

Mool Chandra Gupta Vs. Rent Control and Eviction Officer/Additional City Magistrate (ist), Kanpur Nagar and Another

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Court : Allahabad

Decided On : Mar-16-1999

Reported in : 1999(2)AWC1350

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 11, 12, 13, 14, 15, 15 (1) and (2), 16, 30 (1) and 31 (1); [Limitation Act, 1963](#) - Shedule - Article 137; [Indian Telegraph Act, 1885](#) - Sections 10 and 16 (5); [Indian Electricity Act, 1910](#) - Sections 51; [Constitution of India](#) - Article 137; [Code of Civil Procedure \(CPC\), 1908](#)

Appeal No. : C.M.W.P. No. 30114 of 1998

Appellant : Mool Chandra Gupta

Respondent : Rent Control and Eviction Officer/Additional City Magistrate (ist), Kanpur Nagar and Another

Advocate for Def. : S.C. and ;Shashi Kant Gupta, Adv.

Advocate for Pet/Ap. : S.P. Srivastava, Adv.

Judgement :

Sudhir Narain, J.

1. The petitioner has challenged the order declaring vacancy dated 9.9.1998 passed by the Rent Control and Eviction Officer-respondent No. 1.

2. Respondent No. 2, on 24.10.1997, moved an application before respondent No. 1 intimating vacancy purporting to be under Section 15 (1) and (2) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act) on the allegations that on the ground floor of house in dispute, one Amar Nath was a tenant of one room. He vacated it in the year 1989. The petitioner, thereafter, occupied it without any allotment order. Respondent No. 1 directed the Rent Control Inspector to submit a report. He submitted report dated 15.11.1997 that one Amar Nath was a tenant and on his vacation, the petitioner occupied it without any allotment order though he has obtained a rent receipt from the landlord to establish that he is living as a tenant. The petitioner filed objections to the said report, it was contended that he was occupying the disputed room for the last more than 30 years as a tenant. He had raised rent from Rs. 40 to Rs. 100 per month. Amar Nath was never a tenant of any portion of the house in question. Respondent No. 2 claiming herself as co-owner alleged that the house in question was owned by Ram Shankar Awasthi and after his death, it was inherited by his three sons, namely, Sadhu Awasthi, Atma Ram Awasthi and Babua Awasthi. She is daughter of Sadhu Awasthi and further she purchased the share of Atma Ram Awasthi. According to her, Amar Nath was a tenant and after his vacation, the petitioner occupied it unauthorisedly without any allotment order being passed by respondent No. 1 and as such the accommodation be treated as vacant.

3. There was a controversy before respondent No. 1 as to whether Amar Nath was a tenant of the disputed accommodation. On the evidence on record, he came to the conclusion that the petitioner was tenant of one room in the house in question and Amar Nath was tenant of another room in the same house and after he vacated it, it was occupied by the petitioner without any allotment order. He relied upon the extract of the quinquennial assessment year 1978-87 of Nagar Palika, Kanpur Nagar wherein Amar Nath was recorded as a tenant. He, however, found that Atma Ram Awasthi, one of the co-owner, had executed a rent receipt in

favour of the petitioner enhancing the rent from Rs. 40 to Rs. 200 per month in the year 1989 and since then, the petitioner is occupying the disputed one room. The petitioner had not obtained any allotment order from respondent No. 1 and as such, his occupation in the disputed accommodation was unauthorised and it should be deemed as a vacant.

4. The main thrust of the submissions of the learned counsel for the petitioner is that the landlords themselves having accepted the petitioner as a tenant, they cannot now urge that the petitioner is in an unauthorised occupation. Secondly, respondent No. 1 should have exercised his discretion to declare the vacancy within a reasonable time.

5. It is incumbent upon the landlord to give notice of vacancy to the District Magistrate in writing on a building falling vacant by his ceasing to occupy it or by the tenant vacating it under sub-section (1) of Section 15 of the Act and similarly, the tenant is also liable to give notice to the District Magistrate in writing under sub-section (2) of Section 15 of the Act where he vacates the building. The landlord cannot let out any accommodation in violation of the provisions of Section 11 of the Act which prohibits any person to let out any building except in pursuance of an allotment order issued under Section 16 of the Act and if the accommodation is so let out without any allotment order passed under Section 16 of the Act, his possession shall be deemed as unauthorised under Section 13 of the Act. The person occupying an accommodation without any allotment order and the person letting out both are liable for prosecution under Section 31 (1) of the Act, in *Nootan Kumar and others v. IInd Additional District Judge, Banda and others*, 1993 (2) ARC 204, it was held that an agreement of lease between the landlord and the tenant in contravention of Section 11 of the Act is void and unenforceable in a Court of law. The tenant cannot justify his unauthorised occupation of a building on the ground that the landlord had let it out to him and his occupation is in pursuance of such an agreement.

6. The next question is whether the District Magistrate is bound to declare such building unauthorisedly occupied by a person without any allotment order as vacant. Sri K. L. Grover, learned counsel for the petitioner contended that

respondent No. 1 should have exercised the discretion of declaring vacancy within three years from the date of actual vacancy or deemed vacancy as contemplated under Section 12 of the Act. Reliance has been placed on Article 137 of the [Limitation Act, 1963](#) which is a residuary article and provides as follows :

Description of application

Period of limitation

Time from which period begins to run

Any other application for which no period of limitation is provided elsewhere in this Division

3 years

When the right to apply accrues

In the Kerala State Electricity Board, T. T. Luandrum v. T. P. Kunhaliumma. AIR 1977 SC 282, wherein a petition under Sections 10 and 16(5) of the Indian Telegraph Act, 1885 read with Section 51 of the Indian Electricity Act, 1910 was filed claiming compensation by respondent against Kerala State Electricity Board, it was held that the period of three years' limitation was applicable under residuary Article 137 of the Constitution for submitting application inasmuch as this Article is applicable for any petition or application filed under any Act and it is not confined to the Code of Civil Procedure. This Article is applicable only when any provision contemplates any application for exercising power under an Act. Section 12 of U. P. Act No. 13 of 1972 does not contemplate any application to be filed for declaring vacancy, it enumerates the circumstances under which a building can be declared as a vacant. Section 15 of the Act casts a duty on the landlord and tenant to intimate the vacancy of a building falling vacant within seven days from the date of occurrence of such vacancy, in case the landlord and the tenant failed to comply with this provision and the District Magistrate is not aware of any collusion between the landlord and the tenant and the landlord after obtaining possession, lets out the building to any other person, he can exercise the power only when he comes to know of the vacancy. The occupier and the landlord either of them

cannot claim that though the letting was unauthorised but long time has elapsed, the accommodation cannot be declared as a vacant, it will be perpetuating its own wrong on the authorities. Secondly, Section 14 of the Act provides for regularisation or occupation of existing tenant, it saves the letting of a building by a landlord prior to U. P. Amending Act 28 of 1976 came into effect on 5.7.1976. If an accommodation is let out subsequently and the District Magistrate regularises an unauthorised occupant for a period subsequent to 5.7.1976, it will be acting in contravention of the provisions of Section 14 of the Act.

7. Learned counsel for the petitioner lays emphasis on the principle that the authority who is to exercise the discretion, should exercise the discretion within a reasonable time where no limitation is provided for exercising of such power. He has placed reliance upon the decision in *Smf. Brij Bala Jain v. Smt. Amarjeet Kemr and others*. 1996 (2) ARC 474, wherein the question was whether the tenant having admitted a person as a partner in business which was being carried on in the shop amounts to deemed vacancy. On facts, it was found that the landlady was residing on the first floor and on the ground floor business was being carried on and the landlady having never raised any objection for more than 12 years but when she sold it to another person, such purchaser submitted an application to declare it as vacant. There was no dispute that initial letting by the landlord was valid. On the facts of that case, relying upon the decision of the Supreme Court in *Mansa Ram v. S. P. Pathak and others*. AIR 1983 SC 1239, it was held that the Rent Control and Eviction Officer is to exercise the discretion within a reasonable time when no limitation is provided therefore, in *Smt. Brij Bala Jain's case (supra)*, it was observed that more than 12 years' period had elapsed and the landlady had never objected to the admission of a partner in the business, the Rent Control and Eviction Officer was directed to examine the matter in accordance with law as to whether conduct of the landlord amounted to acquiescence, in the present case, the accommodation is alleged to have been let out in the year, 1989, even 10 years' period has not elapsed and there is no justification for illegal letting. The Rent Control and Eviction Officer, in these circumstances, rightly declared the accommodation in question as vacant.

8. The petitioner has assailed the finding recorded by respondent No. 1 that he had occupied the disputed room in the year 1989. I have perused the Impugned order and I find that respondent No. 1 has, on assessment of evidence, recorded a finding that one Amar Nath was a tenant. He vacated in the year. 1989 and thereafter it was occupied by the petitioner. I do not find any legal infirmity in this finding.

9. There is no merit in the writ petition, it is accordingly, dismissed.

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