

**Kaloo and ors., Vs. Rent Control and Eviction Officer**

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**SooperKanoon Citation :** [sooperkanoon.com/473019](http://sooperkanoon.com/473019)

**Court :** Allahabad

**Decided On :** Feb-23-2005

**Reported in :** 2005(1)ARC713

**Judge :** S.U. Khan, J.

**Appeal No. :** Civil Misc. Clarification Application No. 5017 of 2005 and Civil Misc. Clarification/Modification Ap

**Appellant :** Kaloo and ors., ;raj Kumar (Smt.) and ors. and O.P.S. Malik

**Respondent :** Rent Control and Eviction Officer

**Judgement :**

**S.U. Khan, J.**

1. The following four Writ Petitions were decided by me on 25.10.2004 Writ Petition Nos. 21874 of 2001, 33657 of 2001, 36225 of 2001 and 36226 of 2004.
2. S.L.P. (Civil) No(s) 786-789 of 2005 (reported in 2005 (1) ARC 712) O.P.S. Malik v. Rent Control and Eviction Officer and Ors. filed against the aforesaid judgment has been dismissed by the Supreme Court on 24.1.2005.
3. Through the aforesaid judgment O.P.S. Malik to whom property in dispute had been allotted by Rent Control and Eviction Officer, was directed to vacate the entire building. The property in dispute which is a big bungalow contains some

servant quarters also. These two applications have been filed by occupants of the servant quarters also. Through these applications it has been stated that applicants were not parties in any of the four writ petition, hence they are not liable to ejection under order dated 25.10.2004 passed in the aforesaid writ petitions. According to the learned Counsel for these applicants they were permitted to occupy the servant quarters by the previous tenant as they were his servants hence their status of as sub tenant of the previous tenant and they cannot be evicted under order of eviction passed against the subsequent tenant i.e. O.P.S. Malik.

4. When O.P.S. Malik under allotment order took possession of the entire building including servant quarters the previous tenant stood completely evicted. Right of subtenant is dependent upon right of main tenant, A sub tenant has got no independent right de hors the right of the chief tenant. The position is that either upon the eviction of the previous chief tenant applicants lost every right to occupy the servant quarters or they became sub tenant of the subsequent chief tenant i.e. O.P.S. Malik hence they are liable to evicted alongwith O.P.S. Malik.

5. Landlord had filed suit for eviction against the previous tenant and in that suit he had impleaded the applicants of these two applications which term includes their predecessors. The suit was numbered as S.C.C. Suit No. 19/82 Naresh Chandra Kapoor v. Smt. Syeda Farroqui and Ors.. The suit was decreed on 27.4.1985 by IVth A.D.J., Allahabad. Against the said judgment and decree the chief tenant i.e. Smt. Syeda Farooqui filed revision being Revision No. 324 of 1985. In the said revision landlord Naresh Chandra Kapoor was respondent No. 1. The applicants of these applications were impleaded as proforma defendant-respondent Nos. 3 to 9 in the said revision. The said revision was dismissed for default on 9.4.1999 by this Court. The applicants of these applications had not filed any revision, in the judgment dated 27.4.1985 it was clearly held that the applicants were sub tenants. The plea of the learned Counsel for the applicants that applicants were not parties in eviction proceeding is also therefore, not tenable.

6. Learned Counsel for applicants has cited in AIR 1954 Alld. 6 Chandra Bhan v. R.C. and E.O. to contend that allotment order is invalid if at the time of the

allotment building was not vacant. The matter having been finally decided against allottee, this question is no more open to the sub tenant of the out houses. Even if allotment order was illegal on this ground it will not confer any right upon the applicants. In fact on the other grounds allotment order was found to be illegal by me.

7. The main emphasis of learned Counsel for the applicants was that the applicants were entitled to be heard. In this regard firstly I have heard them through their Counsel in these applications and secondly subtenant or licensee is not even a necessary part in a suit for eviction against the chief tenant. The applicants have not been able to establish any independent right to occupy.

8. Learned Counsel for the applicants has also cited AIR 1987 Alld. 56 P.D. Tondon v. State of U.P. The said authority dealt with lease hold rights of properties situate in Civil Lines, Allahabad. It has got no bearing on the point involved in the instant writ petition. In our or two paragraphs in the said judgment it was stated that the government shall make arrangement for re-habilitating out house dwellers. There is nothing in the said judgment which deals with right of landlord to dispossess them. The other authorities cited by learned Counsel for the applicants are Olga Tellis v. Bombay Municipal Corporation, AIR 1986 S.C. 180 and AIR 1977 SC 789 Lal Chand v. Radha Krishn. The said authorities have also got no bearing on the question involved in the instant writ petition.

9. Accordingly there is no merit in these modification applications and accordingly they are rejected. However, the applicants/occupants of the out houses are granted three months time to vacate.