

**(1982) 03 AHC CK 0047**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 9338 of 1979

Yogendra Sahai Raizada

APPELLANT

Vs

Rent Control and Eviction Officer and others

RESPONDENT

**Date of Decision :** 29-03-1982

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —  
Section 16(4), 18(3)

**Citation :** (1982) 03 AHC CK 0047

**Hon'ble Judges :** M.P.Mehrotra, J

**Final Decision :** Allowed

## Judgement

M. P. Mehrotra, J.

This petition arises out of the proceedings under Section 18 (3) of the U. P. Act No. XIII of 1972.

The facts, in brief, are these. In respect of an accommodation an allotment order was passed in favour of the respondent No. 2 Malkhan Singh. Against the said allotment order, the petitioner as the landlord went up in revision and the same was allowed by the Revisional Court by his order dated 30/10/1978, a true copy of which is Annexure 4 to the petition. The allotment order was set aside. The case was remanded to the Rent Control and Eviction Officer for a fresh decision in accordance with the law and in the light of the discussion in the aforesaid revisional order.

Thereafter, an application under Section 18 (3) of the Act was moved before the Rent Control and Eviction Officer praying that the possession of the accommodation in question be restored to the landlord after dispossessing the respondent No. 2 who claimed to have obtained possession in pursuance of the aforesaid order the Rent Control and Eviction Officer rejected the said application under Section 18 (3) of the Act by his order dated 9/10/1978, a true copy of which is Annexure 7 to the the petition. A certified copy of the said order is also on the

record.

Feeling aggrieved, the petitioner has now come up in the instant petition against the said order dated 9101979 and in support thereof. I have heard Sri Y. S. Saxena, learned counsel for the petitioner. None has appeared to oppose the petition.

Sri Saxena contended that the impugned order is bad in law because it has wrongly interpreted the scope of the Section 18 (3) of the Act. In the impugned order the Rent Control and Eviction Officer held that Section 18 (3) of the Act was not applicable because in the instant case, remand order was passed by the Revisional Court and the same could not be treated as having rescinded the allotment order under Section 16 of the Act. This approach is wholly wrong. The clear language in the revisional order was that the allotment order was being set aside and the case was remanded for a fresh consideration of the question of release and allotment. It was a clear case where an order under Section 16 of the Act has been rescinded. The Rent Control and Eviction Officer further held that Section 18 (3) of the Act would be applicable only where the possession has been obtained by an allottee under Section 16 (4) of the Act and as in the instant case the respondent No. 2 had obtained the possession without recourse to Section 16 (4) of the Act, therefore, Section 18 (3) of the Act was not applicable. The Officer was again wrong. Section 18 (3) of the Act nowhere refers to Section 16 (4) of the Act. It refers to Section 16 of the Act as such and in such circumstances, the distinction which the Officer sought to make was wholly uncalled for and artificial. Lastly, the Officer rejected the application on the ground that the petitioner's mother had not signed the application even though it purported to be on her behalf. Again this approach was wrong. The son had signed the application and purported to do so on behalf of his mother also. There was nothing to show that the mother was in any manner hostile to the son, In any case, the respondent No. 2 had no right to raise the said point and his position was wholly illegal.

This petition is accordingly allowed and the impugned order dated 9101979 is hereby quashed. The respondent No. 2 is hereby directed to hand over the possession to the petitioner and on his failure to do so, the Officer shall use such force as may be necessary to put the petitioner in possession of the accommodation in question. There will be no order as to costs.