
(2012) 12 AHC CK 0143
In the Allahabad High Court
Case No : Writ Petition No. 78 (R/C) of 1995

Tarawati Shukla and Others

APPELLANT

Vs

District Judge, Lucknow and Others

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

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

Citation : (2012) 12 AHC CK 0143

Hon'ble Judges : Saeed-Uz-Zaman Siddiqi, J

Final Decision : Allowed

Judgement

SaeedUzZaman Siddiqi, J.—By means of this writ petition, the petitioner has prayed for appropriate writ quashing the order dated 26.08.1985, passed by Learned Additional District Magistrate (Civil Supply), Lucknow and order of the Revisional Court dated 09.05.1995 and 20.05.1995 passed by Incharge, District Judge, Lucknow.

2. I have heard learned counsel for the petitioner as none appeared on behalf of the opposite parties.

3. Brief facts of the case, relevant for the purposes of deciding this petition are that, the petitioner is a land lady of the shop, in question (shop No. 2) and is the owner of a building bearing House No. 109/108, Model House, P.S. Aminabad, Lucknow, which was in the tenancy of Sri Bhagwati Prasad Gupta. The petitioner moved release application on 04.01.1988. The proceedings to determine tenancy were pending before the learned Additional District Magistrate (Civil Supply), Lucknow. On 12.11.1984, the release application of the petitioner was rejected and the shop, in question was allotted to Opposite party No. 3. Aggrieved by the said order, the petitioner moved review application, which was also rejected vide order dated 09.05.1995. While rejecting the review application, the Additional District Magistrate observed that since the application has been dismissed on merits, the review is not maintainable.

4. The petitioner, then filed rent review No. 12/1995, which was also rejected by Incharge, District Judge, Lucknow, "In my opinion, when the release application was dismissed in default, the review of the order for the allotment of the accommodation on the ground that the release application and allotment application should not be disposed of by a common order, was not maintainable. As such, I find no reason to interfere with the order passed by Learned Rent Control Officer. Accordingly, this revision has no force and it is dismissed summarily."

5. Learned counsel for the petitioner submits that the allotment order has not yet acted upon and the petitioner is in possession of the disputed shop. In his counter affidavit, the opposite party No. 3 has deposed that the petitioner as well as the deponent were present in the Trial Court and their counsels have refused to lead the evidence as such the learned Trial Court had fixed 17.09.1984 for arguments and thereafter the petitioner did not appear, as such, the Learned trial Court has no option but to dismiss the revision application in default and fix the case for allotment proceeding.

6. The petitioner has averred in Para No. 5 of the writ petition that she has filed affidavit in support of application for release. This fact has been admitted in Para 6 of the counter affidavit by Opposite party No. 3 to the extent that the petitioner had filed affidavit dated 13.10.1983, in support of his release application dated 04.01.1983. Though, the petitioner has filed a wrong copy of the affidavit as Annexure 2 to the writ petition. Yet, the opposite party No. 3 has filed a copy of the said affidavit contained as CA3. In the said affidavit, the petitioner has deposed that on 13.12.1982, Bhagwati Prasad Gupta, tenant has vacated the said shop and handed over its vacant possession to the petitioner. It has also been deposed that the petitioner's husband was a railway employee and has retired and now he wants to do a business of Radio repairing etc, to enhance the income. The Learned ADM (Civil Supply) was not competent to dismiss the release application as not pressed or in Default, which should have been entered into the merits of the case, and, as such, the impugned order contained in Annexure No. 3 to the writ petition is bad in the eyes of law. Moreover, the learned Incharge District Judge, Lucknow has also wrongly held that since the application for release and allotment has been disposed of by a common order, was not maintainable.

7. In both the orders, as contained in Annexure nos. 3 & 5 to the writ petition are violative of the rules of natural justice, which deserves to be quashed.

8. The writ petition is accordingly allowed. Both the impugned orders are hereby quashed.

9. The Rent Control and Eviction Officer concerned shall decide the release application of the petitioner in accordance with law.