
(2006) 10 AHC CK 0135
In the Allahabad High Court
Case No : Writ Petition No. 8618 (R/C) of 1990

Vishwanath Khanna and Ors.

APPELLANT

Vs

Xth Addl. District Judge, Lucknow & Ors.

RESPONDENT

Date of Decision : 09-10-2006

Acts Referred:

Citation : (2006) 10 AHC CK 0135

Hon'ble Judges : A.N.Varma, J

Final Decision : Dismissed

Judgement

A.N. Varma, J.—The instant writ petition arises out of proceedings initiated under Section 16(1)(b) of U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972, U.P. Act No. 13 of 1972 (to be hereinafter referred to as the Act) whereby the revision preferred by the petitioners against the order passed by opposite party No. 2 allowing the application for release, has been dismissed.

2. The dispute in the petition pertains to a Motor Garage, measuring about 12 ft. x 18 ft. situate in Jagat Cinema Building, Aminabad, Lucknow. According to the petitioners, by virtue of registered lease deed dated 571975, they took on lease the building in question for running Cinema. According to them, it was found that there was shortage of space for opening a booking office, therefore, they are said to have approached the owners of the building for getting on rent a Motor Garage in the building in question which at the relevant time was locked.

3. According to the petitioners, the said Garage was in exclusive possession of Shri Parkash Sunder Bhargava and, therefore, with the consent of all the coowners the petitioners are said to have got the said Motor Garage on monthly rent of Rs. 300/ with effect from 1101975. The tenancy of the petitioners was alleged to have been regularized under Section 14 of the Act. The said Motor Garage was being used as a booking office. As per the petitioners' case, Shri Kailash Chandra Bhargava was on inimical terms not only against his brothers but also against the petitioners. They had lodged a report of theft against him for theft of certain girders. As a counter blast, late Shri Kailash Chandra Bhargava

applied for release of the said Motor Garage in 1976 and also got an application for allotment through one Matin Ahmad. Both the applications i.e., application for allotment as well as application for release were rejected.

4. Subsequently, in November 1978, Late Kailash Chandra Bhargava again applied for release. Along with him one Naresh Kumar Rawat and Shri Dinesh Kumar Gupta applied for allotment. On report submitted by the Inspector, vacancy in respect of the building was declared and the same was released in favour of Kailash Chandra Bhargava.

5. The case of the petitioners was refuted by the opposite parties. According to the opposite parties the garage in question was never let out to the petitioners nor did it form part of the lease dated 571975. The petitioners were unauthorized occupants of the building in question and the benefit of Section 14 of the Act was not available to them. According to the opposite parties, one Matin Ahmad applied for allotment in respect of the building in question and the opposite parties applied for release of the same. Both the applications i.e. one for allotment and the other for release were rejected by the A.D.M. Civil Supplies vide its order dated 16121976. Being aggrieved against the same the revision was filed which was dismissed by the learned District Judge vide order dated 1811977, on the ground that the garage in question was found in possession of the owners and, thus, was not vacant and the dispute about the possession appeared to be inter se between four landlords/owners. Thereafter, on 1491977, one Naresh Kumar Rawat applied for allotment of the said garage. Another application for allotment was preferred by one Shri Dinesh Kumar Gupta on 2711978. On the application preferred by Rawat, the Rent Control Inspector submitted its report on 27121977 while on the application by Dinesh Kumar Gupta, report was submitted on 1721978 and upon an application by Shri Kailash Chandra Bhargava for release, the report was submitted by the Inspector on 30111978. All the three reports submitted by the Rent Control Inspector indicated that the garage in question was in unauthorized occupation of the petitioners i.e. there was no valid allotment order in their favour.

6. On the basis of the said reports, vacancy in respect of the premises in question was notified on 17121981 and objections were invited. After the disposal of the objections the A.D.M. Civil Supply, vide order dated 221982, declared the vacancy in respect of the premises in question. Being aggrieved against the same, the petitioners filed a revision before the District Judge (Revision No. 22 of 1982). The said revision was, however, dismissed.

7. The Additional City Magistrate (1) (Rent Control and Eviction Officer) vide its order dated 641989, allowed the application for release of the building in question and dismissed the applications for allotment preferred by Naresh Kumar Rawat, Dinesh Kumar Gupta. Being aggrieved against the same the petitioners filed a revision before opposite party No. 1, who vide its judgment and order dated 1781990 dismissed the same and maintained the order passed by opposite party No. 2. It is against the said judgment and order that the petitioners have

approached this Court through the instant writ petition.

8. I have Shri Mohd. Arif Khan, learned Senior Advocate, assisted by Shri Anil Kumar, learned Counsel for the petitioners as well as S.K. Mehrotra, learned Counsel for the opposite parties.

9. Shri Khan submitted that the order declaring the vacancy was incorrect and the procedure laid down under the Rules with regard to the same were not followed. He further argued that the vacancy was required to be declared by a speaking order. His submission is that the reports submitted by the Inspector were also in violation of the Rule 8 (2) of Rules framed under the Act. According to him since the petitioners were in possession prior to the commencement of the Act, they were in occupation of the premises with the consent of the landlord and no eviction proceedings having been initiated, therefore, their tenancy stood regularized and as such the building could not have been declared as vacant.

10. Shri Mehrotra, on the other hand submitted that the orders impugned in the Writ Petition do not suffer from any infirmity. As per all the three reports submitted by the Rent Control Inspector, the petitioners were found to be in unauthorized occupation. Since their possession over the property was not found prior to July, 1976, therefore, their tenancy could not be deemed to have been regularized. He further argued that a person who had been found to be in unauthorized occupation and in whose favour there was no valid allotment order has no right to maintain the petition.

11. In support of his case, Shri Mehrotra relied upon 2002 (20) LCD page 1368, Nutan Kumar & Ors. v. Second Additional District Judge & Ors., 1999(1) JCLR 7 (All) : 1999(1) ARC 34, Vinod Kumar v. Rent Control and Eviction Officer/District Supply Officer, Saharanpur & Anr. and 1992(1) Allahabad Rent Cases page 174, Brij Pal Singh v. 1st Additional District Judge, Muzaffarnagar & Ors. and 2005(3) JCLR 787 (All) : 2005(1) ARC page 573, Ramakant Mishra v. Surendra Kumar Mishra & Ors.

12. From the perusal of the order dated 16/12/1975, passed by the Additional District Magistrate (Civil Supplies, Lucknow) copy of which has been filed alongwith the writ petition as Annexure No. 87 it appears that the application for allotment preferred by Matin Ahmad as well as application preferred by the landlords for the release of the garage in question both were rejected on the ground that the garage was found to be in possession of the owners and was not actually vacant. The relevant portion of the said order is reproduced hereunder:

"From the record it appears that the garage is in possession of the owners and is actually not vacant."

13. The revision filed against the said order by the landlords was dismissed on 18/11/1977 by the District Judge. The said order is being reproduced hereunder:

TO THE COURT OF THE DISTRICT JUDGE, LUCKNOW

PRESENT: B.L Goel.

Kailash Chandra Bhargava.....

Applicant

Versus

The A.D.M.(C.S) and others.....

Opposite parties.

"Heard the applicant's learned Counsel and perused the order. The disputes about the possession appears to be inter se the four landlords owners. The application of the application has been rejected finding that the Garage in question was in possession of the owners. Under the circumstances there is no force in this revision."

ORDER

The Revision is dismissed summarily.

Sd/B.L. Goel 1811977.

District Judge, Lucknow 1811977.

14. Thus, as is apparent from the perusal of the aforesaid orders, it clearly transpires that the petitioners were not in possession of the garage in question on 16121976 and thereafter till 1811977.

15. U.P. Act No. 13 of 1972, as amended by UP. Act No. 28 of 1976 came to be applicable w.e.f. 571976. Section 14 of the Act was substituted by U.P. Act No. 28 Of 1976 w.e.f. 571976. The said provision reads as follows :

"Regularisation of occupation of existing tenants. Notwithstanding anything contained in this Act or any other law for the time being in force, any licensee (within the meaning of Section 2A) of a tenant in occupation of a building with the consent of the landlord immediately before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Amendment Act, 1976, not being a person against whom any suit or proceeding for eviction is pending before any Court or authority on the date of such commencement shall be deemed to be an authorized licensee or tenant of such building."

16. As would appear from the perusal of the aforesaid provision, a person in occupation of a building with the consent of the landlord and against whom no eviction proceedings are pending before any Court on the date of such commencement, shall be deemed to be an authorized licensee or tenant of such building. Meaning thereby that his tenancy would be deemed to have been regularized under the aforesaid provision. Other persons in occupation in violation of the aforesaid provision would not be deemed to be authorized occupants.

17. In the case at hand, the petitioners were not found to be in possession of the building in question prior to the commencement of the Act rather upto January, 1977, they were not found to be in possession, therefore, their possession cannot be said to be authorized in any manner i.e. their tenancy cannot be said to have been regularized under the provisions of Section 14 of the Act. They as such were unauthorized occupant.

18. In Nutan Kumar case (supra) the Apex Court in Paragraph 13 observed as follows:

"Section 13 of the said Act specifically provides that a person who occupies, without an allotment order in his favour, shall be deemed to be an unauthorized occupant of such premises. As he is in unauthorized occupation he is like a trespasser. A suit for ejectment of a trespasser to get back possession from a trespasser could always be filed. Such a suit would not be on the contract agreement between the parties and would thus not be but by principles of public policy also."

19. In Brij Pal Singh (supra) this Court relying upon a Full Bench decision of this Court held as follows:

"As regards the merits of the case, the release of the accommodation in dispute in favour of the landlord after the order declaring the vacancy has become final, the petitioner, who was treated to be an unauthorized occupant without an order of allotment in occupation of the premises, cannot be treated to be an aggrieved person so as to challenge the order releasing the premises in favour of the landlord. The petitioner cannot be allowed to contest the release application under Section 16(1)(b) of the Act as it is mainly a matter to be considered between the landlord and the Rent Control Authorities (Refer Talib Hasain & Anr. v. 1st Additional District Judge, Nainital & Ors., 1986(1) ARC 1 (FB))."

20. In Ramakant Mishra (supra) learned Single Judge of this Court in paragraph 5 of the said report held as follows:

"Now coming to the order passed by the Rent Control and Eviction Officer it is admitted case of the parties that the petitioner is occupying the accommodation in question without any allotment order under the provisions of the Act. Learned Counsel for the petitioner has submitted that in view of decision of the Supreme Court in Nutan Kumar & Ore. v. II Additional District Judge & Ors., AIR 2002 SC 3456:2002 (2) ARC 645, whereby Full Bench of this Court has been overruled and the Apex Court ruled as under:

A person who occupies a premises without an allotment order in his favour shall be deemed to be an unauthorized occupant of such premises as he is in unauthorized occupation like a trespasser."

21. The fact that the petitioners occupied the garage in question without an order of allotment is not disputed. Section 11 of the Act prohibits of letting without allotment order. It contemplates that no person shall let any building

except in pursuance of an allotment order issued under Section 16 of the Act. Section 13, thereafter puts a restriction on the occupation of a building without allotment or release and if a person so purports to occupy it he shall be deemed to be an unauthorized occupant of such building. Thus, any letting of building made in contravention of the provisions of Sections 11 and 13 is illegal and void and the tenanted accommodation would be deemed to be vacant and open for allotment or release.

22. The argument of the learned Counsel for the petitioners that the tenancy of the petitioners stood regularized under Section 14 of the Act, thus fails and is negatived. The unauthorized occupant has, as such, no right to contest the matter before the Rent Control Authority. He does not even have any locus to seek remedy before this Court under Article 226 of the Constitution of India.

23. The vacancy in respect of premises in question was notified on 17/12/1981 and objections were invited. Against the said notification, the petitioner filed objections, which was disposed of on 22/1/1982 and the vacancy was declared. Being aggrieved against the same, the revision was filed before the District Judge which was dismissed. The said order was, however, not made subjectmatter of challenge in any proceedings and thus, the order declaring the vacancy became final.

24. Opposite Party No. 2, vide its order dated 6/4/1989, upon consideration of entire material on record rejected the application for allotment preferred by Dinesh Kumar Gupta and Naresh Kumar Rawat and allowed the application preferred by the opposite parties for release of the building. The revision preferred against the same was also dismissed. Once the order declaring the vacancy having become final the arguments thereafter on the question of compliance of Rule 8(2) of the Rules framed under the Act does not arise. If the procedure prescribed had not been followed, the petitioners ought to have raised the same in the appropriate proceedings which having not been done the same cannot be raised in the present proceedings.

25. In view of what has been said hereinabove the Writ Petition lacks merits and, thus deserves to be dismissed.

26. The Writ Petition is accordingly, dismissed.

27. There will, however, be no order as to costs.