6th May 1987 and 30th May 1987 as the Respondent No. 2 has already filed an application u/s 16(5) of the Act, which is pending and is under consideration before the Rent Control and Eviction Officer.

8. It is however, clear that order dated 30th June 1987 directing for restoration of the possession in favour of Respondent No. 2 is parse illegal and does not have been crutches to stand. The Rent Control and Eviction Officer had no authority to order for the restoration of possession merely on an application by the tenant without adjudicating the entire dispute specially when the order declaring the vacancy u/s 12 and the order of release u/s 16(1)(b) of the Act were in operation. The only reason stated in the impugned order seems to be the injunction order dated 22nd December 1986 passed in Civil Suit No. 221 of 1986.

9. The U.P. Act No. XIII of 1972 is a special Act and is a self contained code. The principle that a general provision should give way to a special provision is well settled. Where Legislature gives two directions one covering a large number of matters in general and another to only some of those, its intention is that the later direction should prevail over the former one. The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, rovisions of Special Act must prevail and the orders declaring vacancy and release in favour of landlord cannot be treated as nugatory.

10. For the reasons stated above, in my opinion, the Rent Control and Eviction Officer had no jurisdiction to pass the impugned order as there was no occasion for him to adjudicate the proceedings either u/s 12 or u/s 16 of the Act. The petition succeeds and the impugned order dated 30th June 1987 passed by the Rent Control and Eviction Officer, in case No. 3 of 1987 is set aside, but there shall be no order as to costs.

11. Before parting with the case, learned Counsel for the Respondent stated that the application u/s 16(5) of the Act filed on 6th July 1987 is still pending and no orders have been passed by the Rent Control and Eviction Officer. The Rent Control and Eviction Officer, Kashipur is directed to dispose of the aforesaid application after affording opportunity of hearing to the parties within period of three months from the date of production of certified copy of this order.