
(2004) 07 AHC CK 0040
In the Allahabad High Court
Case No : C.M.W.P. No. 15995 of 1986

Thakur Radhendra Kishore Ji Maharaj	APPELLANT
Vs	
IInd A.D.J. and Others	RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 16(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 8, 9

Citation : (2004) 4 AWC 2881

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : R.N. Bhalla, for the Appellant;

Judgement

Tarun Agarwala, J.—By means of this petition, the petitioner has challenged the order of the Rent Control and Eviction Officer declaring the vacancy in the premises in question as well as the order of the Rent Control and Eviction Officer rejecting the release application of the petitioner u/s 16(1)(b) of the Act and also the revisional order. The facts leading to the filing of the writ petition is that the property in question is owned by a charitable trust known as "Thakur Radhendra Kishore Ji Maharaj Birajman", Tikari, Raj Mandir, Gyan Gudri, Brindaban. The said property is being managed by its trustee Smt. Rani Umeshwari Kunwarji.

2. It transpires that the respondent No. 3 moved an application u/s 16 of the Act praying that the ground floor of the premises of the temple be allotted in his favour. The said application was also accompanied by a letter of Smt. Rani, the trustee, allegedly giving her consent for the allotment of the premises in favour of respondent No. 3. The said letter also stated that the standing counsel for respondent Nos. 1 and 2. No one appeared for the respondent No. 3. The said letter also stated that the premises was never allotted earlier, to any other person and that the allotment would be made for the first time.

3. Based on the said application, the Rent Control and Eviction Officer called for a report. It transpires that the Inspector made a visit to the premises in question and found the premises locked. The Rent Control and Eviction Officer, thereafter, issued notices to the petitioner who filed the objections on an affidavit stating therein that there was no vacancy in the premises in question and that the trustee had never given any consent to respondent No. 3 for allotment. The petitioner submitted that the letter given by the trustee was a forged document obtained surreptitiously by respondent No. 3.

4. In spite of filing the objections, the Rent Control and Eviction Officer by its order dated 11.1.1983 declared the vacancy in the premises in question and invited applications for allotment. The petitioner by way of abundant precaution filed an application u/s 16 (1) (b) of the Act for the release of the premises in question. The said application was rejected by an order dated 7.9.1983, passed by the Rent Control and Eviction Officer. The petitioner preferred a revision u/s 18 of the Act, which was also rejected by the revisional court by an order dated 7.8.1986. The petitioner has now filed the present writ petition assailing the correctness of the aforesaid orders passed by the Rent Control and Eviction Officer and the revisional court.

5. Notices were issued, to respondent No. 3 at the time of the admission of the writ petition. In spite of issuance of notice by registered post, respondent No. 3 has neither appeared nor filed any counter-affidavit to the writ petition. The respondent No. 1, namely, the Rent Control and Eviction Officer has also not filed any counter-affidavit. Consequently, the averments made in the writ petition remained un rebutted.

6. Heard Sri R. N. Bhalla, the learned counsel for the petitioner and standing counsel for respondent Nos. 1 and 2. No one appeared for the respondent No. 3

7. In my view the impugned orders are manifestly erroneous in law and are liable to be quashed.

8. A Full Bench of this Court in Talib Hasan and Anr. v. Ist A.D.J., Nainital and Ors. 1986 (1) ARC 1. has held that a prospective allottee had no right to be heard on the release application of the landlord. In the present case, the Rent Control and Eviction Officer rejected the release application of the petitioner after hearing and considering the evidence led by the prospective allottee. The prospective allottee cannot be heard as per decision of the Full Bench. Further any evidence led by the prospective allottee cannot be taken into consideration by the Rent Control and Eviction Officer while considering the release application. In Hardwari Lai v. Ist A.D.J., Saharanpur and Ors. 2004 (2) ARC 84. it was held that neither the need nor the evidence brought on record by a prospective allottee could be seen. Similar view was also given by me in Writ Petition No. 17361 of 1990. Smt. Kamla Devi v. Ist A.D.J., Jhansi, decided on 28.5.2004. Similar mistake was also made by the revisional court.

9. Thus, the order dated 7.9.1983, passed by the Rent Control and Eviction

Officer rejecting the release application as well as the revisional order dated 7.8.1986, are wholly erroneous and are accordingly quashed.

10. The next question is whether the order of vacancy could be sustained or not, I find that Rent Control and Eviction Officer has neither complied nor followed the procedure contemplated under Rules 8 and 9 of the Rules. From the record, it is clear that no notice was sent to the owner/landlord of the premises in question. A notice was sent to the trustee. It may be stated here that before declaring the vacancy, a notice to the landlord is mandatory. Non-compliance of this rule would render the order of vacancy void and nugatory. In the present case, no notice was sent to the landlord. The trustee is not the landlord and, therefore, notice to the trustee is not a notice to the landlord. Thus, the order of vacancy is wholly illegal and unsustainable.

11. In view of the aforesaid, the writ petition succeeds and the order of vacancy dated 11.1.1983, the order dated 7.9.1983, rejecting the release application and order dated 7.8.1986, dismissing the revision are quashed. In the circumstances of the case, there shall be no order as to cost.