
(1999) 01 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30299 of 1998

Vinod Kumar and Others

APPELLANT

Vs

R.C.E.O., Kanpur Nagar and Another

RESPONDENT

Date of Decision : 04-01-1999

Acts Referred:

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

Citation : (1999) 01 AHC CK 0046

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 3131998 passed by the Prescribed Authority declaring the accommodation in question as vacant.

2. Respondent No. 2 landlady, filed application alleging that premises No. 103/71, Colbnelganj, Kanpur which is accommodation in question is vacant. This accommodation was originally under, the tenancy of father of the petitioners, namely, Gyan Chandra. He died and thereafter his widow Smt. Sarojini Devi purchased two houses by registered sale deed. One is House No. 103/132, Colonelganj, Kanpur on 2nd March, 1983 and another House No. 103/134, Colonelganj, Kanpur on 561987. Thekent Control and Eviction Officer came to the conclusion that after the purchase of these houses by the mother of the petitioners and subsequent to her death, the petitioners inherited the aforesaid property hence the disputed premises should be deemed as vacant and accordingly he passed the impugned order 3181998 which is under challenge in the instant writ petition.

3. I have heard Shri S.M. Dayal, learned counsel for the petitioners and Shri R.N. Bhalla, learned counsel for contesting respondent.

4. The learned counsel for the petitioner contended that the sale deed was not duly proved and it was not established that the houses were purchased by Smt.

Sarojini Devi. The two houses have been purchased by registered sale deed. The sale deeds have been executed in the name of mother of the petitioners. The petitioners never categorically denied that the sale deeds are fictitious. The finding of the Rent Control and Eviction Officer that these properties were purchased by the mother of the petitioners does not suffer from any illegality.

5. The next submission of the learned counsel for the petitioners is that the Rent Control and Eviction Officer has not specifically recorded any finding that these properties were purchased in vacant state and they are in the occupation of the petitioners. Contesting respondent has filed counteraffidavit and it has been stated that the mother of the petitioners was in occupation and after her death the properties were in the occupation of the petitioners. The petitioners have not denied this fact in the rejoinder affidavit. They have not categorically stated that these accommodation is in the occupation of any tenant to whom the accommodation was duly allotted in accordance with law. After the purchase of the properties it is not clear whether the petitioners were in its occupation or the same was in the tenancy of some tenant and on this aspect, no finding has been recorded by the Rent Control and Eviction Officer.

6. In view of the above, the Rent Control and Eviction Officer is directed to record specific finding whether the houses purchased by the mother of the petitioners are in the possession of the petitioners or in the possession of some tenant. Accordingly, the impugned order dated 3181998 is hereby quashed. The writ petition is allowed. The Rent Control and Eviction Officer shall decide the question of vacancy keeping in view the observations made above. As the matter is quite old, Rent Control and Eviction Officer shall decide the case within two months from the date of production of certified copy of this Order by either of the parties. The parties shall bear their own costs.