
(2013) 04 AHC CK 0163
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 60207 of 2006

Tara Chand & Anr.

APPELLANT

Vs

Rent Control & Eviction Officer, Agra & Ors.

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 13, 16(1)(b)

Citation : (2013) 04 AHC CK 0163

Hon'ble Judges : Krishna Murari, J

Final Decision : Dismissed

Judgement

Krishna Murari, J.

Heard learned counsel for the petitioner and Shri P.C. Jain, learned counsel appearing for the respondents.

By means of this petition filed under Article 226 of the Constitution of India, petitioners have approached this Court challenging the order dated 16.09.2006 passed by Rent Control and Eviction Officer declaring vacancy of the shop in dispute.

Facts as emerge from the pleadings of the parties are that respondent nos. 2 to 4 moved an application under Section 16 (1)(b) of the U.P. Urban Building (Regulation of Letting and Eviction) Act, 1972 (hereinafter referred to as the U.P. Act No. 13 of 1972) on the allegations, inter alia, that they are the ownerlandlord of the shop in dispute having purchased by virtue of registered sale deed dated 24.06.1999 and the same was in unauthorised occupant of the petitioners without any allotment order and their possession being unauthorised, the same was vacant within the meaning of Section 13 of U.P. Act No. 13 of 1972. It was also pleaded that the shop was required for business purposes and the need was bona fide, urgent and pressing. Rent Control Inspector submitted a report that at the time of inspection, shop was found in the possession of the petitioners, who were carrying business of sale of cold drinks etc. and they failed to produce any

allotment order. Petitioners filed objections to the release application alleging that they were sitting tenants for the last more than 27 years and were paying rent to the erstwhile landlord and had no knowledge of the sale deed as no notice was given to them. It was also pleaded that there was no need of the allotment order as when the shop was let out to them, it was newly constructed within the meaning of U.P. Act No. 13 of 1972. In support of the case, petitioners filed their own affidavit annexing therewith the receipts issued by the erstwhile landlord for the security amount of Rs.30,000/ received from the petitioners as also affidavit of one Mohan Singh Verma, who witnessed the receipt of payment of Rs.30,000/. Rent Control and Eviction Officer disbelieved the case set up by the petitioners on the ground that they have failed to produce any evidence to establish that they were let out a newly constructed shop in January 1976.

It has been contended by the learned counsel for the petitioners that the Rent Control and Eviction officer has wrongly and illegally disbelieved the receipt annexed along with the affidavit of the petitioners and the witness for payment of Rs. 30,000/ as security, which was executed on 08.01.1976, which went to show that petitioners were put in possession of the newly constructed shop with the consent of the landlord prior to 5th July, 1976 and, thus, they were not unauthorised occupant and there was no deemed vacancy. It is further contended that various rent receipts filed by the petitioner has also not been considered.

In reply, learned counsel for the respondent has submitted that Rent Control and Eviction Officer disbelieved the evidence on the ground that there was material difference in the two photo copies of the same document, one filed along with the affidavit of the petitioner and other along with the affidavit of one of the witness of the receipt, Mohan Sigh Verma.

I have considered the argument advanced by the learned counsel for the parties and perused the record.

In so far as various rent receipts filed as Annexure 4 to the writ petition are concerned, in respect of which it has been alleged that same has not been considered by the Rent Control and Eviction Officer, it may be pointed out that Rent Control and Eviction Officer has recorded a categorical finding that except for filing the receipt dated 08.01.1976 for payment of Rs.30,000/ as security, no other evidence has been filed. There is nothing on record of writ petition, nor even an assertion has been made to dislodge the said finding. Apart from above, a perusal of the photo copy of the receipts filed as Annexure 4 goes to show that the earliest receipt is dated November, 1980, thus, there is nothing on record to establish the case set up by the petitioners that the shop in dispute was let out to them in January, 1976. In so far as the receipt for security of Rs.30,000/ alleged to have been executed on 08.01.1976 is concerned, the same has been disbelieved by the Rent Control and Eviction Officer on the ground that there is material difference in the photo copies of the said documents annexed along with the affidavit of the petitioners and the witness.

Although the petitioners have not filed the copy of the said documents along with the writ petition, but the same have been brought on record by the respondent along with the counter affidavit as Annexure CA 3 and 4. A mere look goes to show that not only the two documents are in different hand writing, but the format and language is also different. Rent Control and Eviction Officer is right in recording that there cannot be two different documents of the same nature executed between the parties on the same date and for the same purpose. Thus, the document relied upon by the petitioners has rightly been disbelieved and the order passed by the Rent Control and Eviction Officer cannot be faulted on this ground.

There being no evidence to substantiate the case set up by the petitioners that a newly constructed shop was let out in January, 1976, the only conclusion is that the petitioners are in occupation of the same without any valid order of allotment and there is a deemed vacancy.

In view of the above facts and discussions, the impugned order does not require any interference.

The writ petition, accordingly, fails and stands dismissed.