

(1978) 08 AHC CK 0004
In the Allahabad High Court
Case No : Civil Misc. Writ No. 973 of 1976

Vinod Chandra Dubey

APPELLANT

Vs

IX Addl. Distt. and Sessions Judge and Others

RESPONDENT

Date of Decision : 11-08-1978

Acts Referred:

Land Acquisition Act, 1894 — Section 12
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 18, 18(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 9(3)

Citation : (1978) AWC 726

Hon'ble Judges : K.C. Agrawal, J

Bench : Single Bench

Advocate : V.N. Khare and T.P. Singh, for the Appellant; Ram Nath and B.D. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—House No. 9 Albert Road, Allahabad belongs to F.S. Gandhi, Respondent No. 2. A portion of this bungalow was vacated by the tenant. On an intimation sent by Respondent No. 2, the premises was allotted to one Rais Ahmad. He could not get possession of the said portion of the house, and got another premises allotted in his name and intimated to the Rent Control and Eviction Officer that he did not require the premises. It was thereafter that the vacancy was again notified by the Rent Control and Eviction Officer on September 6, 1974. On September 13, 1974 the Rent Control and Eviction Officer allotted the premises to Vinod Chand Dubey, the Petitioner. Against the said order of allotment an appeal was filed by F.S. Gandhi, Respondent No. 2 on 6th November, 1974. An objection was raised by the Petitioner about the maintainability of the appeal on the ground that the same, having not been preferred within 15 days of the order of allotment dated 13-9-1974, was barred by time and was thus liable to be dismissed on that ground. The learned District

Judge held that the appeal filed was not barred by time and further that the allotment order was invalid. He accordingly set aside the allotment order and remanded the case back to the Rent Control and Eviction Officer to proceed afresh for the allotment of the building in question according to law. Aggrieved by this judgment the present writ petition has been filed by Vinod Chand Dubey, the allottee.

2. The first submission made before me was about the appeal being incompetent on the ground of being barred by time. To appreciate the point urged by the learned Counsel for the Petitioner, it may be worthwhile to note the various dates which are relevant for deciding the said controversy. As stated above, the allotment order was passed by the Rent Control and Eviction Officer on 13th September, 1974. The certified copy of the order was applied for by the Respondent No. 2 on 26-9-1974, which was made ready on 25-10-1974 and the appeal was thereafter filed on 6th November, 1974. u/s 18 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, the period of limitation prescribed for filing an appeal is 15 days from the date of the order. The submission made by the learned Counsel for the Petitioner was that as the allotment order was passed on 13th September, 1974, limitation for filing the appeal would start running from that date and since the appeal was not filed within this period, the same was liable to be dismissed.

3. It is no doubt correct that if the limitation is computed from the date of the order, the appeal would be clearly barred by time. However, the argument made on behalf of the Respondent No. 2 was that since the Respondent No. 2 learnt about the allotment order on 26th September 1974, the limitation would start running from that date. This calls for an interpretation of the phrase "from the date of such order" used in Sub-section (1) of Section 18 of the Act. According to the submission of the learned Counsel for the Petitioner, it would clearly imply the date on which the allotment order was passed whereas the submission of the learned Counsel for the Respondent was that as the said Respondent was not aware of the allotment proceedings and no notice was issued to him, the limitation would start from the date of acquiring the knowledge about the said order. The phrase "from the date of such order" in my opinion, should be construed in a manner so as it subserves the interest of justice and is not against the language employed therein. Admittedly, Respondent No. 2 was not a party in the proceedings before the Rent Control and Eviction Officer and that no notice had been issued to him on the same. The fact that Respondent No. 2 learnt about the allotment order on the 26th September 1974 was also not controverted before me. The fact of the filing of the application on the aforesaid date for a copy also corroborates that the said Respondent came to know about it on the said date. If the limitation is computed from the aforesaid date, the appeal is within time. In *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, a similar question came up for consideration in connection with Section 12 of the Land Acquisition Act. The Supreme Court held that where the rights of a person are affected by an order and limitation is

prescribed for the enforcement of the remedy by the person aggrieved against the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. This decision was followed by the Supreme Court in *State of Punjab v. Kaiser Jhan Begum* AIR 1963 SC 1605. In view of these authorities, it appears to me that the proper construction to be placed on the words "from the date of such order" should be the date of actual or constructive knowledge of the party affected by such an order. The observations made by the Supreme Court in *Raja Harish Chandra's* case (supra) in this regard are, the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice, the expression "the date of award" used in the proviso must mean the date when the award is either communicated to the party or is known by him, either actually or constructively. In view of this I hold that as the Respondent No. 2 came to know of the order on the 26th September, 1974, the limitation for filing appeal would start from that date.

4. The second submission made, in respect was that the copy of the judgment applied for by Respondent No. 2 was made ready on 5th October, 1974 and that the limitation should have been counted from 5th October. The submission made was replied by the learned Counsel for the Respondent No. 2 and it was urged on his behalf that the copy was actually made ready on 23th and not on the 5th. According to the case of the Petitioner the figure 2 was interpolated and was written before the word "5" in order to make the appeal within time and it was contended on behalf of the Petitioner that as Respondent No. 2 could be the only beneficiary of the said interpolation, the court should hold that the appeal filed was barred by time. This controversy was gone into by the appellate court. He did not only take oral evidence of the parties adduced on this controversy, but inspected the entire record and found that the copy was prepared on 25th October, 1974 and not on the 5th October. He held that the claim of the Petitioner that the figure "2" was inserted subsequently was not correct. After having examined the judgment of the District Judge I am not prepared to hold that the finding recorded thereon is erroneous.

5. The next submission made by the learned Counsel for the Petitioner was that the Additional District Judge committed an error in holding that as a notice of the allotment proceedings had not been sent to the Respondent No. 3 the allotment order was invalid. It was urged on his behalf that the said Respondent was not entitled to the same. The submission made is not tenable. It was the admitted case of the parties that the vacancy was intimated by Respondent No. 2. That being so, under Sub-rule (3) of Rule 9 the Petitioner was entitled to a notice. The words used in that provision are mandatory and the violation of the same renders the allotment order invalid. The view taken by me is supported by a decision of this Court reported in *Shakti Pada Roy v. Smt. Annapurna Devi* 1977 RCC 121 and *Shrimati Bhagwati Sah v. The District Judge, Kumaon* 1977 RCC 534.

6. Shri V.N. Khare, Counsel for the Petitioner, however, contended that since the Respondent had made an endorsement on the application for allotment made by one Shivaji Misra, the Respondent No. 2 should be deemed to have the knowledge of the proceedings and the omission of sending a formal notice or intimation to him by the Rent Control and Eviction Officer was inconsequential. It is true that an endorsement had been made by Respondent No. 2 on the application of Shivaji Misra that he would have no objection in case the premises was allotted to him. By making the endorsement on the application he did not waive his right of receiving a notice under Sub-rule (3) of Rule 9. It is also not possible to conclude from the fact of endorsement that the Respondent No. 2 had knowledge of the entire proceedings of allotment. In this case as the allotment was not made to Shivaji Misra, it had become still more necessary that compliance of Sub-rule (3) of Rule 9 was made.

7. For these reasons the writ petition fails and is dismissed with costs.