

(1997) 09 AHC CK 0055
In the Allahabad High Court
Case No : C.M.W.P. No. 17012 of 1997

Suraj Bhan Jain and another

APPELLANT

Vs

Ist Additional District Judge, Agra and others

RESPONDENT

Date of Decision : 04-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(4), 16(1), 18, 18(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 13(4)

Citation : (1998) 1 AWC 266

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : H.S. Nigam, for the Appellant;

Judgement

J.C. Gupta, J.—This writ petition has been filed for the quashing of the order dated 23.4.1997 passed by respondent No. 1 whereby petitioner's application for bringing additional evidence on record of revision filed u/s 18 of U. P. Act No. 13 of 1972. hereinafter called as the Act, has been rejected.

2. The facts relevant in brief are that one Jitendra Prasad Jain initiated proceedings before the Rent Control and Eviction Officer by moving an application for the release of the accommodation in question, which is a residential building, stating therein that tenant-petitioner No. 1 has ceased to occupy the tenanted accommodation as he has taken up a permanent residence in Delhi and has allowed the premises to be occupied by petitioner No. 2. who is not a member of his family. The proceedings were contested by the petitioners. By the order dated 13.3.1987 respondent No. 2 declared the accommodation in question as vacant by holding that there was a deemed vacancy u/s 12 of the Act and released the same in favour of the landlord for his personal requirement. Aggrieved by the said order, the petitioners have filed Revision No. 24 of 1997 u/

s 18 of the Act. which is still pending before respondent No. 1.

3. During the pendency of the said revision, the petitioners moved an application for admitting affidavit of petitioner No. 2 as additional evidence whereby certain facts were sought to be brought on record to show that the landlord need for the disputed accommodation was not bonafide and his application for release was liable to be rejected. The said application was opposed by the landlord on the grounds that while exercising powers u/s 18 of the Act, the revisional court has no power to admit additional evidence and that the petitioners have no right to contest the release application or to lead any evidence on the said question. Respondent No. 1 by the impugned order rejected the said application of the petitioners.

4. Since the affidavits have been exchanged and the parties counsel have been heard at length, this writ petition is finally disposed of at the admission stage itself.

5. Learned counsel for the petitioners Sri H.S. Nigam argued with vehemence that the view of the lower revisional court that in law no additional evidence could be admitted in a revision filed u/s 18 of the Act. is patently erroneous and in support of his argument, learned counsel has relied upon a number of decisions of this Court. Reliance has been placed on the decisions in (1) Lallu Lal Gupta v. IVth Additional District Judge and others 1979 (UP) RCC 372 ; (2) Bihari Lal v. IInd Additional District Judge, Mathura and others 1983 (2) ARC 146 ; (3) Smt. Shanti Devi v. District Judge, Farrukhabad and others 1982 ARC 92 and (4) Radhey Shyam and another v. Additional District Judge, Unnao and others 1984 (2) ARC 404. In all these decisions, the view taken was that a revisional court in suitable cases is entitled to take additional evidence and while exercising the power of taking additional evidence, the revisional court has to act on the principles contained in Order XLI. Rule 27, C.P.C.

6. In the decision of Lallu Lal Gupta [supra], it was further held that power to admit additional evidence is subject to the conditions mentioned in clauses (a), (b) and (c) and Order XLI, Rule 27, C.P.C. The power is not wide as that of a court trying a suit. It was also held that the power of inquiry in a revision is not as wide as that of appeal. The power of appeal is one of review ; whereas the power of revision is supervisory. In exercise of the supervisory power, a Revision Authority can interfere only if the error committed is that of jurisdiction.

7. On the other hand, Sri Sushil Harkauli, learned counsel for the respondents defended the impugned order. He urged that petitioners' application has been rejected not only on the ground that no additional evidence could be admitted in revision, but also on the grounds that the petitioners have no right to contest the matter of consideration of release application and to lead any evidence with regard to the said matter. He further invited the attention of the Court to the fact that the revision is pending since 1987 and the application was moved mala fide with an oblique motive to further delay the disposal of the revision, which itself

was not maintainable. Sri Harkauli in support of his arguments placed reliance on the Full Bench decision in the case of Talib Hasan and another v, 1st Additional District Judge. Nainital and others 1986 (1) ARC 1. While interpreting Section 16(1) (b) of the Act and Rule 13 (4) of the Rules framed thereunder, the Full Bench of this Court in the aforesaid case held that as the right of the prospective allottee for consideration of his application for allotment commences after the rejection of the release application of the landlord, he has no right or interest or locus standi to contest the release application. He has no right to file objection or to adduce evidence, as the question of release is a matter between the landlord and the Rent Control Authorities. Sri Harkauli further argued that since the petitioners have been held to be unauthorised occupants and the accommodation in question has been declared vacant u/s 12 of the Act, they do not possess any right to have any say in the matter of release of the accommodation in question in favour of the landlord, or to lead evidence in respect of the said matter.

8. A perusal of the impugned order would indicate that petitioners' application for admitting additional evidence on record has been rejected on a number of grounds and it is not correct to say that the said application has been rejected solely on the ground that the revisional court does not possess any power to admit additional evidence while exercising jurisdiction u/s 18 of the Act. It would appear that the revisional court has also held that the petitioners have no right in law to contest the release application or to challenge the order releasing the accommodation in favour of the landlord. In all those cases on which reliance has been placed on behalf of the petitioners, it was held that the additional evidence in revision can be admitted in suitable cases on the principles contained in Order LXI, Rule 27, C.P.C., but before that power could be exercised, it has to be seen by the court that a right vests in the party seeking to bring additional evidence on record. In the present case, undisputedly the petitioners wanted to bring on record certain facts to show that landlord's need of the house in question was not bona fide. The question that arises for consideration is whether such a right vested in the petitioners? In the Full Bench decision of Tolib Hassan (supra), it has been held that the question of release is a matter between the Rent Control Authorities and the landlord and no third person has got any right to contest the said matter or to adduce evidence. The position of an unauthorised occupant is no better than that of third person. Sri H..S. Nigam, however, placing reliance on a few divisions of this Court argued that there is no legal bar for the Rent Control Authorities to take evidence from any source including from the prospective allottee or any third person. He placed reliance on the decision in Ram Kumar v. VIIth Additional District Judge, Meerut and others 1993 (1) ARC 309. In this case, Hon"ble R. R. K. Trivedi, J., set aside the order of the revisional court whereby the order of Rent Control and Eviction Officer allotting the accommodation in favour of the petitioners was revoked and the application for release of the landlord was allowed. In that case, the Hon"ble Judge upheld the order of the Rent Control and Eviction Officer by holding that without violating the dictum of the Full Bench, the Rent Control and Eviction Officer may take such

step which according to his wisdom may be necessary for testing the bona fide of the claim of the landlord and in this process, he could consider the affidavits filed before him including that of the prospective allottee. In this decision also it was held that no third person has any right to file objection or to adduce evidence and then to enter into elaborate arguments in the matter of consideration of release application. Reliance was also placed on the decision in *Bisheshwar v. VIth Additional District Judge, Varanasi and others* 1994 (2) ARC 85. In this case, the Rent Control and Eviction Officer had released the disputed property in favour of the landlord and the order was confirmed in revision. The writ petition was filed by a prospective allottee. The petitioner filed an application before the Rent Control and Eviction Officer for allotment as well as another application that the application of the landlord for release of the disputed premises be rejected and in support of his application, he also filed an affidavit stating that the need of the landlord was not bonafide and genuine. The Rent Control and Eviction Officer, after taking into consideration the report of the Rent Control Inspector and the affidavit filed by the landlord, came to the conclusion that the need of the landlord was bonafide. He also heard the arguments raised on behalf of the prospective allottee in opposition to the release application filed by the landlord, but took the view that a prospective allottee has no right to contest a release application filed by the landlord. Two questions came up for consideration before this Court. Firstly whether a prospective allottee has a right to contest the release application and secondly whether he has a right to lead evidence to show that the claim of the landlord that his need is bona fide, is incorrect. The learned single Judge relying upon the Full Bench decision in *Talib Hassan's case* (supra), held that the prospective allottees have no *locus standi* in the disposal of an application for release. The submission that the prospective allottee is entitled to be heard on the principle of *audi alteram partem* even in an application u/s 16 (1) (b) was rejected as being devoid of any force. The right to contest a matter comes to a person only when there is a vested right in him. There is no vested right in a prospective allottee-till the release application is rejected. It was further held that if a prospective allottee has not been given a right to contest release application, he cannot be given a right to lead evidence in support of his objection to the release application. The learned Judge then went to consider the scope of Section 34 of the Act which provides that the District Magistrate shall, for the purpose of holding enquiry under the Act, have the same powers as are vested in civil court under the CPC and in that process, it is for him to take such evidence as he considers fit. The learned Judge was of the view that the power to take evidence by the District Magistrate while considering the application for release u/s 16 (1) (b) of the Act is very wide and he can take evidence from any source including from a prospective allottee, but prospective allottee cannot claim any right to adduce evidence.

9. In the case of *Khunri Singh v. District Judge, Kanpur and others* 1995 (2) ARC 390, it was held that a prospective allottee has no right to file writ petition against the order releasing the disputed accommodation in favour of the landlord.

10. In the case of Smt. Radha Sharma v. With Additional District Judge, Bulandshahr 1997 (1) ARC 397. the view taken was that a prospective allottee has no right to file a revision against the order passed by the Rent Control and Eviction Officer releasing the disputed accommodation in favour of the landlord u/s 16 (1) (b) of the Act. Similarly in another decision in Ved Prakash v. VIIIth Additional District Judge, Ghaziabad and others 1993 (1) ARC 442, the Rent Control and Eviction Officer had rejected the release application, but the same was allowed in revision u/s 18 of the Act and it was held by this Court that the writ petition against such order was not maintainable at the instance of a prospective allottee.

11. In the case of Ceep Industrial Syndicate Ltd., Allahabad and others v. Vinod Kumar Agarwal and others 1997 (1) ARC 396, it has been held that the position of an unauthorised tenant is not better than that of the prospective allottee. While deciding the said case Hon"ble R.H. Zaidi, J., has held that:

"It is well-settled in law that release is a matter between the landlord and the District Magistrate. The outgoing tenants or the prospective allottees have got no right to interfere in the matter of release as would appear from the sub-section (4) of Section 12 read with proviso to sub-section (1) of Section 16 of the Act. The Magistrate, i.e., Rent Control and Eviction Officer is required to give an opportunity of being heard before making an order of allotment under clause (a) of sub-section (1) of Section 16 of the Act. but he is not required to give an opportunity in the cases of release and has got the power to pass the order of release without affording an opportunity of hearing to the tenant in favour of the landlord. The outgoing tenant is a person, who ceases to occupy the building, has got no right to be heard before the Rent Control and Eviction Officer. In the case of release of the building in favour of the landlord, the outgoing tenant will also have no right to file a revision u/s 18 of the Act, on the same apology for the reason that he cannot be said to be the person aggrieved within the meaning of the term used in sub-section (1) of Section 18 of the Act."

12. From the aforesaid decisions including the Full Bench decision, the position of law is very clear that a prospective allottee or an unauthorised occupant has no say in the matter of consideration of release application filed by the landlord u/s 16 (1) (b) of the Act and as such, he has also no right to adduce or lead evidence in support of the objection. It is a different matter that while considering the bonafide of the landlord's claim for release of the accommodation, the District Magistrate or the Rent Control Authority may make such enquiry as he may deem fit and in the process, he may call for any record or take such evidence, which may, in its opinion, be necessary for judging the question of bona fide need of the landlord. Simply because such a power vests in the Rent Control Authorities, a prospective allottee or an unauthorised occupant cannot claim that a particular piece of evidence should be brought on record because under law he possesses no right to contest the release application.

13. In the present case since no vested right exists in favour of the petitioners to

challenge the release order or to lead evidence in opposition to the release application of the landlord, this Court would not be justified in making interference in the impugned order merely on the ground that while rejecting the application of the petitioners for additional evidence, the revisional court has also held that the revisional court did not possess power to admit additional evidence in exercise of jurisdiction u/s 18 of the Act.

14. Before writ jurisdiction of this Court could be invoked, the petitioner has to satisfy the court that a right vests in him which has been infringed. The writ petition is maintainable only where it is found from the order impugned that the fundamental principle of law has been violated and further that such an order causes substantial injustice to the party aggrieved.

15. In the case of Kripa Shankar Tripathi Vs. Deputy Director of Education, IVth Region and Others, it has been held that before invoking writ jurisdiction under Article 226 of the Constitution of India, the petitioner must satisfy the court that a legal right exists in his favour, which has been invaded or infringed. In the absence of the existence of a legal and enforceable right in his favour, the petitioner is not entitled to get any writ or direction issued in his favour under Article 226 of the Constitution. Where the petitioner does not possess any enforceable legal right in himself, this Court is not required to make a futile attempt to Judge the correctness or otherwise of the action or order of the authority concerned because such an attempt will be purely academic and of no consequence. Since the petitioners have no vested right in them to lead evidence in opposition to petitioners' release application, they will certainly have no right at the revisional stage also. Once they did not possess such a right, the application for admitting additional evidence on record was itself not maintainable and was liable to be rejected. For these reasons this Court finds no sufficient ground to quash the impugned order. Since the revision is pending before the revisional court for the last about ten years, the same shall be disposed of expeditiously within a period of six weeks from the date a certified copy of this order is produced before it.

16, For the reasons stated above, this writ petition is dismissed. In the circumstances no order as to costs is made. Interim order, if any, shall stand vacated.