

Atar Singh Vs. Viith Additional District Judge, Meerut and Others

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Court : Allahabad

Decided On : Apr-21-1998

Reported in : 1998(2)AWC1233

Judge : N.S. Gupta, J.

Acts : Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 12, 21, 21(1), (2), (3), (3A) and (3B); [Constitution of India](#) - Article 226; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976

Appeal No. : C.M.W.P. No. 19002 of 1988

Appellant : Atar Singh

Respondent : Viith Additional District Judge, Meerut and Others

Advocate for Def. : S.C. and ;P.K. Jain, Adv.

Advocate for Pet/Ap. : N.C. Rajwanshi, Adv.

Judgement :

N. S. Gupta, J.

1. By means of this writ petition under Article 226 of the [Constitution of India](#). Sri Atar Singh, tenant-petitioner has sought to quash the orders dated 15.12.86 and

26.9.88 passed by the Addl. District Magistrate (Civil Supplies) Delegatory Authority, Meerut and the then VIIIth Addl. District Judge, Meerut, whereby a portion of the house in dispute situate in Vijai Nagar, Meerut was released in favour of the landlord respondent Kulwant Singh.

2. I have heard learned counsel for the parties and have gone through the facts and circumstances of the case. The fact that the petitioner was earlier a tenant of the ground floor of the house in question of the landlord-respondent is not disputed before this Court. It appears that on a petition being moved by the landlord under Section 21 (1) (a) of U. P. Act XIII of 1972 for the eviction of the tenant-petitioner from the ground floor of the house in question, it was ordered by the prescribed authority on 12.8.81 that the petitioner would vacate the ground floor of the house in question provided the landlord-respondent provides similar accommodation on the first floor of his house within one month from the date of the said order. It was contended by the learned counsel for the petitioner that the writ petition filed by the petitioner against the said judgment of the prescribed authority was dismissed by this Court on 3.1.88 with the observation that the petitioner had legal right under the provisions of U. P. Act XIII of 1972 to ask the landlord-respondent to get the accommodation windproof and waterproof. The petitioner specifically averred in para 7 of his affidavit that thereafter according to the orders of the prescribed authority, possession was handed over by the petitioner-tenant to the respondent-landlord of the ground floor and the tenant-petitioner was given possession of the upper floor consisting of two rooms, bathroom and a kitchen on the first floor and the latrine on the ground floor in the year 1985. Subsequently, however, the upper portion of the house in question was declared vacant by the prescribed authority and was released in favour of the landlord-respondent No. 3 as also by the lower revisional court.

3. Sri N. C. Raghuvanshi vehemently argued before me that when in pursuance of the earlier order of the prescribed authority which was maintained upto the level of this Court in Civil Misc. Writ Petition No. 14614 of 1984, dated 3.1-1988 passed by Hon'ble Mr. Justice. V. K. Khanna, the tenant-petitioner had occupied the first floor of the house in question after evicting the ground floor of which he was admittedly the tenant of the landlord, for all practical purposes it would be deemed that the

petitioner had occupied the first floor of the house in question as a tenant and was a lawful tenant thereof. There was, therefore, no question of the accommodation which was admittedly there in the first floor of the house in question in possession of the tenant-petitioner having fallen vacant or deemed to have become vacant.

4. The fact that the tenant-petitioner had occupied the first floor after vacating the ground floor in pursuance of the earlier order passed by the prescribed authority was not disputed by the learned counsel for the landlord-respondent. Sri P. K. Jain, learned counsel for the landlord-respondent contended before this Court that when the vacancy of the accommodation in question was declared by the prescribed authority, the proper remedy for the revisionist was to have gone up in revision or writ before the appropriate authority prior to the release of the accommodation in question in favour of the landlord-respondent.

5. A perusal of the record of the case reveals that the tenant petitioner did contest the matter of the release of the accommodation in question in favour of the landlord-respondent upto the level of the lower revisional court but he failed.

6. It is important to note here that the provisions of Section 12 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 relating to deemed vacancy of a building reads as under :

12. Deemed vacancy of building in certain cases.--(1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if:

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

(2) in the case of non-residential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to

occupy the building.

(3) in the case of a residential building. If the tenant or any member of his family builds or acquires in a vacant state or gets vacated a residential building in the same city municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy :

Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date, Explanation.--For the purposes of this sub-section :

(a) a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee :

(b) the expression 'any member of family' in relation to a tenant, shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant.

(3A) if the tenant of a residential building holding a transferable post under any Government or local authority or a public sector corporation or under any other employer has been transferred to some other city, municipality, notified area or town area, then such tenant shall be deemed to have ceased to occupy such building with effect from the thirtieth day of June following the date of such transfer or from the date of allotment to him of any residential accommodation (whether any accommodation be allotted under this Act or any official accommodation is provided by the employer) in the city, municipality, notified area or town area to which he has been so transferred, whichever is later.

(3B) if the tenant of a residential building is engaged in any profession, trade, calling or employment in any city, municipality, notified area or town area in which the said building is situate and such engagement ceases for any reason

whatsoever, and he is landlord or any other building in any other city, municipality, notified area or town area, then such tenant shall be deemed to have ceased to occupy the first mentioned building with effect from the date on which he obtains vacant possession of the last mentioned building whether as a result of proceedings under Section 21 or otherwise.

(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of sub-section (1) or sub-section (2) or sub-section (3). sub-section (3A) or sub-section (3B). shall for the purposes of this Chapter, be deemed to be vacant.

(5) A tenant or, as the case may be, a member of his family, referred to in sub-section (3) shall, have a right, as landlord or any residential building, referred to in the said sub-section which may have been let out by him before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment). Act. 1976 to apply under clause (a) of sub-section (1) of Section 21 for the eviction of his tenant from such building, notwithstanding that such building is one to which the remaining provisions of this Act do not apply.'

7. Admittedly, the present case is not covered by any of the aforesaid contingencies enumerated in the said section. Thus, it was absolutely an abuse of the process of law first by the Addl. District Magistrate in declaring the accommodation in question vacant and thereby releasing the same in favour of the landlord-respondent, then again the revisional court did not care to ponder over the matter and to appreciate the fact that the petitioner-tenant was neither a prospective allottee nor an unlawful occupant of the premises in question. In fact when alternative accommodation was earlier offered by the landlord-respondent himself to the tenant-petitioner on the first floor of his house and acting upon the said option, the prescribed authority as also the tower appellate court sustained that offer of the landlord-respondent and consequently decreed the suit of the plaintiff-respondent for the eviction of the defendant-appellant from the ground floor of the said house and in pursuance of the said decree of the two Courts below, viz.. prescribed authority and the lower appellate court, the tenant-appellant occupied the accommodation in question on the first floor of that very house of

which house the tenant-petitioner was a lawful tenant, it did not He in the mouth of the landlord-respondent to seek the release of the alternative accommodation in question under the garb of deemed vacancy.

8. It was vehemently argued by Sri P. K. Jain, learned counsel for the landlord-respondent that since the tenant-petitioner has not challenged the . vacancy order, the present petition at his behest is not maintainable.

Reliance was placed on the following rulings :

Ganpat Rai v. A.D.J., 1985 ARC Vol II page 73 ; Sobaran Singh Sharma v. IVth A.D.J., 1993 ARC 21; (FB) Nootan Kumar v. A.D.J.. 1993 ARC Vol II page 204 : Geep Industrial Syndicate v. Vinod Kumar, 1997 ARC Vol I page 396 : Deo Raj v. 1st A.D.J.. 1997 ARC Vol I page 590 : Naresh Chand Tyagi v. Delegated Authority, Meerut and others, 1996 ARC Vol II page 596 ; Vijai Kumar Sonker v. I/c Ist A.D.J., 1995 ARC Vol II page 1 ; Talib Husain v. 1st A.D.J., 1996 ARC Vollpage 1.

9. It is not possible for me to appreciate the contention put forward by the learned counsel for the landlord-respondent for the obvious reasons that it is not open to a landlord to first offer an alternative accommodation to the tenant and then to get the same either released in his favour or to get it allotted to a stranger for the obvious purpose of evicting the lawful tenant. In fact when the tenant-petitioner had shifted on the first floor of the accommodation in pursuance of a decree passed by the prescribed authority and sustained by the lower appellate court, viz., District Judge, the status of the tenant-petitioner was that of a statutory tenant. He was neither an unauthorised occupant nor a prospective allottee. Therefore, the rulings relied upon by the learned counsel for the landlord-respondent are of no help to him.

10. It is important to note here that if the contention of the landlord-respondent is upheld by this constitutional court, it would mean granting permission to the authorities of the State, viz., District Magistrate etc. to evict every tenant under the garb of deemed vacancy to whom alternative accommodation is offered and occupied under orders of the prescribed authority in accordance with the

provisions of Section 21 of U. P. Act XIII of 1972, which approach in the opinion of this Court, exercising extraordinary Jurisdiction under Article 226 of the [Constitution of India](#), cannot be sustained for the obvious reason that such an approach would be absolutely illegal, inequitable and unjust.

11. I may, however, observe here that for if any reason whatsoever, changed circumstances have happened justifying the bona fide need of the landlord-respondent for the accommodation in question, he may again approach to the prescribed authority in accordance with the provisions of Section 21 (1) (a) of U. P. Act XIII of 1972.

12. Thus. In the result. I hold that the petitioner-tenant Atar Singh was a lawful tenant of the accommodation in question. The impugned orders dated 15.12.86 and 26.9.1988, passed by the then Addl. District Magistrate and VIIIth Addl. District Judge, Meerut respectively are bad in law. They are hereby quashed. The respondent-landlord is commanded to treat the petitioner as a lawful tenant of the premises in question. The petition is accordingly allowed. Costs on parties.

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