
(2000) 08 AHC CK 0096
In the Allahabad High Court
Case No : Writ Petition No. 38739 of 2000

Surya Nath Pandey

APPELLANT

Vs

4th Addl. District Judge, Gorakhpur and others

RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 11, 12, 13, 15, 16
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 10, 11, 12, 16, 28

Citation : (2000) 4 AWC 2933

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : R.U. Ansari and H.N. Singh, for the Appellant; S.C. and A.K. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

R. H. Zaidi, J.—Present petition arises out of proceedings u/s 16 of the U. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act, 1972 (U. P. Act No. XIII of 1972), (for short the Act), and is directed against the order dated 16.8.2000 whereby revisions filed by respondent Nos. 2 and 3 against the order of allotment dated 16.1.1986 and against the order dated 13.6.1986 dismissing the application u/s 16 (5) of the Act, passed by the Rent Control and Eviction Officer, were allowed by the revisional authority, IVth Additional District Judge, Gorakhpur.

2. The facts of the case giving rise to the present petition, in brief, are that one Ayodhya Nath Dey happened to be the owner and landlord of the building in question. He died leaving behind Smt. Latika Sarkar, respondent No. 3, (daughter) and Deepu alias Subiechar Dey (son). During his lifetime, he had executed a will on 10.1.1977 in favour of his daughter. Smt. Latika Sarkar, bequeathing the property in dispute in her favour. It appears that an application

for allotment of building In question was made by one Smt. Sharda Devi wife of the petitioner, on 18.1.1985 on the basis of which the Rent Control and Eviction Officer ordered the Rent Control Inspector to inspect the building and submit his report, which was submitted. Thereafter, notice is alleged to have been issued to Deepu alias Subiechar Dey S/o Ayodhya Nath Dey. In the meanwhile, the petitioner who happens to be the husband of Smt. Sharda Devi, also applied for allotment of building in question. It is stated that the said application was made with an endorsement of consent of Smt. Sharda Devi on it to the effect that the building in question may be allotted in favour of the petitioner. The building in question is stated to be declared as vacant on 6.1.1986 and was allotted to the petitioner on 10.1.1986. Immediately thereafter, the petitioner is also alleged to have taken possession of the said building. Respondent No. 3, in the meanwhile, is alleged to have sold the building in question in favour of respondent No. 2, Smt. Prem Rani Srivastava, through a registered sale deed dated 3.2.1986. As soon as the respondent No. 3 came to know about the order of allotment, she filed a review u/s 16 (5) of the Act challenging the validity of the order dated 16.1.1986. A revision is also alleged to have been filed by respondent Nos. 2 and 3 against the said order. It was on 13.6.1986 that the application filed u/s 16 (5) was dismissed by the Rent Control and Eviction Officer. Challenging the validity of the said order, another revision was filed by respondent Nos. 2 and 3. Both the aforesaid revisions were connected and consolidated by the revisional Court and were heard together. The aforesaid revisions were filed by the contesting respondent Nos. 2 and 3 contending that the entire proceedings of allotment were conducted and concluded in contravention of the provisions of the Act, particularly. Sections 12 and 16 and Rules 8. 9 and 14 of the Rules framed under the Act. They were, therefore, null and void and the impugned orders were liable to be quashed. The revisional court, respondent No. 1 afforded full opportunity of hearing to the parties and ultimately upheld the objections raised by the contesting respondents against the impugned orders and allowed the two revisions by his judgment and order dated 16.8.2000. The operative portion of the said judgment is quoted below :

^^iqujh{k.k la-&100@99 ,oa 216@86 lO;; Lohdkj fd;s tkrs gSa A iqujh{k.kk/khu vkns"k fnukad 10-1-1986 o 13-6-1986 vikLr fd;s tkrs gSa A ekeyk fdjk;k fu;a=d ,oa fu"dklu vf/kdkjh] xksj[kiqj dks bl funsZ"k ds lkFk izfrizsf"kr fd;k tkrk gS fd bl fu.kZ; esa O;Dr fd;s x;s fopkjksa ds vuq:i fof/k vuqlkj edku dh fJDrrk mn~?kksf"kr djds vkcaVu izkFkZuk&i= fof/k vuqlkj iqu% fuLrkfjr djsa A ekfyd edkunkj@iqujh{k.kdrkZ fdjk;k fu;a=d ,oa fu"dklu vf/kdkjh] xksj[kiqj ls edku dk rRdky v;/klu iznku djus dk fuosnu djds v;/klu izkIr djus ds fy;s Lora= gS A bl fu.kZ; dh ,d izfr nksuksa iqujh{k.kksa dh i=kofy;ksaa es j[kh tk; A**

Challenging the validity of the aforesaid order, present petition has been filed by the petitioner.

3. Learned counsel for the petitioner vehemently urged that before the building in question was declared vacant and was allotted in favour of the petitioner, the

procedure prescribed for the same under the Act and the Rules framed thereunder, was followed. It was urged that the notice was rightly issued to Deepu Dey. As he did not file any objection, therefore, the Rent Control and Eviction Officer rightly proceeded with the case and declared the building in question as vacant and thereafter rightly allotted it in favour of the petitioner. There was no illegality or infirmity in the order passed by the Rent Control and Eviction Officer declaring the vacancy or allotting the same in favour of the petitioner. It was also urged that the application u/s 16 (5) of the Act was rightly dismissed by the Rent Control and Eviction Officer.

4. On the other hand, Mr, A. K. Srivastava, learned counsel appearing for the respondent Nos. 2 and 3, supported the validity of the impugned order passed by the revisional court. It was urged that the order declaring the vacancy and allotment in favour of the petitioner were passed wholly illegally in violation of the provisions of the Act and the Rules and in violation of the principles of the natural Justice as respondent Nos. 2 and 3 were not afforded any opportunity of hearing before the said orders were passed. It was urged that neither any notice was issued to respondent No. 3 nor the same was ever served upon her nor she was afforded any opportunity of hearing in any form or manner. On the other hand, the notice is alleged to have been issued to a person who had no concern with the building in question.

5. I have considered the submissions made by learned counsel for the parties and also perused the record.

6. It is well-settled in law that before any building is declared vacant and the same is allotted in favour of any person, the procedure prescribed for the same will have to be followed. It is well-settled in law that a building can be allotted if it is vacant, likely to fall vacant or the same is deemed to be vacant. Vacancy may arise if the building is actually vacated either by the owner or a tenant of the same. It may be deemed vacant if any event happens as provided u/s 12 of the Act. If proceedings for allotment are initiated, the vacancy is to be ascertained in accordance with the provisions of Rule 8, which provides as under :

"8. Ascertainment of vacancy [Sections 12, 16 and 34 (8)].--(1) The District Magistrate shall, before making any order of allotment or release in respect of any building which is alleged to be vacant u/s 12 or to be otherwise vacant or to be likely to fall vacant, get the same inspected.

(2) The inspection of the building, so far possible, shall be made in the presence of the landlord and the tenant or any other occupant. The facts mentioned in the report should wherever practicable, be elicited from at least two respectable persons in the locality and the conclusion of the inspection report shall be pasted on the notice board of the office of the District Magistrate for the Information of the general public, and an order of allotment may be passed not before the expiration of three days from the date of such posting, and if in the meantime any objection is received, not before the disposal of such objection.

(3) Any objection under sub-rule (2) shall be decided after . consideration of any evidence that the objector or any other person concerned may adduce."

7. The proceedings of allotment may also be initiated if the intimation of vacancy is given by the landlord u/s 15 of the Act, the procedure for which has been provided under Rule 9 of the Rules. As, in the present case, admittedly no intimation of vacancy was ever given by the landlady, therefore, it is not necessary to deal with the procedure prescribed for the same and to quote Rule 9. Legally, occupation of any building without an order of allotment is prohibited under the law, as is evident from Sections 11 and 13 of the Act. The procedure of allotment has been provided u/s 16 of the Act read with Rules 10, 11, 12 and 16 of the Rules framed under the Act. The revisional authority has examined the entire record and thereafter recorded a clear and categorical findings that in the present case provisions of Sections 12 and 16 read with Rules 8. 10, 11. 12 and 16 of the Rules were utterly violated and flouted. The allotment order was passed without following the procedure prescribed for the same and in disregard of the mandatory provisions of the Act and the Rules. The findings of the revisional authority are all findings of fact, which are based on the relevant evidence on record. The revisional authority has also referred to and relied upon the decisions of the Apex Court and of this Court and rightly held that the impugned orders declaring the vacancy and allotment were passed in violation of the mandatory provisions of the Act. They were, therefore, liable to be quashed.

8. According to the findings recorded by the authority below, admittedly no notice, as required under the law, was ever issued or served upon the landlady, respondent No, 3. of the building in question at the relevant time. Notice is alleged to have been Issued to a person who had no concern with building in question. Rule 28 of the Rules framed under the Act provides for the mode of service of notice. The notice was issued in violation of the provisions of Rule 8 and was served in contravention of the provisions of Rule 28 upon Deepu Dey who was neither a landlord nor a member of the family of respondent No. 3. Respondent Nos. 2 and 3 were, also not afforded any opportunity of hearing at any stage before said orders were passed. The orders of declaration of vacancy and allotment, thus, were also passed in violation of the principles of natural justice. They were, therefore, non est in law.

9. The revisional authority also appears to be right In observing that the petitioner at the relevant lime was holding the post of Head Proficient/Head Constable in the office of the A.P.O., Collectorate, Gorakhpur and he had somehow managed to procure the order of allotment in his favour in violation of the provisions of the Act from the Rent Control and Eviction Officer in respect of the building in question and also took possession illegally.

10. Lastly, a feeble attempt was made by learned counsel for the petitioner to contend that respondent No. 2 had no right to pursue the matter and the revision as framed and filed was legally not mainlainable. It is not disputed that in the meanwhile, the building in dispute was transferred/assigned in favour of

respondent No. 2 by respondent No. 3. Revisions were filed by both the said respondents before the authority below. The authority below, therefore, rightly rejected the objection raised before it regarding maintainability of the revisions. I do not find any force in the submission made by learned counsel for the petitioner inasmuch as the assignee has got full right to pursue the matter to protect her interest in the property In question. No case for interference under Article 226 of the Constitution of India is made out.

11. The writ petition falls and is dismissed in limine.