
(2002) 07 AHC CK 0048
In the Allahabad High Court
Case No : C.M.W.P. No. 15766 of 2002

Vijay Pal Goel

APPELLANT

Vs

Rent Control and Eviction Officer and Others

RESPONDENT

Date of Decision : 05-07-2002

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12

Citation : (2002) 3 AWC 2381

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : M.K. Rajvanshi and N.C. Rajvanshi, for the Appellant; P.K. Jain, S.C.,
for the Respondent

Judgement

Anjani Kumar, J.—This writ petition under Article 226 of the Constitution of India filed by. petitioner Vijay Pal Goel, who alleges himself to be a tenant of the shop in question, against the order of the Rent Control and Eviction Officer (Prescribed Authority), Muzaffarnagar dated 10.4.2002, Annexure-11 to the writ petition, whereby the application for allotment filed by Dr. Mahesh Kumar Agarwal, son of Sri Nemchand Agarwal was rejected by the Prescribed Authority on the ground that the shop in question is not vacant and is occupied by petitioner Vijay Pal Goel. The matter came up to this Court earlier as two writ petitions were filed, one by Vijay Pal Goel, the present petitioner being Writ Petition No. 9597 of 2001 and the another by Praveen Gupta being Writ Petition No. 34797 of 2000. This Court since found that both the writ petitions have arisen out of by common facts, therefore, both the writ petitions were heard together and decided by the common judgment vide order dated 20.3.2001, copy of which has been annexed as Annexure-10 to the writ petition. This Court after hearing learned counsel for the parties allowed both the writ petitions and the order passed by the revisional court dated 19.2.2001 was quashed and it was held that the revision application was not maintainable. The order dated 25.5.2000, which was challenged by means of another writ petition being 34797 of 2000, was also quashed with a

direction that the Rent Control and Eviction Officer shall determine the question of deemed vacancy in the light of the entry made in the column No. 12 of the concerned register. In this view of the matter, the matter was re-opened before the Rent Control and Eviction Officer, who decided the same in view of the direction issued by this Court, referred to above, vide its order dated 10.4.2002, that the shop in question, which is in occupation of Vijay Pal Goel and who is occupying the same without any allotment order, is in law vacant and thus the vacancy is declared. The Rent Control and Eviction Officer has further held that since there is a release application of landlord pending, therefore, in view of the provision of U. P. Act No. 13 of 1972, this release application is to be decided first, he, therefore, directed that the vacancy may be published in two daily newspapers as well as pasted on the notice board and the matter may be placed before the authority on 1.5.2002. It is this order, which is under challenge by means of the present writ petition.

2. Heard Sri M. K. Rajvanshi, learned senior counsel appearing on behalf of the petitioner and the learned standing counsel for the State-respondent as well as Sri P. K. Jain for the contesting respondent.

3. The extract from the assessment register, which has been annexed with the supplementary-affidavit and the writ petition demonstrates that the completion of the building in question was reported on January 31, 1981 and March 31, 1981 and that the building was ceased w.e.f. April 1, 1981 and column No. 12 shows that the house tax w.e.f. April 1, 1982, is ceased at the rate of Rs. 240 per year, which was to be paid w.e.f. April 1, 1982. It is because of this entry, this Court granted time to the learned counsel for the petitioner vide order dated 30.4.2002 to find out any statutory provision as to why entries in the assessment register of the municipal board are made to demonstrate that column No. 12 of Annexure-12 to the writ petition is not in accordance with the statutory provision. Nothing further has been brought on record, which may throw light as to why the entries made in the aforesaid column 12 should not be accepted because the date of completion of the building in question was reported on 31.1.1981 and 31.3.1981. According to the provision of the Statute, if the date of completion is reported to the concerned local body or authority, the date of assessment of the house tax shall be taken into consideration for the purposes of exemption of the Act. Thus, the date 31.3.1981, which can be said to be the final date when the completion of the building is reported, is the date on which it was reported. In this view of the matter, when the date of completion of the building is the date prior of the occupation of the shop in question by the petitioner, Irrespective whether there is an agreement or not because in view of the Full Bench decision of this Court in Nutan Kumar 1993 ARC in which, it has been held that the provision of U. P. Act No. 13 of 1972 will not apply, is simply void. In the present writ petition, the landlord has filed an affidavit stating therein that it has been incorrectly mentioned in the agreement that the U. P. Act No. 13 of 1972 will not apply. These findings of fact have been tried to be assailed by Sri Rajvanshi on the ground that the same is malafide as the landlord after entering

into the agreement has turned dishonest and he is adopting every practice by hook and crook so that the petitioner-tenant may be ousted from the shop in question. Be it as it may, the Rent Control and Eviction Officer has recorded a categorical finding, rebutted the case set up on the ground based on the mala fide and held that on the date when the said agreement has been entered in pursuance whereof the petitioner was admitted to the tenancy of the accommodation, the U. P. Act No. 13 of 1972 was operative and the shop in question was covered within the ambit of U. P. Act No. 13 of 1972. Thus, the occupation of the petitioner-tenant without any allotment order, which is admitted fact, is no occupation, is contrary to the provision of U. P. Act No. 13 of 1972 and thus there is a vacancy as contemplated u/s 12 of the Act. I do not find any error in the findings arrived at by the Rent Control and Eviction Officer. Learned counsel for the petitioner Sri Rajvanshi next contended that the petitioner is admittedly in possession and occupation of the shop in question. His occupation and possession is contrary to law is to be established by the person who is challenging the same to be unauthorised and he, therefore, relied upon a decision of Hon"ble Supreme Court in Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, The another decision relied upon by Sri Rajvanshi is in Bhinka and Others Vs. Charan Singh, wherein the Apex Court has ruled that "presumption of genuineness of the entries in the certified copy is to be taken to be correct, unless the non-compliance with the rules as to which issue has not been raised before the Prescribed Authority." Same is the position in the present case with regard to the entry in column No. 12 of the property register of the municipal board concerned having not raised even after giving an opportunity by this Court, the genuineness of the entry cannot be disputed. In this view of the matter also the argument advanced by Sri Rajvanshi is liable to be rejected.

4. In the teeth of the findings of this Court, the Rent Control and Eviction Officer, who has complied with the direction issued by this Court in the earlier two writ petitions and after that arriving at the conclusion that the occupation of the petitioner-tenant being contrary to law cannot be interfered with by this Court in exercise of its powers under Article 226 of the Constitution of India. This writ petition, therefore, is liable to be dismissed and is hereby dismissed. The interim order, if any, stands vacated. However, in the facts and circumstances of the case, the parties shall bear their own costs. The Rent Control and Eviction Officer will now proceed in accordance with law for deciding the release application/allotment order.

5. In view of what has been stated above, the writ petition is dismissed. The interim order, if any, stands, vacated. Order accordingly.