
(2017) 03 AHC CK 0184
In the Allahabad High Court
Case No : 1871 of 2004

Vibhu Shanker

APPELLANT

Vs

State of U.P.Thru Secy.Estate & Ors.

RESPONDENT

Date of Decision : 21-03-2017

Acts Referred:

Public Premises (Eviction of Unauthorized Occupants) Act, 1971,
Section 4, Section 5, Section 7 - Issue of notice to show cause against order of eviction
- Eviction of unauthorised occupants - Power to require payment of rent or damages in respect of public premises

Citation : (2017) 03 AHC CK 0184

Hon'ble Judges : Shabihul Hasnain, Rajan Roy

Bench : Division Bench

Advocate : B.B.Saxena

Judgement

1. Heard Sri Vibhu Shanker, Advocate-petitioner, in person as well as learned Standing Counsel for quite some time.
2. Petitioner has challenged the order dated 31.3.2004, passed by the Deputy Secretary, Government of Uttar Pradesh, Estate Department, Anubhag-2, as contained in Annexure-1 to the writ petition, whereby the application of the petitioner for allotment of Bungalow No.A-7, P.W.D. Bungalows Mahanagar Colony, Lucknow has been rejected citing therein the reason for the same and he has been required to vacate the house in question immediately after depositing the arrears of rent upto date.
3. The petitioner has alleged in Para-1 of the writ petition that by the impugned order, the opposite party no.1 has refused to substitute the name of the petitioner in respect of Bungalow Number A-7, Mahanagar P.W.D.Bungalows, Mahanagar, Lucknow in place of his father late Sri Sudhir Shanker, Advocate, holding that the petitioner does not come under the category of Government Servant in terms of Rule (J) 4 and thus has misinterpreted the said Rule and

misdirected himself in passing the impugned order without considering the true import of the said notification.

4. On 9.4.2004, the first day of hearing of the writ petition this Court has passed the following order :

"Additional Chief Standing Counsel appearing on behalf of opposite parties prays for and is granted a weeks" time to seek instructions in the matter.

List/put up this petition on 20.4.2004, till then the petitioner or the family members of late Sri Sudhir Shanker shall not be evicted from the House No.A-7, P.W.D. Bungalows, Mahanagar, Lucknow"

5. On 20.4.2004, following order was passed by this Court.

" Sri N.C.Mehrotra, Additional Chief Standing Counsel appearing on behalf of opposite parties on the basis of the instructions submits that from 1.1.1981 the rent of the premises was fixed as Rs.1,340/- per month and there is outstanding of Rs.1,19,738/- against the petitioner upto January, 2003.

Sri Umesh Chandra, Senior Advocate appearing on behalf of the petitioner prays for and is granted two months" time to deposit the balance amount of Rs.1,19,738/-. The eviction of the petitioner from House No.A-7, P.W.D. Mahanagar, Lucknow shall remain stayed provided the petitioner deposits Rs.1,19,738/- within two months and keep on depositing the monthly rent regularly.

List this petition in the 1st week of August, 2004."

6. This case has come up for hearing in 2017 and the stay is continuing till date.

7. The facts of the case as narrated in the instant petition by the petitioner are that the colony wherein the bungalow in question is situated was constructed under the Middle Income Group Housing Scheme in the year 1956 by the Government of India, Ministry of Works, Housing and Supply and is called Mahanagar colony apart from the other houses under the same scheme at Basheeratganj, Havelok Road. The Central Government made it obligatory to construct the same on "No Profit No Loss" basis or to sell it out after completion of construction.

8. The argument advanced by the petitioner who has appeared in person are that the property in question was originally allotted to the grand father of the petitioner, late Shri Bijay Shanker, Advocate, in the year 1956 and after the death of his grand father, the allotment of the above premises was substituted/ transferred in February 1960 in favour of the father of the petitioner, late Sri Sudhir Shanker, Advocate by the opposite parties vide letter dated 8.2.1960. He submits that he and his family along with his aged mother is residing in the above premises and is in possession of the same till date.

9. Petitioner submits that his father and six other plaintiffs filed a suit for

permanent injunction restraining the defendants/opposite parties from demanding rent at the rate more than the agreed rate of rent and for restraining them to take any action of eviction for non-payment of enhanced rent, which is pending adjudication. Father of the petitioner expired on 23.01.2003, thereafter the petitioner filed an application with the opposite party no.2 for substitution/transfer of allotment with respect to the above premises on 22.02.2003.

10. It has been argued by the petitioner that houses built under the aforementioned Scheme were for both government and non government categories of persons, hence a question was raised whether the houses constructed under the Middle Income Group Housing Scheme, the allotment of which is not specifically restricted to the government servants only but extends to other classes from the general public also, shall be considered as government accommodation for the purpose of admissibility of house rent allowance thus entitling government servants residing therein for the allowance. In reply to the above question the Special Secretary U.P.Government by his letter dated 17.8.1974 as contained in Annexure-6 to the writ petition has clarified that the houses constructed by the government under the Middle Income Group Housing Scheme allotted to the government servants do not come under the purview of government accommodation. The opposite parties have miserably failed to appreciate that Rule 10(J)-4 refers to conditions as to whether or not the allotment already made in favour of a person is to be carried on or to be cancelled but it in no way applies to the family members of an allottee so as to declare them whether they come in the category of a Government Servant or not. Therefore the impugned order on the face of it is perverse.

11. Petitioner further submits that being the legal heir of the earlier allottee, he is entitled to be substituted in place of his father with respect to the premises in dispute and the impugned order directing the petitioner to vacate the premises immediately without resorting to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, particularly Sections 4,5 and 7 of the Act is arbitrary and malafide and the same deserves to be quashed. He further argued that in other similar circumstances the occupants have been allowed substitution/transfer of allotment of the houses constructed and allotted under the Scheme while he has been denied the same benefit arbitrarily.

12. Learned Standing Counsel appearing for the State refuting the submissions and the arguments advanced by the petitioner defends the impugned order and inter alia submits that the house in question was initially allotted in favour of the grandfather of the petitioner and after his death it was allotted to his father. By no stretch of words or imagination it could be termed as transfer of allotment or substitution in the name of his father in place of his grandfather in/under the law of inheritance by virtue of he being the son or legal heir of the previous allottee- his grandfather late Sri Vijay Shanker. In fact, it was a fresh allotment of the house in question in the name and favour of his father late Sri Sudhir Shanker.

13. Learned Standing Counsel further submits that the reason for rejection of the

application of the petitioner is sound in law and well founded as the amended Rule/Condition No.10 (J)-4 has substituted the original Rule/Condition No.10 (J)-4 contained under Rule 10 of the Rules framed and notified vide Notice No..236 by the Estate Department, Government of U.P. in 1962 which commences to read as "VERNACULAR MATTER OMITTED"

14. The bare reading of the said Rule 10 (as amended) makes it crystal clear that it applies only and specifically to the allottee who are government employee, in addition to the other rules and conditions applicable to all the allottees. Learned Standing Counsel further submits that there is no provision of allotment of house to the family members of the previous allottee by way of succession and under Rule/Condition No.10 (J)-(4), as amended, the family member (s) of previous allottee may be permitted to continue in occupation of the house allotted in favour of the previous allottee happens to be a government employee; therefore, the petitioner cannot be extended the benefit of the said Rule/Condition No.10 (J)-4, as neither his father was a government employee nor he is. The submission of the petitioner that the respondents were not justified in passing the impugned order without resorting to the provisions of the 1971 Act or the U.P.Public Premises (Eviction of Unauthorised Occupants) Act, 1972, is not tenable because the petitioner himself has chosen the forum of this Court instead of going to the appropriate authorities for redressal of his grievances and thus he himself has elected to prefer the filing of instant writ petition therefore his plea cannot be allowed.

15. State has filed counter affidavit stating that allotment of house in question is not possible in favour of the petitioner under Rule 10(J)-4 of the Rules, which provided for the allotment of the quarters constructed under middle income group housing scheme. From the perusal of the above rules it is clear that the said rule is applicable only in case of those allottees who are government servants.

16. Learned Standing Counsel submits that the house in question was initially allotted to Shri Vijai Shanker, Advocate and father of the petitioner late Shri Sudhir Shanker as a fresh allotment and not by way of transfer or as heritable tenancy. The allotment in favour of Sri Sudhir Shanker was made on terms and conditions as contained in allotment letter itself and vide letter dated 7.4.1960 a consent agreeing with the terms and conditions of the letter dated 8.2.1960 was submitted.

17. He further submits that Rule 10 (J)-4 of the Rules was amended vide notice/ amendment dated 6.2.1980, copy of the said amendment was sent to late Sri Sudhir Shanker, Advocate, allottee of the house no. A-7, Mahanagar. Through aforesaid amendment it was provided that in case of death, removal or retirement, if the Government Servant and/or his family members, as the case may be, are not residing in the house, then the allotment can be cancelled, but until employee or his family members (which includes wife, minor and major sons, unmarried daughters) are residing in the house the allotment will continue.

18. Learned Standing Counsel submits that after the death of Sri Sudhir Shanker, Advocate, petitioner moved applications for the transfer of allotment of house in dispute in his favour but as the case of the petitioner was not covered under Rule 10 (J)-4 of the rules, hence allotment in his favour was not found possible and petitioner was informed accordingly and was further requested to vacate the house vide letter dated 31.3.2004. It is submitted that the tenancy being not heritable and the provisions applicable to State Government employees, being not applicable in case of the petitioner as his father was not a government employee, neither the petitioner can continue in the premises in question nor he is having any right for being allotted the house in question.

19. Learned Standing Counsel at the end submits that there is no illegality in issuing the impugned letter dated 31.3.2004. The occupation of the petitioner is unauthorised in absence of any allotment as such he is liable to be evicted.

20. Attention of the Court has been drawn to the observations made by the Hon"ble Apex Court in ""Lok Prahari v. State of U.P." reported in (2016) 8 SCC in which the cases of ""S.D.Bandi v. State of Karnataka SRTC" reported in (1997) 1 SCC 444 have been considered and dealt with. We think it apposite to quote the relevant paragraphs from the aforesaid judgments. In the case of S.D.Bandi (supra) the Hon"ble Supreme Court has observed :

"34. It is unfortunate that the employees, officers, representatives of people and other high dignitaries continue to stay in the residential accommodation provided by the Government of India though they are no longer entitled to such accommodation. Many of such persons continue to occupy residential accommodation commensurate with the office (s) held by them earlier and which are beyond their present entitlement. The unauthorized occupants must recollect that rights and duties are correlative as the rights of one person entail the duties of another person similarly the duty of one person entails the rights of another person. Observing this, the unauthorised occupants must appreciate that their act of overstaying in the premise directly infringes the right of another. No law or directions can entirely control this act of disobedience but for the self realization among the unauthorised occupants."

21. In the case of Lok Prahari (supra) the Hon"ble Supreme Court has observed :

"46. So far as allotment of bungalow to private trusts or societies are concerned, it is not in dispute that all those bungalows were allotted to the societies/trusts/ organizations at the time when there was no provision with regard to allotment of government bungalows to them land therefore, in our opinion, the said allotment cannot be held to be justified. One should remember here that public property cannot be disposed of in favour of any one without adequate consideration. Allotment of government property to someone without adequate market rent, in absence of any special statutory provision, would also be bad in law because the State has no right to fritter away government property in favour of private persons or bodies without adequate consideration and therefore, all

such allotments, which have been made in absence of any statutory provision cannot be upheld. If any allotment was not made in accordance with a statutory provision at the relevant time, it must be discontinued and must be treated as cancelled and the State shall take possession of such premises as soon as possible and at the same time, the State should also recover appropriate rent in respect of such premises which had been allotted without any statutory provision."

22. We have given our anxious consideration to the rival arguments. There is no dispute that the premises belong to the Government and it is the discretion of the State Government to allot the property to the deserving candidate. The petitioner and his family has been occupying this Government property at a throw away consideration of rent since 1960. Thus the family has used it for about 67 long years. The petitioner is a 3rd generation lawyer practising in Delhi and Mumbai as well. This fact was mentioned by the petitioner himself during the arguments. In any view of the matter, neither the petitioner is a government servant nor his father or grandfather was. The purpose of constructing such bungalows was not to give it to one particular family for times immemorial.

23. Learned Standing Counsel has been able to show that the rules do not permit petitioner's candidature. There is no fresh allotment in his name after the death of his father. Petition was filed in the year 2004. On the strength of an interim order granted by the Court in the beginning the petitioner has been staying in the premises in question without any legal allotment for about 13 years. The petitioner has not been able to demonstrate his right to be given a fresh allotment. He has only harped on the fact that there are one or two more persons who are still occupying such premises and hence petitioner cannot be discriminated and asked to vacate the premises. The Court feels that such negative parity cannot be claimed by the petitioner. Even if some people are illegally occupying the house or they have managed to stay in such buildings that will not entitle the petitioner not to vacate the premises. Two wrongs cannot make one right. The application of the petitioner has rightly been rejected by the opposite party no.1.

24. In view of above, we do not find any good reason to interfere in the impugned order. The writ petition is totally misconceived and lacks merit. It is accordingly dismissed.