
(2006) 08 AHC CK 0143
In the Allahabad High Court
Case No : Writ Petition No. 10 of 2003 (R/C)

V.K.Srivastava

APPELLANT

Vs

Srimati Vandana Pitariaand Others

RESPONDENT

Date of Decision : 04-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 59, 64, 65, 74
Transfer of Property Act, 1882 — Section 109

Citation : (2006) 08 AHC CK 0143

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—Heard Sri H.S. Jain, learned counsel for the petitionertenant and Sri S.K. Mehrotra and Sri I.D. Shukla, who have put in appearance on behalf of respondent No. 1, the landlord.

2. Under challenge are two judgments and orders, one passed on 28.8.2001 by the Civil Judge (Senior Division) J.S. C.C., Lakhimpur Kheri in J.S.C.C. Suit No. 11 of 1999 decreeing the suit for eviction and payment of arrears of rent, and the other, judgment and order dated 12.12.2002 passed by the Additional District Judge (Court No.4), LakhimpurKheri dismissing J.S.C.C. Revision No.13 of 2001 and upholding the judgment and order of the Prescribed Authority.

3. The property in dispute is a big bungalow built over 6000 sqr. ft. land, consisting of nine rooms, lawn, verandah with open space, situate at Civil Lines area of the city of LakhimpurKheri near Deputy Commissioner's residence. Earlier, one Smt. Buddhimati Devi, a resident of town Singahi, district Lakhimpurkheri was the landlady of this house/bungalow. Later it was sold by her to Smt. Vandana Pitaria, a resident of Lakhimpurkheri by a registered sale deed executed at Bombay (now Mumbai) on 23.2.1992. It has been submitted by the present landlord Smt. Vandana Pitaria that initially this bungalow was let out to petitioner's father Sri K.M. Saran in the year 197980 at a meager rent, which

was later on raised to Rs.250/ per month. After the death of Sri K.M. Saran, the petitioner Dr. V.K. Srivastava, who was working as a Medical Officer in district Kheri, was allotted this bungalow on 10.6.1974 by the Rent Control Officer/ District Magistrate, Kheri. There is no mention of any monthly rent in the order of allotment of said house dated 10.6.1974, which was issued by the concerned Rent Control Officer, Kheri, as per provisions of Section 16(1) of the concerned Rent Control Law i.e. the U.P. Urban Building (Regulation of Letting, Rent and Eviction Act), 1972 (Act XIII of 1972), hereinafter referred to as "the Act". A copy of the order of allotment dated 10.6.1974 has been brought on record by the petitioner as Annexure5 to this writ petition.

4. As per present landlady Smt. Vandana Pitaria, she and her husband had bought the bungalow in question for residential purposes as they did not have any house or property in the city of LakhimpurKheri. The petitioner Dr. V.K. Srivastava became her tenant with effect from 23.2.1992. The present landlady Smt. Vandana Pitaria and the earlier landlady Smt. Buddhimati Devi had informed the petitioner tenant in February, 1992 itself that henceforth he should pay the rent (which was Rs.250/ per month) to the new landlady Smt. Vandana Pitaria. Despite the above fact brought to his notice, Dr. V.K. Srivastava stopped paying rent to the new landlady with effect from March, 1992. not only this, Dr. V.K. Srivastava, the tenant had also made alternations in the bungalow. By putting grills in the verandah, he changed the nature of the property and the open verandah was closed. He had also constructed a pucca garage on the ground floor and further made constructions on the first floor of the house. Dr. V.K. Srivastava, the tenant did not seek the permission of the landlady before making the abovesaid changes/alterations in the property.

5. It has also been pleaded by the new landlady Smt. Vandana Pitaria that the petitioner Dr. V.K. Srivastava was transferred from LakhimpurKheri and was serving elsewhere in the State of Uttar Pradesh. He has also built a new house in the city of Lucknow. Since the tenant was transferred from LakhimpurKheri and had constructed his own house in Lucknow, the landlady sought eviction of the tenant as she was in urgent need of the house for residence of her family. When the landlady failed to persuade the tenant to pay the rent, a legal notice was sent to the tenant on 26 3.1999 and the tenancy was terminated on 27.4.1999. Dr. V.K. Srivastava, the tenant did not pay monthly rent, including arrears of rent fallen due with effect from 1st March, 2002, to the landlady even after receipt of the said notice. He had also refused the title of the landlady in his legal notice and pleadings before the lower Court. Consequently, Smt. Vandana Pitaria filed a J.S.C.C. Suit No. 11 of 1999 in the Court of Judge, Small Causes at Kheri seeking eviction of the tenant and for payment of arrears of rent. The landlady had highlighted before the Court that despite oral and written notice to the tenant that he must pay rent to the present landlady Smt. Vandana Pitaria with effect from March 1,1992, he failed to pay the rent. The landlady had waited for about seven years for the tenant to pay the rent, but in vain. Alterations and additions as aforesaid were made in the property without seeking permission of the

landlady. The petitioner tenant had also denied the title of the landlady despite being informed by the earlier landlady Smt. Buddhimati Devi and her Mukhtar regarding the change of ownership of the property on 23.2.1992. The rent was demanded regularly by the new landlady and her husband, agent Sri Ved Prakash Pitaria, but the tenant did not pay the rent. The tenant deposited the rent in Court under Section 30 of the Act in Misc. Case No.27 of 1997 in favour of Smt. Buddhimati Devi (she was landlady before 23.2.1992) for the period from January 1991 to 2000 at the rate of Rs.24/ per month. He had also filed rent receipts for the period from October, 1996 to April, 2001 showing payment of rent at the rate of Rs.24/ per month. These receipts have been exhibited as Paper No. Ga22 in the Court of Judge, Small Causes Court. The petitioner denied that he was in arrears of rent or he had made any alterations in the property. He averred in the written statement that Smt. Vandana Pitaria and her husband tried to occupy the bungalow forcibly and as such he had to file an Injunction Suit No.342 of 1999 Dr. V.K. Srivastava v. Smt. Vandana Pitaria and another, in the competent Court at Kheri.

6. After hearing the learned counsel for the parties and going through the material on record, the learned Judge, Small Causes Court framed the following three issues for consideration:

1. Whether Dr. V. K. Srivastava, petitioner was the tenant of Smt. Vandana Pitaria, landlady at the rate of Rs.250/ or Rs.25/ per month?
2. Whether the tenant was in arrears of rent and was defaulter?
3. Whether the landlady had given any proper, valid notice to the tenant?

7. The learned Judge, Small Causes Court, after discussing the documentary and oral evidence led by the parties, arrived at a conclusion that Smt. Vandana Pitaria became the owner, landlady of the bungalow in question with effect from 23.2.1992 on the basis of a registered saledeed. The petitioner Dr. V.K. Srivastava was held to be a tenant with effect from the said date i.e. 23.2.1992. He was required to pay arrears of rent at the rate of Rs.250/ per month, as was being paid by him to Smt. Buddhimati Devi, the erstwhile landlady at the time of execution of the saledeed. The learned Court below had also found that Dr V.K. Srivastava was allotted the bungalow under the orders of District Magistrate, Kheri on 18.4.1974. There was no mention of any rent payable by the tenant to the landlady in the said allotment order dated 18.4.1974 and as such the version of the tenant that he was paying rent at the rate of Rs.24/ per month to the erstwhile landlady Smt. Buddhimati Devi was found to be false. The Court below after going through the material on record had found that the tenant Dr. V.K. Srivastava was paying Rs.250/ per month as rent to the erstwhile landlady Smt. Buddhimati Devi at the time of execution of the saledeed and change of the ownership of the property on 23.2.1992. The Court below further found that the tenant was duly informed by the erstwhile landlady Smt. Buddhimati Devi and her representative Mukhtar, etc. regarding this change of ownership of the

bungalow. He was also informed that he should pay Rs.250/ per month as rent to the new landlady i.e. Smt. Vandana Pitaria. The witnesses, who deposed on oath before the trial Court, had proved this fact. They were duly crossexamined by Dr. V.K. Srivastava, the tenant, who failed to prove before the Court as to how he was required to pay Rs.24/ per month only (a meager rent, which was "no rent" in the eye of law) for a huge accommodation consisting of nine rooms, courtyard, lawn and verandah, etc. On the basis of oral evidence, it was found proved before the Court that a pucca garage was constructed by the tenant on the ground floor and he had made material alterations in the building, changing the nature of entire verandah and raising constructions over the first floor of the bungalow. This was done in the year 1996 without obtaining permission of the landlady, Smt. Vandana Pitaria.

8. Both the Courts below i.e. the Judge, Small Causes Court and the revisional Court, have taken note of the fact that in February, 1992 itself Dr. V.K. Srivastava was informed regarding change of ownership of the house. Admittedly, the rent was deposited by him in the Court in the year 1997 i.e. about five years after the above change in ownership and that too, in favour of Smt. Buddhimati Devi, who had ceased to be the landlady after 23.2.1992: He had categorically admitted in his pleadings that he was not denying the title of Smt. Vandana Pitaria (YADDYAPI PRATIVADI KO VADINI KE SWATVA, SWAMITVA SE INKAAR NAHIN HAI). The erstwhile owner of the property Smt. Buddhimati Devi and her Mukhtar Aam/agent had never raised any objection to the ownership of Smt. Vandana Pitaria. The petitioner had filed Injunction Suit No.342 of 1999 impleading Smt. Vandana Pitaria as party to the suit and this proves that he had knowledge of the fact that Smt. Vandana Pitaria had become owner of the bungalow and he was her tenant. The saledeed executed by Smt. Buddhimati Devi in favour of Smt. Vandana Pitaria and proved before the trial Court was found to be proper and in order by the revisional Court.

9. There is a very material fact, which has come to the notice of this Court. The learned Judge, Small Causes Court had, on the basis of documentary and oral evidence, found that the tenant Dr. V.K. Srivastava had failed to indicate the Court in which he had deposited rent in favour of the landlady. As per the tenant, he had deposited rent from January, 1991 to January, 2000 (vide Paper No.Ga43). The rent for this period is shown to have been deposited on 1.7.1997 at the rate of Rs.24/ per month. In the rejoinder affidavit, the rent has been indicated as Rs.25/ per month. The trial Court has also taken note of the fact that Dr. V.K. Srivastava, tenant had failed to establish his case for payment of rent for the period from 1990 to 1997. He had given no explanation regarding the rent for this period, as to whom (Smt. Buddhimati Devi or the new landlady Smt. Vandana Pitaria) he had offered or paid the rent. The receipt Paper No.Ga47 dated 12.4.1992 was in the name of his father late K.M.Saran. The receipt Paper No.Ga49 relating to the payment of rent from October, 1986 to December, 1986 was said to be issued in the name of Dr. V.K. Srivastava. The Judge, Small Causes Court came to the conclusion that an overwriting had been made on the

receipt showing 17.1.1987 as date of receipt. The signatures on the receipt Paper No.Ga40 related to the payment of rent from April 1985 to September, 1986. No receipts were produced, duly signed and issued by Smt. Buddhimati Devi, the erstwhile landlady or by the present landlady Smt. Vandana Pitaria, who had become owner of the property with effect from 23.2.1992. The sale deed was duly proved by P.W.2 Sri Ved Prakash Pitaria, husband/agent of Smt. Vandana Pitaria. He had also proved the notice dated 26.3.1999 containing the facts regarding alterations made by the tenant in the property. Sri Ved Prakash Pitaria was available for cross-examination by Dr. V.K. Srivastava, tenant. P.W.2 Chandra Prakash had supported the sale deed of the house executed on 23.2.1992 and proved the fact that Smt. Buddhimati Devi's son Vishwanath Upreti was her Mukhtar Aam/agent. She and her agent had categorically informed Dr. V.K. Srivastava that the same rent i.e. Rs.250/, which was being paid to Smt. Buddhimati Devi, was to be paid per month to the new landlady Smt. Vandana Pitaria. This Chandra Prakash, P.W.2 was a witness to the sale deed executed on 23.2.1992.

10. In the present case, interestingly Dr. V.K. Srivastava, tenant has admitted several facts, like allotment of the bungalow in question in his favour on 10.6.1974, etc. At one place, in the rejoinder affidavit, he has admitted that the house in question was allotted in favour of his father on rent at the rate of Rs.24/ per month. In fact, no rent has been indicated in the allotment order dated 10.6.1974 issued by the Rent Control Officer. Different dates have been given in this regard by the tenant in the written statement, plaint, rejoinder affidavit, etc. the trial Court has also recorded a finding that the petitioner tenant Dr. V. K. Srivastava did not pay the rent regularly to his erstwhile landlady Smt. Buddhimati Devi even before 23.2.1992. The receipts shown as papers No.Ga47 to Ga50 relate to the years 1972 and 1986-87. He had failed to demonstrate before the Court as to whether he had paid any rent to his erstwhile landlady Smt. Buddhimati Devi from 1987 to January, 1991. In his evidence, he has stated that from January, 1991 the erstwhile landlady Smt. Buddhimati Devi did not ask for any rent from him. The trial Court has categorically recorded the finding that the tenant had failed to place the rent receipts issued to him upto December, 1990. He had placed on record the rent receipts from 1986 to 1987, but he did not produce the receipts of the year 1990 onwards. This was done with the sole motive to mislead the trial Court regarding rate of rent that was in fact Rs.250/ per month as indicated by erstwhile landlady Smt. BUddhimati Devi and claimed by the new landlady Smt. Vandana Pitaria. The tenant had deposited rent at the rate of Rs.24/ per month in the lower Court under the provisions of the Act but that too, in favour of Smt. Buddhimati Devi, who had ceased to be the landlady after 23.2.1992. The present landlady had filed the suit in the year 1999. The petitioner tenant had not made any explanation before the Courts below or this Court as to how and in what manner he had offered the rent to the landlady Smt. Vandana Pitaria. The trial Court has also noted that even in the injunction suit filed in the year 1997 before the Civil Judge (Junior Division), the

tenant had not indicated that he had in fact deposited the total rent i.e. upto 1997 in the Court. He had failed to produce any material before the Judge, Small Causes Court dealing with the eviction suit to demonstrate that he had actually paid any rent. The learned Judge, Small Causes Court had rightly come to the conclusion that the tenant was defaulter in payment of rent to the new landlady Smt. Vandana Pitaria. The tenant with illegal and ulterior motive did not offer or pay rent to the new landlady Smt. Vandana Pitaria. The trial Court had come to the conclusion that no rent for the bungalow in occupation of the tenant was paid by him to any of the landladies, old or new.

11. As far as the rent is concerned, learned counsel for the petitioner Sri H.S. Jain has vehemently argued that it was Rs.24/ per month and not Rs.250/ as claimed by the landlady. He has further submitted that since the rent was not determined, as such whatever was thought proper by the tenant and was being paid by his father, the original allottee i.e. Rs.250/ per month, was deposited by him in the Court below. Since the tenant, till date, was not informed as to who was the landlord of the bungalow, he could not make payment of the rent to the legal, valid landlord of the bungalow. According to Sri H.S. Jain, both the Courts below have committed manifest error of law in arriving at their conclusions. The receipts Ga47 to Ga50 were proved by the tenant and they show that Rs.24/per month was the actual rent which was payable to Smt. Buddhimati Devi, whom he still considers to be the actual, true landlady. Smt. Buddhimati Devi was not examined by any of the parties. It was a burden of the landlady to demonstrate before the Court by placing saledeed and other evidence that in fact she was now the owner of the bungalow occupied by the petitioner. The Courts below have acted on conjectures and surmises. Both the Courts below have not considered the evidence; they relied on hearsay evidence, not on documentary evidence. The findings of facts recorded by the Courts below were perverse. The judgments of the Courts below are wholly erroneous and liable to be set aside. Sri H.S. Jain has argued at length and submitted that Dr. V.K. Srivastava had succeeded the tenancy after his father's death. His father was inducted as tenant sometime in the year 1968. He was paying Rs.24/ per month as rent and the same rent was offered by him to the landlady. It was the burden of the landlady to prove before the Courts below as to what was the rent. The fact regarding change of ownership was not formally communicated to the tenant. The crucial issue in this case was the quantum of rent. The witnesses, landlady's husband and other persons, had failed to prove the version of the respondent Smt. Vandana Pitaria. Sri Jain has further submitted that the power to enhance the rent vests with the Rent Control Officer/District Magistrate, Kheri. The landlord had never approached the District Magistrate, Kheri for enhancement of the rent after following the procedure indicated in the Act, Since the tenant had already deposited rent under Section 30(1) of the Act in favour of Smt. Buddhimati Devi, landlady, he was not a defaulter. Learned counsel for the petitioner has placed reliance on the following judgments in support of his submission that there was no determination of rent and before settlement of this issue, he could not be said

to be a defaulter:

- 1.1981 ARC (SC) 381. Harcharan Singh v. Smt. Shivrani and others.
2. (1987) 1 ARC 1, Kamleshwar Singh Srivastava v. IXth Addl. District Judge. Lucknow and others.
3. (2000) 1 ARC 653. Gokaran Singh v. 1st Additional District and Sessions Judge. Hardoi and others.
- 4.1982 ARC 127. Pitambar Putt v. District Judge. Almora and others.
5. (1985) 2 ARC 24, Ganesh Inter College. Etah v. Surekha Jain, and
6. (1986) 2 ARC 297, Gyanendra Prakash Sanggl v. 1st Additional District Judge. Muzaffarnagar and others.

12. Sri H.S. Jain, learned counsel for the petitioner has further contended that in the present case, the respondent No.1 landlady had not filed any application under Section 21(1)(a) of the Act for release of the house in question. As far as the arrears of rent and default in payment of rent is concerned, this ground was not available to the landlady seeking eviction of the petitioner tenant. The whole exercise was unnecessary. He has cited (1989) 1 ARC 157, Om Prakash Sharma v. District Judge. Moradabad and others, in support of his above submission. According to Sri Jain, the learned Judge, Small Causes Court was not competent to deal with the dispute.

13. Sri S.K. Mehrotra, learned counsel for the respondenttenant has led the Court through the impugned judgments and orders passed by the Judge, Small Causes Court and the revisional Court in support of his submissions; that both the Courts below have recorded concurrent findings of fact that the petitioner tenant had acted dishonestly and did not pay rent to any of the landladies i.e. Smt. Buddhimati Devi, erstwhile landlady or Smt. Vandana Pitaria, present landlady, who had purchased the bungalow on 23.2.1992 through a valid, legal sale deed executed in her favour by Smt. Buddhimati Devi. The present landlady Smt. Vandana Pitaria immediately after execution of the saledeed on 23.2.1992 had informed the tenant Dr. V.K. Srivastava that she had become the owner of the bungalow occupied by him. Smt. Buddhimati Devi and her Mukhtar Aam/ agent (her own son) Vishwanath Upreti had also informed Dr. V.K. Srivastava that now onwards he should pay rent to Smt. Vandana Pitaria. Again, in the month of April, 1992, Vishwanath Upreti alongwith Sri Ved Prakash Pitaria, husband and agent of Smt. Vandana Pitaria, had contacted Dr. V.K. Srivastava and apprised him of the fact that he should pay the rent to the new landlady i.e. Smt, Vandana Pitaria. The tenant was required to pay rent to the new landlady. The tenant Dr. V.K. Srivastava was persuaded for several years to pay rent, but when he didn't pay any heed, legal notices were sent to him. Dr. V.K. Srivastava fully knew the fact that the property had been sold by Smt. Buddhimati Devi in March, 1992 to Smt. Vandana Pitaria. He cleverly filed a Misc. Case No.27 of 1997, Dr V.K. Srivastavav. Smt. Buddhimati Devi and deposited the rent from

January, 1991 to 2000 under Section 30 of the Act in the Court of Civil Judge, Junior Division, LakhimpurKheri. Sri Mehrotra has laid stress on the fact that this case was filed after about five years of execution of the aforesaid sale deed on 23.2.1992 and interestingly the tenant had deposited the rent for the period from January, 1991 to 2000 and for the period from October, 1996 to April 2001 the rent was deposited at the rate of Rs.24/ per month. A legal notice dated 23.2.2001 was sent to the tenant, a copy of which has been filed as Annexure13 to the writ petition. By this notice, Dr. V.K. Srivastava was required to vacate the premises, indicating that the tenant had constructed his own house in the city of Lucknow and since he was going to retire and settle at Lucknow, he was not requiring the premises.

14. Sri Mehrotra has further led this Court through the order of allotment, a copy of which has been enclosed as Annexure5 to the writ petition, to show that no rent had been indicated in the said order. He has challenged the validity of the allotment order also, as the same was not passed in accordance with the provisions of Section 16 of the Act, according to which rent had to be prescribed by the Rent Control Office and the tenant was required to pay one month's rent in advance to the landlord and was further required to pay the rent to the landlord every month. Thus the allotment order itself was illegal and no right could be said to have accrued in favour of the tenant on the basis of said allotment order which was issued on 10.6.1974. Since the petitioner tenant had failed to deposit the advance rent and monthly rent regularly, he has no right to continue as tenant as per provisions of the Act and the Rules made thereunder. He has placed reliance on two decisions of this Court as reported in 2006 (24) LCD 162, Shyam Sunder (Dead) By L.Rs. v. 1a Additional District Judge, Ghaziabad and others and 2004 (2) ARC 789, Kusum Lata Yadav (Smt.) v. Additional District Judge. Moradabad. paras 21 and 22, which are quoted below:

"21. It is provided under Section 16(19) of the U.P.R.C. Act that while making allotment order allottee shall also be required to pay to the landlord an advance equivalent to one months presumptive rent and on the failure of the allottee to make or offer the payment within a week from the allotment order, the same shall be rescinded. In the instant case, no rent was directed to be paid through allotment order. In fact in the allotment order no rent was even fixed or mentioned. In the copy of the proforma of the allotment order in question, Annexure5, column of rent is blank. Without rent there cannot be any tenancy (Section 105 T.P. Act). The allotment order is liable to be set aside on this ground alone [vide R.L.Poddar and C.K. Nagarkar (supra)]. It has been stated in Para 30 of the writ petition that allottee sent through money order rent from 29.9.2003 till 29.12.2003 at the rate of Rs.18.75/ per month on 26.10.2003. It is not clear from where this magic princely figure of Rs. 18.75/ was conjured by the allottee.

22. The house in dispute is situate in Moradabad and contains five rooms, hence in no case its rent must be less than Rs.2,000/ per month. The petitioner is directed to pay the damages for use and occupation to the landlord at Rs.2,000/

per month from the date of occupation till date of vacation. The said amount if not paid within two months from today shall be recovered by the Collector from the petitioner like arrears of land revenue within a period of two months thereafter and paid to the landlord respondent."

15. Sri S.K. Mehrotra has further contended that in the present case, the tenant despite knowledge of the fact of change of ownership in the month of April, 1992 had avoided to pay rent and did not pay any rent to the landlady. Sri Mehrotra has highlighted the fact that not a single paisa was paid towards rent by Dr. V.K. Srivastava to the present landlady since 1.3.1992. He had filed an injunction Suit No.342 of 1999 before 1st Additional Civil Judge (Junior Division), Lakhimpur Kheri against Smt. Vandana Pitaria. In para 4 of the plaint, he had categorically admitted that he had received notice dated 26.3.1999, by which he was informed that his tenancy had been terminated and he had to vacate the bungalow in his occupation and that he had raised unauthorized construction altering the nature of the property without permission of the landlady.

16. Sri S.K. Mehrotra has submitted that the petitioner with illegal and ulterior motive had categorically denied the title of the landlady Smt. Vandana Pitaria though he was fully knowing that she was his landlady (as defined under Sections 3(j) and 20(2)(f) of the Act). Another notice was sent on 23.2.2001. The tenant had not acted bonafidely. Even he had tried to mislead the Court by producing manufactured, fabricated receipts. He did not approach the Court with clean hands. There was no dearth of evidence before the Courts below to prove that the ownership of the bungalow in question was transferred by Smt. Buddhimati Devi to Smt. Vandana Pitaria on 23.2.1992 after executing a sale deed. Both the witnesses of the landlady had proved this fact. As far as making alterations in the property is concerned, the petitioner and his witness Alok Shukla had admitted before the Court below that there was existence of a pucca garage in the house; meaning thereby that it was constructed by Dr. V.K. Srivastava. D.W. 1 Dr. V.K. Srivastava, in his crossexamination, had stated that there were nine rooms, one kitchen, etc. He had not uttered a word about he existence of this pucca garage. The construction of a pucca garage on the ground floor of the house, as held by the Courts below, comes in the definition of making substantial, material alterations in the building. As far as burden of proof is concerned, the tenant Dr. V.K. Srivastava was required to prove under Section 106 of the Evidence Act that he had deposited the rent in favour of Smt. Vandana Pitaria, who was the landlady in this case. Till date, no rent has been offered or paid to her. As per Section 106 of the Evidence Act, the negative burden was on Dr. V.K. Srivastava to prove that the rent was not Rs.250/ but it was Rs.24/ per month. Even in the allotment order, no rent has been specified.

17. Sri S.K. Mehrotra has drawn attention of the Court towards Section 16(g) of the Act. In the present case, fresh allotment order was issued in the year 1974 (much before 15.7.1972). The erstwhile landlady had already informed and all the witnesses before the Court had deposed that the rent was Rs.250/ per

month. The petitioner tenant had failed to prove before the Courts below and this Court as to how and on what basis the rent Rs.24/ was fixed after he became the tenant i.e. from the date of issuance of allotment order on 10.6.1974 by the Rent Control Officer/District Magistrate, Kheri. Sri Mehrotra has led this Court through various Sections of the Evidence Act regarding burden of proof, like Sections 59, 64, 65 and 74, in support of his submission that private documents placed before the lower Court were to be connected with oral evidence. In the present case, P.W.1 Sri Ved Prakash Pitaria, the husband, agent of the landlady Smt. Vandana Pitaria and P. w.2 Chandra Prakash, who was also a witness to the saledeed, had proved the saledeed before the Court. They were also crossexamined by the tenant.

18. Applying the same test, the receipts said to be issued by the erstwhile landlady were not found proved as per provisions contained in the Indian Evidence Act. No oral evidence was led, nor any witness was produced by Dr. V.K. Srivastava to prove these receipts. Moreover, the petitioner had not produced any rent receipt, duly executed by Smt. Vandana Pitaria. The receipts placed by the tenant had no evidentiary value. Here is a case where both the Courts below have recorded concurrent findings of facts regarding the tenant being a defaulter and in the circumstances of the case, his eviction was justified. The petitioner has failed to place any material before this Court to demonstrate that the Courts below had erred in law or the findings recorded by them were perverse. The findings were based on documentary and oral evidence and accordingly no interference is required by this Court under Article 226 of the Constitution of India. Sri Mehrotra has placed reliance on 2003 (2) ARC 385 (SC) Surya Dev Rai v. Ram Chander Rai and others. 2004 (1) ARC 613 (SC) Ranjeet Singh v. Ravi Prakash and 1996 (14) LCD 66, Punjab National Bank v. Central Govt. Industrial cum Labour Court and another.

19. On the point of burden of proof regarding quantum of rent, learned counsel for the respondent landlord has placed reliance on 1982 ARC 225, Satya Prakash v. District Judge. Ghaziabad and others and 2000(18) LCD 731 (FB) Gokaran Singh y. 1st Addl. District and Sessions Judge. Hardoi and others.

20. Sri S.K. Mehrotra, learned counsel for the respondent landlord has submitted that the petitioner has not come with clean hands. He has placed forged, fabricated rent receipts before the Court. The trial Court had perused the said receipts and come to the conclusion that these were fabricated. The Courts have power to make their own assessment regarding genuineness of a document and satisfaction of the Court is sufficient. Sri Mehrotra has referred to the provisions of Sections 45, 47 and 73 of the Evidence Act and placed reliance on an Apex Court's decision as reported in (2003) 3 SCC 583, Lalit Popli v. Canara Bank and others, in support of his submission.

21. I have heard learned counsel for the parties and have carefully gone through the contents of writ petition alongwith its enclosures, judgments of the trial Court and the revisional Court, notices, replies to the notices, complaints, written

statements, allotment order dated 10.6.1974 and other material on record.

22. It emerges from record that the petitioner Dr. V.K. Srivastava was a tenant in the bungalow/house in question since 1974. There is ample material on record, documentary and oral evidence to prove that a sale deed was executed by Smt. Buddhimati Devi in favour of Smt. Vandana Pitaria on 23.2.1992 at Bombay (now Mumbai). This sale deed has been proved by P.W.2 Sri Ved Prakash Pitaria, husband/agent of Smt. Vandana Pitaria and P.w. 2 Sri Chandra Prakash, who had also signed the sale deed as a witness. Sri Ved Prakash Pitaria had deposed that Smt. Buddhimati Devi and her son were in urgent need of money when they were at Bombay and as such the sale deed was executed at Bombay. In his Injunction Suit No.342 of 1999, Dr. V.K. Srivastava v. Smt. Vandana Pitaria and another in paras 4, 7 and 9 of the plaint, the tenant had categorically admitted that he had learnt about execution of the sale deed dated 23.2.1992 through the legal notice dated 26.3.1999 served on him. Dr. V.K. Srivastava further admitted that some persons representing Smt. Vandana Pitaria came to his residence on 12.4.1999 and asked him to vacate the house. The record further reveals that on 1.7.1997 the tenant had deposited the rent in the Court of Civil Judge, Junior Division Lakhimpur Kheri through an application registered as Misc. Case No.27 of 1997 (finally decided on 21.10.1998) under Section 30 of the Act. He had indicated in this application that the rent was Rs.24/ per month for the period from January, 1991 to December 1997. Thus on 1.7.1997 he had shown Smt. Buddhimati Devi, wife of Sri Kedar Nath Upreti, resident of Mohalla Chhawani Singahi, Pargana Kharigarh, Tahsil Nighasan, district Kheri as landlady of the bungalow and the rent deposited under Section 30(1) of the Act was to be provided to Smt. Buddhimati Devi, who had already ceased to be the landlady on 23.2.1992.

23. In the present case, the petitioner obtained the allotment order on 10.6.1974 from the Rent Control Officer/District Magistrate, Kheri. He became the tenant of the said bungalow with effect from the said date. It was a fresh tenancy, created after the order of allotment. Interestingly no rent was indicated or specified in this allotment order. As per provisions of Section 16(9) of the Act, the District Magistrate may, on an application being made for allotment, by order require the allottee to pay to the landlord in advance one month's rent. The law also requires the allottee to pay the rent to the landlord regularly. It was thus the statutory duty of Dr. V.K. Srivastava, the tenant to pay the rent to the landlady regularly. As per findings recorded by the trial Court, based on documentary and oral evidence, the petitioner tenant had failed to pay the rent to any of the landladies, old or new, on due dates and within a reasonable period. His bonafides are not clear. As per trial Court's findings at pages 7 and 8 of the judgment, Dr. V.K. Srivastava, tenant had admitted that he had not paid any rent after December, 1990. The trial Court has recorded categorical finding that the tenant had paid the rent for a period from 1972 to 1986/87; thereafter no receipts were placed on record to demonstrate that he had paid rent from 1987 to January, 1991. He should have placed on record the receipts or evidence to

demonstrate before the Courts below that his bonafides were clear; he was an honest tenant and was regularly paying the rent to his landladies. He has made a halfhearted attempt to explain the lapse on his part by saying before the lower Court that the erstwhile landlady Smt. Buddhimati Devi did not take rent from him since 1.1.1991. It was the burden of the petitioner to prove before the court that he had actually paid rent upto December, 1990 to the erstwhile landlady.

24. Both the Courts below i.e. the Judge, Small Causes Court and the revisional Court (Additional District Judge, Kheri), on the basis of oral and documentary evidence, have come to the conclusion that Dr. V.K. Srivastava did not pay any rent to Smt. Buddhimati Devi after 1987 upto December 1990. He had also not paid the rent to the new landlady (Smt.) Vandana Pitaria, who had stepped into the shoes of old landlady on 23.2.1992. From the record, it is amply clear that the tenant Dr. V.K. Srivastava was duly informed of the above fact by Smt. Buddhimati Devi and her son and agent/Mukhtar Aam Vishwanath Upreti. It has also come on record that Rs.250/were being paid by the petitioner to Smt. Buddhimati Devi at the time of execution of sale deed i.e. on 23.2.1992. The same rent i.e. Rs.250/ per month was payable by the petitioner to the new landlady Smt. Vandana Pitaria. Even in the injunction suit, which was filed earlier to Suit No.11of 1999, the tenant Dr. V.K. Srivastava had admitted the fact that he had knowledge about execution of the sale deed on 23.2.1992. Both the Courts below have recorded concurrent findings of fact that in fact Dr. V. K. Srivastava had full knowledge about the sale of bungalow occupied by him in favour of Smt. Vandana Pitaria on 23.2.1992 at Bombay. The sale deed was duly proved by the witnesses and there were several other documents, evidence, litigations and notices, etc., a perusal of which clearly indicates that the petitioner was fully aware of the fact that the property has been transferred to the new landlady. Despite having knowledge of the change of ownership of the property, the petitioner was trying to take advantage of the situation and was deliberately avoiding to pay reasonable rent to the landlady.

25. It is strange to note that how the imaginary, magical figure of Rs.24/ per month as rent, for a huge bungalow, consisting of nine rooms, tawn, verandah, etc. in the Civil Lines area of LakhimpurKheri near Deputy Commissioners bungalow, has been invented by the petitioner. A perusal of the allotment order dated 10.6.1974 reveals that no rent was indicated in the allotment order. Rs.24/ per month for such a bungalow in the Civil Lines area of Lakhimpur Kheri was "no rent" in the eye of law. Even the rent, which was deposited by the tenant in the Court of Additional Civil Judge, Junior Division, Kheri in the year 1997 was not in favour of Smt. Vandana Pitaria and she would not have been benefited by this deposit. The law is settled that the tenant must offer the rent to the landlord. In the present case, Smt. Vandana Pitaria was the landlady as defined under Sections 3(j) and 20(2)(f) of the Act. The tenant cannot be permitted to become a Judge/adjudicator, asking the landlord to show him the title deed and other documents to enable him to decide the question as to who was the actual landlord. Even after approaching this Court under Article 226 of the Constitution

of India, till the date of final arguments, the petitioner-tenant despite receiving notices and filing an injunction suit had been insisting that Smt. Buddhimati Devi was his landlady and not the respondent No.1 Smt. Vandana Pitaria. There are concurrent findings of facts recorded by the Courts below on the above issue. The petitioner has failed to establish before this Court as to how these findings were erroneous or perverse which were pure simple findings of facts based on documentary and oral evidence of the witnesses, who had proved that a sale deed in respect of the house in question was executed on 23.2.1992 in favour of Smt. Vandana Pitaria and she became the landlady of the bungalow, in occupation of the petitioner as tenant.

26. I have carefully gone through the judgments of the learned Courts below. Both the Courts below have passed well-reasoned, well-considered and well-discussed judgments to arrive at a conclusion that Dr. V.K. Srivastava had defaulted in making payment of rent to the present landlady Smt. Vandana Pitaria (or the erstwhile landlady Smt. Buddhimati Devi). There is nothing on record to prove that the rent was Rs.24/ per month. Both the witnesses, Ved Prakash Pitaria and P.W. 2 Chandra Prakash have stated on oath that at the time of execution of the sale deed, factual rent of the bungalow was Rs.250/ per month and if it is rented out to some new tenant, it will fetch at least Rs. 1,000/ per month, i.e. in the year 2000.

27. The petitioner-tenant was certainly in arrears of rent and the Courts below were justified in evicting him from the premises in question. It is also apparent from the arguments of the learned counsel for the parties that presently in Civil Lines area of Lakhimpur Kheri, that too in the vicinity of Deputy Commissioner/Collector's bungalow, such a big bungalow consisting of 9 rooms, courtyard, lawn and verandah, etc. cannot be rented out for Rs.24/ or Rs.250/ per month. Applying the principles of law as laid down in *Atma Ram Properties (P) Ltd, v. Federal Motors (P) Ltd*, as reported in (2005) 1 SCC 705, the landlady was entitled for a proper and reasonable rent for this bungalow. The Courts below have rightly held that the tenancy of the petitioner was terminated by registered notice dated 26.3.1999 duly served on him on 27.3.1999 and thereafter the petitioner was in unauthorized and illegal occupation of the bungalow.

28. Both the Courts below have also arrived at a conclusion that the petitioner-tenant, who is a doctor, member of Provincial Medical Services, and was posted as Medical Officer T.B. Hospital in district Kheri, had made manipulations in the rent receipts. The Judge, Small Causes Court in its judgment dated 28.8.2001 has recorded a finding that the petitioner had deliberately defaulted in making payment of the rent after December, 1986 and no payment of rent was admittedly made with effect from 1.1.1991. The petitioner had made manipulation in the rent receipts Ga49, wherein date 17.1.87 had been put by overwriting. The signatures on the rent receipts also differed. The Court was of the opinion that the rent receipts executed after December, 1986 were deliberately not produced before it and this was purposely done with a view to

confuse the issue and mislead the Court. From the record, it appears to have been done by the tenant to create confusion about quantum of rent right from the stage of trial Court. Till the date of final arguments before this Court, the petitioner-tenant has been insisting that Rs.24/ was fixed as rent for the bungalow in question. There is no mention of any rent in the allotment order. Even this allotment order has not been issued in accordance with the provisions of the Act. This Court has discussed about such malpractices, devices of housegrabbing in several cases, one of which has already been cited by Sri S.K. Mehrotra, learned counsel for the respondent-landlady i.e. 2004(2) ARC 789, Kusum Laxe Yadav (Smt.) v. Additional District Judge, Moradabad and others. The said decision fully applies to the present case. Important rights in immovable property are affected by such allotments. If the rent had been prescribed in the allotment order on 10.6.1974, there would have been no occasion for the tenant to make efforts for creating confusion about the rent of the premises before the law Courts.

29. I have also perused the findings recorded by both the Courts below that the petitioner has made material alterations in the building. It is evident from the petitioner's own statement recorded before the Judge, Small Causes Court and the statement of his witness Alok Shukla, and to be a neighbour, that a pucca garage was available in the bungalow. Dr. V.K. Srivastava, in his statement, while giving description of the property cleverly avoided to indicate about the existence of a pucca garage. As per findings recorded by both the Courts below, this pucca garage was constructed without permission of the landlady, old or new. The alterations were made in the verandah and some construction was raised on the first floor of the house. The law is settled that if a tenant makes material alterations or additions in the property under his tenancy, he is liable to be evicted from the premises. Both the Courts below have rightly recorded finding of fact that material alterations and additions, like construction of pucca garage, etc. had been made by Dr. V.K. Srivastava, tenant in the bungalow without permission of the landlady, which was not permissible under law. On this point also, both the Courts below have rightly arrived at the conclusion that the tenant was liable for eviction.

30. This Court has also considered the findings and conclusions arrived at by the Courts below in the light of various provisions of Indian Evidence Act. In the present case, the landlady has successfully proved the sale deed executed on 23.2.1992 by producing two witnesses, Sri Ved Prakash Pitaria, husband/agent of Smt. Vandana Pitaria, landlady and Sri Chandra Prakash, who was a witness to the sale deed. On the request of learned counsel for the parties, this Court has scrutinized the findings of the Courts below in the light of Sections 59, 64, 65, 74 and 106 of the Indian Evidence Act. The Court has found sufficient force in the argument of the learned counsel for the respondent landlady that no oral evidence was led by the tenant to prove the rent receipts produced by him, hence they had no evidentiary value. The landlady had discharged her burden of proving the sale deed, ownership of the bungalow. Both the witnesses, Ved

Prakash Pitaria and Chandra Prakash have stated on oath before the Court below that Smt. Buddhimati Devi and her agent had indicated to Dr. V.K. Srivastava that Rs.250/ per month was the rent for the bungalow which was sold to Smt. Vandana Pitaria on 23.2.1992. The tenant Dr. V. K. Srivastava has miserably failed to prove his version before the Court regarding ownership of the bungalow and the imaginary, magical figure of Rs.24/ as rent for a huge bungalow consisting of 9 rooms, lawn, verandah, etc. situate in prime locality of Civil Lines in the city of LakhimpurKheri. The landlady had placed direct, positive and specific evidence to prove her case before the Courts below. There was direct evidence of the person, who went to Dr. V.K. Srivastava in April, 1992 to inform him that now onwards Smt. Vandana Pitaria was the landlady/owner of the premises and the rent was to be paid to her. As observed above, Smt. Buddhimatt Devi, the erstwhile landlady and her agent had also informed the new landlady and the tenant that the rent was Rs.250/ per month and it was to be paid to Smt. Vandana Pitaria. In the present case, there was no agreement between the landlady and the tenant regarding rent. The alleged receipts produced before the trial Court, said to be executed by the agent of Smt. Buddhimati Devi, erstwhile landlady cannot be said to be the admission of present landlady. Moreover, these receipts or the one which has been placed before this Court at the time of final hearing cannot be treated as rent receipt. The existence of such receipts had not been pleaded in various plaints, suits filed before the lower Courts at LakhimpurKheri. Mention of these receipts also does not find place in the statements of witnesses. The Court has also discussed about the validity of the receipt said to have been signed by Sri Yogesh Saxena, Advocate, counsel for Smt. Vandana Pitaria on 4.7.2000. This receipt containing the words like "SATYATA SWEEKAR VADI HAI" cannot be said to be a receipt executed under Section 20(4) of the Act. In this receipt, an imaginary amount of Rs.25/ has been indicated (not Rs.24/ or Rs.250/). As per Sri S.K. Mehrotra, learned counsel for the respondent landlady, the last line "SATYATA SWEEKAR VADI HAI" was later on added with illegal motive. This Court has seen this receipt dated 4.7.2000 and found that its last sentence has been written in words smaller in size, which are not in consonance with the ; manuscript written in words bigger in size on the above part of the receipt. This raises a question on the genuineness of the receipt. However, even after such a receipt was there, it was signed on 4.7.2000 and the same cannot be treated as "admission" of the present landlady. It was written during pendency of the litigation between the parties in the Courts below.

31. This Court has also taken note of one more material fact that the petitioner was allotted the bungalow when he was serving in district LakhimpurKheri. It is evident from the pleadings of the parties that he was transferred from Lakhimpur Kheri and as such as per scheme of the Act and the Rules made thereunder, he was not entitled to continue in the allotted bungalow. Now it has also come on record (not denied by the petitioner Dr. V.K. Srivastava or his counsel Sri H.S. Jain) that he has constructed his own house in the city of Lucknow. He has

retired from services, as has been informed by the learned counsel for the petitioner. Naturally, in the circumstances, he does not require the bungalow in Lakhimpur Kheri, whereas the landlady has bona fide need of this house for residence of his family in the city of Lakhimpur Kheri. On this ground also, the petitioner-tenant has no right to stick to the bungalow in question which was allotted to him on 10.6.1974 when he was posted at Lakitirnpur Kheri. The District Magistrate/Rent Control Officer, Lakhimpur Kheri should have taken note of this fact.

32. In view of above discussion, I am of the opinion that both the Courts below after properly considering and assessing the entire material on record have recorded concurrent findings of facts. These findings are based on oral and documentary evidence adduced by the parties. All the issues raised before the trial Court have been decided after appraisal of the evidence on record and in accordance with the provisions of the Act and other relevant laws on the subject. The petitioner has failed to point out any illegality or error of law or perversity in the judgments and orders impugned in this petition. In view of above, no interference is required by this Court. My views are strengthened by the judgments of the Hon"ble Supreme Court of India and this Court as reported in 2003 (2) ARC 385 (SC) Surya Dev Rai v. Ram Chander Rai and others and 2004 (1) ARC 613 (SC) Ranjeet Singh v. Ravi Prakash. It has been held in 1996 (14) LCD 66, Punjab National Bank v. Central Govt. Industrial cum Labour Court and another that this Court has to see existence of evidence and not the sufficiency of evidence. I find no error of law which can be corrected by this Court in writ jurisdiction.

33. I have also perused the caselaw cited by Sri H.S. Jain, learned counsel for the petitioner. With due respect to the said authorities, in my opinion, they are not applicable in the present set of circumstances.

34. Accordingly, the writ petition lacks merit and the same is dismissed with costs. The judgments and orders of the Courts below are upheld. The petitioner shall hand over vacant and peaceful possession of the bungalow in question to the landlady, respondent No.1 within one month from today.

35. In view of the above facts and circumstances of the case, where the landlady, respondent No. 1 has been deprived of her property, a huge spacious bungalow for the last about 14 years, she is entitled for damages in addition to the rent. Admittedly, the tenant Dr. V.K. Srivastava had not paid any rent to her since 1.3.1992. She is entitled for arrears of rent at the rate of Rs.250/ per month from the said date till the date of filing of the Suit No. 11 of 1999 before the Judge, Small Causes Court, LakhimpurKheri. She shall be entitled for damages from the petitioner for use and occupation of the premises at the rate of Rs. 1000/ per month with effect from the date of filing of the said suit till the date of its final disposal i.e. 28.2.2001. She shall also be entitled for damages at the rate of Rs.1000/ per month with effect from 1.3.2001 i.e. after the date of judgment and decree of the suit passed in her favour on 28.2.2001 till the date

of handing over vacant and peaceful possession of the premises by the petitioner to the landlady, respondent No.1.

36. All the arrears of rent, damages, electricity dues, water tax and other dues, if any, shall be calculated and paid by the petitioner to the landlady Smt. Vandana Pitaria within three months from today, failing which the landlady can approach this Court for passing appropriate orders against Dr. VK. Srivastava.

37. This judgment has been delivered in the presence of learned counsel for the parties. The petitioner shall ensure compliance of the Court's order and file an affidavit of compliance before the Registrar of this Court, indicating therein that the directions issued by the Court have been complied with.

(Petition dismissed)