
(1999) 04 AHC CK 0106

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1080 of 1999

Yashoda Jauhari

APPELLANT

Vs

Ist Addl. Distt.Judge,Nainital and Anther

RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 3

Citation : (1999) 04 AHC CK 0106

Hon'ble Judges : Yatindra Singh, J

Judgement

Yatindra Singh, J.—Heard learned counsel for the petitioner. Petitioner does not want to press this writ petition. In this writ petition a very detailed order was passed on 24/1999.

2. It is necessary to pass orders on the substitution application filed by the petitioner.

3. Petitioner has filed an application on 13th July, 1992 for substituting the heirs of the deceased Smt. Yashoda Jauhari petitioner. In this case affidavit was filed in support of this application. It is mentioned that the petitioner died on 24/6/1992 leaving behind her sons Raghuvansh Jauhari, Kusum Jauhari and Rajendra Prasad Saxena. A counteraffidavit has been filed, in which it has been mentioned that Raghuvansh Jauhari and Kusum Jauhari were not residing with the petitioner at the time of her death; and as the accommodation is residential one, they do not become tenant and Rajendra Prasad Saxena is not the heir and as such the cause of action does not survive and the writ petition to be dismissed.

4. Today the petitioner has filed rejoinder affidavit in which it is admitted that Raghuvansh and Kusum Jauhari were not residing with the deceased Smt. Yashoda Jauhari. In view of the statement none of persons who has filed an application for substitution are the tenant of the ? premises in dispute and after the death of Smt. Yashoda Jauhari, none of them are entitled to press the writ

petition. This application as well as writ petition is dismissed.

5. There is another application dated 28/8/1998 has been filed for abating the writ petition on the ground that Sri Braj Nandan Bhatnagar. Respondent No. 2 has died on 20/10/1998 and his heirs has not been substituted and the writ petition dismissed as abated. Thereafter the petitioner filed an application on 27/9/1998 for substituting the heirs of the deceased respondent No. 2 and for condoning the delay. Counter affidavit has also been filed along with application. I have already dismissed the writ petition on the ground that the petitioner is no more and the persons who have filed substitution application are not tenants after death of the erstwhile tenant in view of Section 3 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. In view of this it is not necessary to pass any detailed order in this application. Suffice to say, there is no sufficient ground to condone the delay in filing the application for substitution of respondent No. 2. The writ petition is also liable to be abated on this ground.

6. Learned counsel for the petitioner states that Sri Rajendra Prasad Saxena was living with Late Smt. Yashoda Jauhari, was residing with her and looking after her in her old age. He is still living in the premises in dispute.

7. In view of the same Sri Rajendra Prasad Saxena may not be evicted for a period of three months provided he files an undertaking in the form of an affidavit before the Prescribed Authority within 16 days that he will hand over the peaceful possession of the premises within three months and pay the damages at the rate of rent for the period of this occupation. The petition is dismissed.