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**SooperKanoon Citation : [sooperkanoon.com/465061](http://sooperkanoon.com/465061)**

**Court : Allahabad**

**Decided On : Jan-31-2002**

**Reported in : 2002(2)AWC1103**

**Judge : A.K. Yog, J.**

**Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 15 and 16**

**Appeal No. : C.M.W.P. No. 4820 of 2002**

**Appellant : Jitendra Kumar**

**Respondent : Rent Control and Eviction Officer and anr.**

**Advocate for Def. : Pankaj Mithal S.C.**

**Advocate for Pet/Ap. : R.P. Singh Yadav, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

**A. K. Yog, J.**

1. Heard Sri R. P. Singh Yadav, learned counsel for the petitioner at length and Sri Pankaj Mithal learned counsel appearing for the caveator-applicant respondent No. 2 landlord.

2. The date chart annexed with the petition shows that Vipin Prakash Agarwal owner of the building in question within the municipal limit of the city of Bulandshahr was the owner and the accommodation in question was assessed for the first time on 1.4.1970 (as is evident from the impugned order that there is no such assessment on record to fix the day and month of the year 1970). The petitioner contends that he occupied the accommodation in question as tenant with an agreement and consent of the erstwhile owner Vipin Prakash Agarwal.

3. The said owner, however, sold the property consisting of the accommodation in question on 28.8.1999. The petitioner further contends that erstwhile owner Vipin Prakash Agarwal continuously accepted the rent, but the subsequent purchaser (present landlord respondent No. 2) without lawful excuse refused to accept the rent and hence he was constrained to file an application under Section 30 of the Act and deposited the rent therein. The petitioner has not filed relevant document and the order sheet of the proceedings under Section 30 of U. P. Act No. 13 of 1972 to indicate as to whether Court had decided the matter after hearing the concerned parties taking in view that the landlord had refused to accept rent without lawful excuse.

4. Be that as it may, the landlord respondent No. 2 appears to have filed an application before the Delegated Authority/Rent Control and Eviction Officer under section 15 of the Act in discharge of his obligation to intimate the vacancy.

5. At the out-set, I may mention that prima facie provisions of Section 15 of the Act are not attracted in the facts of the present case, inasmuch as the erstwhile landlord had full knowledge of the petitioner taking over possession as tenant and he acquiesced the said position for several years. The present landlord respondent No. 2 is presumed to have purchased the property in question with his open eyes after making due enquiry and search and that he has stepped into shoes of his predecessor-in-Interest with all rights and obligation and encumbrance attached to the property vis-a-vis. This will mean that the knowledge of the erstwhile owner of the tenant petitioner taking over accommodation in question as tenant without allotment order was also within the knowledge of the present landlord respondent No. 2. Moreover, there is nothing on record to show

that condonation of delay was sought as contemplated under Section 15 (4) of the Act. Even order does not show that the concerned authority had applied its mind to the said aspect of the matter. The language implied in Section 15 of the Act clearly shows that unless delay is specifically condoned by the District Magistrate considering the facts in their entirety justifying the declaration of vacancy, the District Magistrate/Delegated Authority (Rent Control and Eviction Officer) will not be entitled to assume jurisdiction to take cognizance of such an intimation. The manner in which this Court reads Section 15 of the Act serves inconsonance of the public policy, namely, to avoid abuse of the process of the provisions of the Act by allowing unscrupulous tenant or landlord to wreck up stale matters. However, this interpretation of Section 15 of the Act does not in any manner affect the jurisdiction of the District Magistrate/Delegated Authority to declare vacancy, if such a vacancy is declared by the Rent Control and Eviction Officer in accordance with law otherwise. Learned counsel for the petitioner also raised arguments on the ground of parity with other two tenants whose tenancy was held to have been regularised vide orders both dated 15.1.2002 (Annexures-6 and 7 to the petition).

6. A perusal of the aforesaid order shows that the case of tenants Ravendra Mohan Swaroop, Vasudeo and Munnalal stands on different footing, as they have occupied the accommodation prior to the year 1976. Original Section 15 of the Act was amended after commencement of the Act No. 28 of 1976 on 5.7.1976.

7. In view of the above. I find no manifest error apparent on the face of record in the impugned judgments and orders passed by the courts below, particularly in view of the fact admitted by the petitioner that he occupied the building in question without allotment order.

8. The petition accordingly fails and is hereby dismissed.

9. It may, however, be pointed out that in the light of my decision in the case of C.M.W.P. No. 2907 of 2002, Jagdish v. District Judge, Kanpur Nagar and others, decided on 23.1.2002, the Rent Control and Eviction Officer concerned shall proceed with the allotment and ignore release application being filed by the landlord under Section 16 of the Act on the same analogy on which tenant petitioner has been non-suited.

