

**Mohan Singh Vs. Ist Additional District Judge, Lucknow and Others**

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**Court :** Allahabad

**Decided On :** Feb-24-1998

**Reported in :** 1998(2)AWC950

**Judge :** Mrs. Shobha Dikshit, J.

**Acts :** Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 12, 16 and 20(2); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 8

**Appeal No. :** W.P. No. 5960 (R/C) of 1985

**Appellant :** Mohan Singh

**Respondent :** ist Additional District Judge, Lucknow and Others

**Advocate for Def. :** M.S. Kotwal and ;V.N. Tandon, Adv.

**Advocate for Pet/Ap. :** S.K. Kalia, Adv.

**Judgement :**

**Mrs. Shobha Dikshit, J.**

1. This writ petition is directed against the order dated 2.3.1979 passed by the Additional District Magistrate (Rent Control). Lucknow by which the review petition preferred by the petitioner-tenant has been rejected. It has also been prayed that

the order dated 5.11.1985 passed by the Additional District Judge, Lucknow dismissing the revision against the order dated 2.3.1979 be also quashed.

2. The brief facts of the case are that the petitioner Mohan Singh was allotted a shop for commercial purposes situated on the main road between fourth and fifth lane on Ashok Marg, Lucknow where he claims to have been carrying on his business for last 28 years and paying the rent regularly to the landlord-respondent No. 4 Sri Kishori Lal Agarwal. On 23.4.1975 respondent No. 3 one Sri Zaki Ali Mirza applied for allotment of the premises in question on the ground that since the said shop is lying locked, hence it should be deemed vacant and be allotted to the applicant Zaki All Mirza. On such application being made, the Rent Controller called for the report of the Rent Control Inspector. The Senior Inspector (Rent Control) is said to have inspected the premises/shop on 21.6.1975 and submitted a report regarding the vacancy of the premises, a copy of this report has been annexed as Annexure-1 to this petition. According to this report, the Inspector made enquiries from one Sri Ashraf Ali son of Sri Fazal Ali whose shop is in the same building and from one Sri Beharl Lal son of Sri Shiv Raj who was also carrying on business in a nearby shop by the name of 'Subhash General Store'. As per report based on the statements made by these witnesses, the shop was lying locked for the last 6 months and the lock was said to be that of the landlord. It was also deposed by these witnesses that the shop was with the petitioner Mohan Singh who started the business in the name and style of 'Singh Vastra Bhandar' but after sometime he Instead of carrying on the business himself, sublet it to others on rent. The Unity Store was closed in 1972. Thereafter one Ram Lochan Gupta was sitting in the shop who after sometime shifted to New Market, Nishatganj and shifted his business there and after Sri Ram Lochan Gupta in 1974, one Sri Yunus Khan reopened the shop and started selling stationery. He also at sometime shifted to New Market, Nishatganj. Thereafter one Ram Singh opened the shop for 2-3 months when 'Nav Jyoti Bhandar' was opened but ultimately, the shop was closed and was lying so for the last six months. The Inspector found the board of 'Nav Jyoti Bhandar' hanging on the shop. The inspector on the basis of the aforesaid facts and the enquiries made by him. suggested that the shop can be declared to be vacant. The statements of Ashraf Ali and Behari Lal have also been annexed as Annexures-2 and 3 to the writ

petition. The report was considered by the Rent Controller who declared the vacancy on 30.6.1975. After the aforesaid declaration of vacancy, the application of Sri Z. A. Mirza was considered by the Rent Controller after giving notice to the landlord. The landlord filed no objections and, therefore, a presumption was drawn by the Rent Controller that he has no objection if the shop is allotted to the sole applicant. The applicant prayed for allotment on the ground that he is an employee of Sales Tax Department and he is going to retire very shortly as he was on extension itself. He being desirous to open a shop to supplement his meagre pension that he is expecting to receive. On the consideration of aforesaid facts and circumstances and there being no objection in writing from the landlord, the Rent Controller vide his order dated 3.12.1975 allotted the shop in favour of respondent No. 3. Being aggrieved by the aforesaid allotment, the present petitioner Mohan Singh filed the review petition praying for cancellation of allotment order. It was averred in the said application that he has been occupying the shop for last 20 years and paying the rent and he never vacated the same and permitted any one else to do business in the said shop. In support of his application, he filed affidavits of one Raghunath Prasad, Kedar Nath, a rent receipt also from July to November, 1975. The facts stated in the said application were though not controverted by the allottee Z. A. Mirza but he submitted that now the petitioner Mohan Singh has again sublet the shop to one Sri Ashok Kumar and Dashrath Nandan Jaiswal for opening a wine shop. These facts were not controverted by Sri Mohan Singh. The said application was heard by the Rent Controller. The main ground of challenge for allotment of the shop and declaration of vacancy was that the tenant Mohan Singh was not given an opportunity and was not heard. The learned Rent Controller allowed the application of the petitioner vide his order dated 2.7.1976 on the ground that Mohan Singh was since not heard, therefore, the order of allotment is liable to be cancelled. While passing the said order, the Rent Controller also passed the following order :

'I also order that Sri Mohan Singh will do the business in the shop himself and will not sublet to any one else.'

The allottee Sri Z. A. Mirza respondent No. 3 being aggrieved by the cancellation of the allotment of the shop in his favour filed a revision under Section 18 of U. P.

Act No. 13 of 1972 against the order dated 2.7.1976. In the said revision, the revisionist contended that the vacancy was since declared on 30.6.1975 and the allotment order was passed on 3.12.1975 and thereafter only the allotment order was cancelled vide orders dated 2.7.1976. But so far as the order of declaration of vacancy is concerned, that was never cancelled by the Rent Controller. The order dated 2.7.1976 only cancelled the allotment order and the Rent Controller permitted Sri Mohan Singh to do business in the shop himself and was also directed not to sublet to any one else. He, therefore, contended that if the declaration of vacancy was not held illegal then the Rent Controller could only have heard Mohan Singh and then pass the fresh order regarding allotment. But his direction to permit Mohan Singh to carry on business in the same premises is without jurisdiction. The learned Additional District Judge, Lucknow considered the matter and came to the conclusion that the impugned order dated 2.7.1976 does suffers from legal infirmities and thus the same was set aside. The matter was remanded back to the Rent Controller vide judgment and order dated 24.5.1976 to decide the review application afresh in accordance with law. It was further directed that specific findings regarding vacancy, possession and whether the shop is open to allotment should be recorded by the Rent Controller. Consequently, the matter went back to the Rent Controller who heard it again and considered all the material on record. It took notice of the fact that one Ram Lochan to whom the shop is said to have been sublet had applied for renewal of his registration for the year 1972-73 and there were assessment orders by the Sales Tax Department for the years 1967-68, 1972-73. the reference to another document from Excise Department filed by the allottee Sri Z. A. Mirza was also noticed from which it appeared that one Dashrath Nandan Jaiswal and Sri Ashok Kumar had also done some excise business in the shop. The letters of Sri Yunus Khan and Sri Ram SIngh filed by Mohan Singh were not believed by the Rent Controller as they were the partners of Sri Mohan Singh himself, hence did not inspire confidence. In the opinion of the Rent Controller, the petitioner Mohan Singh failed to file any document to support his case that he was continuing to do business in the premises like sales tax registration or any other correspondence, etc. which could prove hts averment. Accepting the correctness of the documents filed by Sri Z. A. Mirza, the Rent Controller came to the conclusion that other persons have been

carrying on business in the shop in question and. therefore. Sri Mohan Singh has acted in violation of the provisions of Section 25 of the U. P. Act No. 13 of 1972. On such findings, the allotment in favour of the respondent No. 3 was found valid and the review petition preferred by Sri Mohan Singh was rejected by order dated 2.3.1979. Being aggrieved by the same, Mohan Singh. the present petitioner preferred revision before the District Judge being Rent Revision No. 79 of 1979 against the order dated 2.3.1979. In this revision, the revisionist had prayed before the Court below to review its earlier order to the effect that the revisionist has vacated the shop. This revision was rejected summarily vide orders dated 8.3.1979 by the learned District Judge, Lucknow on the ground that since it involved pure question of fact, therefore, the same is not revlsable. Being aggrieved by the same, the petitioner approached this Court by filing a writ petition bearing Writ Petition No. 548 of 1979. This Court allowed the writ petition holding that the rejection of the revision in limitie was bad in law, hence while setting aside the order dated 8.3.1979, the District Judge, Lucknow was directed to rehear the matter on merits and decide it in accordance with law. In the aforesaid facts and circumstances, the revision was reheard and learned First Additional District Judge, vide his judgment and order dated 5.11.1985. rendered a detailed judgment came to the conclusion that the vacancy was validly declared on 30.6.1975 under Section 12 (a) and (b) of U. P. Act No. 13 of 1972 and so also the allotment order was correctly and validly passed in favour of Sri Z. A. Mirza. On such findings, the revision was dismissed. It is this Judgment and order which is under challenge in the present writ petition.

3. I have heard learned counsel for the parties and have perused the various judgments and documents placed on record.

4. Learned counsel for the petitioner challenged the judgment primarily on the ground that since the tenant was not given any opportunity before the declaration of the vacancy under Section 12 of the Act and allotted the premises in favour of the applicant-respondent No. 3. therefore, there is clear violation of Rule 8 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972 as it stood at the relevant time. Rule 8 as it stood at that time is quoted herein below :

'8. Ascertainment of vacancy.--(1) The District Magistrate, shall before making any order of allotment or release in respect of any building which is alleged to be vacant under Section 12 or to be otherwise vacant or to be likely to fall vacant get the same inspected.

(2) The inspection of the building, so far as possible shall be made in the presence of the landlord and the tenant or any other occupant. The facts mentioned in the report should wherever practicable be elicited from at least two respectable persons in the locality, and the conclusion of the inspection report shall be pasted on the notice board of the office of the District Magistrate for the information of the general public, and an order of allotment may be passed not before the expiration of three days from the date of such pasting, and if in the meantime any objection is received, not before the disposal of such objection.

(3) Any objection under sub-rule (2) shall be decided after considering any evidence that the objector or any other person concerned may adduce.'

5. Learned counsel for the petitioner submitted that since notice was not given to the tenant as per Rule 8 therefore, he was denied proper opportunity to place his case before declaration of vacancy, hence the whole process stands vitiated. In support of his contention, he placed reliance on the decision of the Apex Court in the case of Ganpat Roy and others v. Additional District Magistrate and others, 1985 (2) SCC 307. I have gone through this case which deals with Rule 8 as amended in 1977. The whole case has been dealt with in the facts and circumstances that the District Magistrate did not allow three days time before declaring the vacancy on the notice board and made the allotment order. In these circumstances, the Apex Court held that the District Magistrate was not justified in immediately directing the vacancy to be notified after pasting the report of the Inspector on the notice board for the information of general public and in these circumstances, the allotment order which was passed by the Rent Controller was found to be in violation of the said rule. I am of the view that this authority does not help the petitioner in any manner because in the present case, the report is dated 21.6.1975 and the vacancy was declared on 30.6.1975. The intimation was also given to the landlord who did not file any objections. The question of

giving notice to the tenant did not arise in the facts of the present case because as per the report, the shop was found locked for the last several months.

6. Learned counsel for the petitioner thereafter placed reliance on the case decided by this Court in Smt. Gausiya Khatoon and another v. Rent Control and Eviction Officer. Barabanki and another, 1993 (II) LCD 1099. This case also deals with the question of due opportunity to the tenant as provided in Rule 8 of the amended rules. Since the facts and the circumstances of the present case are that the shop was lying locked for the last several months and due notice was given to the landlord and the statements of shop owners of nearby shops were duly taken, therefore, the grievance against violation of compliance of Rule 8 is wholly unjustified.

7. Learned counsel appearing for the respondent allottee while repelling the arguments advanced by the learned counsel for the petitioner placed reliance on a decision in the case of Harish Tandon v. Additional District Magistrate, Allahabad, V. P. and others, rendered by the Apex Court reported in 1995 ARC (I) 220. In this case, the tenant had admitted a person in the existing partnership who was not a member of his family and on such admission of the son-in-law by the tenant as a partner in the business, the deemed vacancy was declared by the authorities under Section 12 read with Section 25, Explanation 1 and Section 20 (2) (e) and the case was treated to be that of subletting also within the meaning of Section 25. Explanation I, a ground for eviction under Section 20 (2) (e). In the present case also, learned counsel for the petitioner contends that on the basis of the material placed by the Inspector along with his report as also by the allottee-respondent No. 3 it cannot be doubted that the petitioner Mohan Singh had sublet the premises to others and, therefore, the deemed vacancy was validly declared under Section 12 of the Act.

8. The learned counsel for the respondent drew the attention of this Court to the judgment of the revisional court and submitted that it has dealt with the question of declaration of vacancy in great detail and thereafter only it has held that the petitioner was all along subletting/permitting others to do business in this shop and the tenant has failed to file any documentary evidence which could show that the

petitioner and petitioner alone was factually carrying on the business in the said shop throughout.

9. I have gone through the impugned judgment and find that the revisional court has discussed the evidence in great detail and it is only thereafter that it has come to the conclusion that the petitioner has failed to prove that he alone was doing business in the disputed premises, on the contrary it held that Ram Lochan Gupta. Sri Yunus Khan and Ram Singh carried on their business from time to time, hence vacancy under Section 12 was rightly declared vide orders dated 30.6.1975 and thereafter the allotment order too was validly passed.

10. In the aforesaid facts and circumstances. I do not find any merit in the contentions raised by the learned counsel for the petitioner. The judgment rendered by the revisional court, therefore, does not call for any interference, as the same does not suffer from any illegality, perversity or error in exercising its jurisdiction. There is no merit in the writ petition. Therefore, the same is liable to be rejected.

11. The writ petition is accordingly dismissed. Since the petitioner has already continued in the shop pursuant to the interim orders passed by this Court for all these years, therefore. I grant three months time to the petitioner to vacate the shop/premises in question and handover the vacant possession to the allottee-respondent No. 3.