
(2013) 01 AHC CK 0038
In the Allahabad High Court
Case No : Writ A. No. 60767 of 2005

Vinod Kumar Mishra

APPELLANT

Vs

Ghanshyam Das Maheshwari and Others

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Citation : (2013) 98 ALR 103 : (2013) 2 RCR(Rent) 572

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Atul Dayal, for the Appellant; Kushal Kant, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Atul Dayal, learned counsel for the petitioner and Sri Yogesh Kumar Mishra, Advocate holding brief on behalf of Sri Kushal Kant, learned counsel for respondents.

Certain chronological events are necessary to understand the dispute in this matter which are very short but to my mind demonstrates a mischievous approach on the part of petitioner which has forced this litigation upon respondents.

The dispute relates to House No. 29/14 Maheshwari Mohal, Kanpur, initially owned by Sri Purshottam Das Maheshwari who died on 12.04.1970 and thereafter it was inherited by his legal heirs, namely, his wife, Smt. Laxmi Devi and son, Prem Kumar. After the death of Smt. Laxmi Devi and Prem Kumar the property has devolved upon their legal heirs. It appears that one of the legal heir, namely, Roop Kishore Maheshwari (allegedly owned half of the building in dispute) intimated vacancy to Rent Control and Eviction Officer, Kanpur (hereinafter referred to as the "RCEO") on 03.01.2003 and also nominated petitioner for allotment of said accommodation u/s 17(1) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as

the "Act, 1972"). Thereafter Sri Roop Kishore Maheshwari sold the premises (his share) owned by him to respondents vide sale deed dated 28.05.2005. The respondents-landlords who claim to own the entire premises, moved an application on 23.09.2003 seeking time to file objection in the allotment proceedings pending before RCEO which stood initiated after intimation of vacancy by erstwhile owner of half of premises, namely, Roop Kishore Maheshwari vide his letter dated 03.01.2003. It does not appear as to whether any actual objection was filed by respondents or not but the RCEO proceeded to declare vacancy in the premises in question on 14.01.2004. However, before passing any order of allotment the respondents-landlords moved release application allegedly dated 04.02.2004 seeking release of accommodation in question in their favour. This Court however, finds that copy of release application is on record as Annexure-CA-2 to the counter affidavit filed by respondents and it shows the date of verification as 04.05.2004. Learned counsel for the parties agreed that release application was actually filed by respondents-landlords much before the date of actual order of allotment made by RCEO, i.e., 03.03.2005 and sometimes in May, 2004. The RCEO ignoring release application passed order dated 03.03.2005 making allotment of accommodation in question in favour of petitioner on the basis of nomination made by erstwhile co-owner, Roop Kishore Maheshwari on 03.01.2003. This order dated 03.03.2005 was assailed by respondents before Revisional Court in Revision No. 34 of 2005, which has been allowed vide judgment dated 12.08.2005 and the Revisional Court after setting aside the order of allotment dated 03.03.2005, directed that RCEO first should take decision and decide landlords' release application.

2. Sri Atul Dayal, learned counsel for the petitioner submitted that u/s 17(1) of Act, 1972 a landlord has been permitted to make nomination within 21 days and once nomination is made, thereafter the allotment has to be made in terms of nomination since it confers a right upon the person nominated by landlord and the Revisional Court has acted wholly illegally in passing the impugned judgment.

3. The submission is thoroughly misconceived.

4. Section 17 of Act, 1972 reads as under:

17. Conditions of making allotment order:-(1) Where the District Magistrate receives an intimation, under sub-section (1) of Section 15, of the vacancy or expected vacancy of building any allotment order in respect of that building shall be made and communicated to the landlord within twenty one days from the receipt of such intimation, and where no such order is so made or communicated within the said period, the landlord may intimate to the District Magistrate the name of a person of his choice, and thereupon the District Magistrate shall allot the building in favour of the person so nominated unless for special and adequate reason to be recorded he allots it to any other person within ten days from the receipt of intimation of such nomination:

Provided that where the landlord has made an application under clause (b) of

sub-section (1) of Section 16, for the release of the whole or any part of the building or land appurtenant thereto in his favour, the said period of twenty-one days shall be computed from the date of decision on that application or where an application for review or an appeal is filed against such decision, from the date of decision on such application or appeal.

(2) Where a part of a building is in the occupation of the landlord for residential purposes, or is released in his favour under clause (b) of sub-section (10 of Section 1 for residential purposes, the allotment of the remaining part thereof under clause (a) of the said subsection (1) shall be made in favour of a person nominated by the landlord unless for special and adequate reasons to be recorded the District Magistrate allots it to any other person.

Explanation.--Where a building in the occupation of the landlord for residential purposes adjoins (whether horizontally or vertically) the building sought to be allotted, and--

- (a) there is a common entrance to or a common passage for both the buildings;
- (b) the two buildings share the sanitary conveniences or other amenities (not including electric connection).

then notwithstanding that the two buildings are independently fit for residential purposes, they shall be deemed to be part of each other for the purposes of this sub-section.

5. A perusal of Section 17(1) shows that after receiving intimation of vacancy or expected vacancy in a building u/s 15(1), the District Magistrate shall pass allotment order in respect to such building and communicate the same to landlord within 21 days from the date of such intimation. Admittedly, no such order of allotment has been made by Competent Authority within 21 days after receipt of intimation of vacancy vide letter dated 03.01.2003 and, therefore, the first part of Section 17(1) has no application.

6. The next clause of Section 17(1) says that where the Competent Authority has not passed any such order or communicated the same to landlord within said period, i.e., 21 days, then it shall be open to landlord to intimate the District Magistrate the name of a person of his choice to whom allotment of vacant building may be made. This entitlement of nomination become available to landlord after 21 days of intimation of vacancy and not earlier thereto, particularly when no allotment order is made within 21 days or communication of such an order is not made by landlord to District Magistrate.

7. The third clause of Section 17(1) then comes into picture stating that when a contingency has arisen where the landlord has made nomination, in such case and thereupon the District Magistrate shall allot the building in favour of the person so nominated unless he record special and adequate reasons for allotting it to anybody else and such an order shall be passed by him within 10 days from intimation of such nomination.

8. The proviso further says that where the landlord has moved a release application the period of 21 days stated in sub-section (1) of Section 17 would commence after the decision made on release application.

9. The non-compliance of Section 17(1) in the present case is writ large from the very beginning. The vacancy was communicated by Sri Roop Kishore Maheshwari who owned admittedly half of building on 03.01.2003. There was no occasion for him to make any nomination for 21 days after receipt of intimation about vacancy to District Magistrate. In the present case, however, the nomination was made by him on the same day, i.e., 03.01.2003 though apparently it was not in accordance with the manner in which it is provided in Section 17(1) of Act, 1972.

10. Be that as it may, the fact remains that before any letter of allotment could be made the landlord made nomination. No time limit has been prescribed within which the landlord shall intimate to District Magistrate the name of a person of his choice. Obviously it would have to be before the actual order of allotment made by Competent Authority. Further, where an order of allotment has actually not been passed but before that a landlord has submitted application for release of vacant building, in my view, such an application has to be decided first by District Magistrate before proceedings to take a decision on allotment.

11. In the present case, it is not the case of parties that after receiving intimation about vacancy in building in dispute, any allotment order was passed or communicated to landlords and before such an order the release application admittedly was filed by landlords. Therefore, under proviso to Section 17 of Act, 1972, it is necessary and obligatory on the part of RCEO to first decide release application filed by landlord and thereafter to take decision in respect to allotment of premises in question, if it still survives. In my view, the Revisional Court has rightly set aside the allotment order since respondents' release application filed earlier, i.e., before the date of allotment, was not decided. The writ petition, therefore, lacks merit. It is accordingly dismissed with cost of Rs. 5000/-. Interim order, if any, stands vacated.