

Manohar Lal and Others Vs. Rent Control and Eviction Officer/Vth Additional City Magistrate, Kanpure Nagar and Another

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Court : Allahabad

Decided On : Dec-08-1999

Reported in : 2000(1)AWC704

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 12(1)

Appeal No. : C.M.W.P. No. 1156 of 1999

Appellant : Manohar Lal and Others

Respondent : Rent Control and Eviction Officer/Vth Additional City Magistrate, Kanpure Nagar and Another

Advocate for Def. : S.C. Tripathi, Adv. and ;S.C.

Advocate for Pet/Ap. : P.N. Khare, Adv.

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the order dated 19.12.1998 passed by the Rent Control and Eviction Officer, respondent No. 1. declaring the disputed accommodation as vacant.

2. Briefly stated the facts are that the petitioner is admittedly tenant of House No. 8/198 Arya Nagar, Kanpur Nagar. Respondent No. 2 purchased this property from its erstwhile owner by registered deed dated 23.8.1997. He filed an application for release on 27.3.1998 alleging that the petitioner has inducted his brother in the disputed accommodation under his tenancy after 1977 and, therefore, the accommodation in question should be deemed as vacant. The petitioner contested the application. It was denied that he had inducted his brother in the year 1977 but in fact they were living since the year 1969. The Rent Control and Eviction Officer took the view that the petitioner failed to prove that he was a karta of the family, therefore, he had no right to permit his brother to occupy any portion of the house with him. He declared the vacancy by the impugned order dated 19.12.1998.

3. I have heard Sri P. N. Khare, learned counsel for the petitioner and Sri S. C. Tripathi, learned counsel for contesting respondent.

4. The question is whether the accommodation can be declared as vacant on the facts of the present case. The version of the petitioner is that his father was tenant of house No. 8/200 Arya Nagar, Kanpur Nagar. He vacated the same in the year 1969 and thereafter his father and brothers started living jointly with the petitioner. It was denied that the father of the petitioner started living with him since 1977. The petitioner had filed the affidavit of the landlord of house No. 8/200 Arya Nagar, Kanpur Nagar, wherein it has been stated that the father of the petitioner had vacated the house No- 8/200 Arya Nagar, in the year 1969. The Rent Control and Eviction Officer referred to two affidavits filed by Darshan Kumar Mangro and Satya Prakash Pandey wherein they have stated that the petitioner had permitted his brother to live with him since 1977.

5. There was no documentary evidence to indicate that the father of the petitioner or his brother continued to occupy house No. 8/200 Arya Nagar, after 1969. On the other hand, the owner of house No. 8/200 Arya Nagar, filed an affidavit stating that the father of the petitioner had vacated it in the year 1969. The Rent Control

and Eviction Officer had not considered this aspect but took into consideration the fact that the petitioner, not being Karta of the family, had no right to permit his brothers to live with him.

6. Secondly, it is to be further ascertained whether the brothers of the petitioner are in exclusive possession of the disputed accommodation or in other words they are living jointly with the petitioner. If a guest or servant of the tenant lives with him, certainly the accommodation cannot be treated as vacant but if some of his relations live jointly with him for certain reasons, where the tenant has not given exclusive possession to him, the Rent Control and Eviction Officer has to consider that in those circumstances the accommodation should be treated as vacant.

7. Section 12 (1) (b) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act) provides that a landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if he has allowed it to be occupied by any person who is not member of his family. The meaning of word 'occupation' must relate the exclusive possession of such person. In *P.C. Jain v. District Judge and others*, 1979 (UP) RCC 107, the Court considered the meaning of the word 'occupy' used in clause (b) of sub-section (1) of Section 12 of the Act and it was held that the word occupation includes possession as it is primary element but it must be held that the premises has been occupied by another person after the possession is transferred to him. In case there is no element of transfer of possession, it will not be an occupation within the meaning of Section 12 (1) (b) of the Act.

8. In *Associated Hotels of India Ltd. v. R, N. Kapoor*. AIR 1959 SC 1262, while examining the difference between the words lease and licence, It was pointed out that if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The Court quoted with approval the following observation of Lord Denning relected in *Errington v. Errington*, 1952 (I) All ER 149:

'The result of all these cases is that, although a person who is let into exclusive possession is. 'prima facie' to be considered to be tenant, nevertheless he will not

be held to be so if the circumstances negative any intention to create a tenancy.'

9. The question was whether the tenant had sublet the accommodation, the Apex Court emphasised that it is not mere possession but there must be other relevant circumstances particularly exclusive possession of such person. In *Resham Singh v. Raghubir Singh and another*, AIR 1999 SC 3087, where the brother of the tenant was carrying on the business and it was found that he was only looking after the business particularly when his brother was involved in a criminal proceedings and absconding, it was held that subletting was not proved. In *Ram Prakash v. Shambhu Dayal*, AIR 1960 All 395, where the parties were close relations and one of them came from Pakistan to take shelter with the other, there was no presumption that a sub-tenancy was created merely because the host and his wife allowed the refugee guest to live with them and then, for the sake of enlarging available accommodation shifted to another house but left a part of their family in the old house.

10. The Court is to examine the nature of possession of such person who is alleged not to be member of family. If his possession is in the nature of a licensee without putting him in exclusive possession, it cannot be taken his occupation as contemplated under Section 12 (1) (b) of the Act. The Rent Control and Eviction Officer before declaring the vacancy is to examine all of the aspects of the matter.

11. In view of the above, the writ petition is allowed and the order dated 19.12.1998 is quashed. The Rent Control and Eviction Officer shall re-determine the matter on the question of vacancy afresh keeping in view the observations made above and in accordance with law. It will be open to the parties to lead evidence before him.

12. The parties shall bear their own costs.