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Smt. Kamla Devi Vs. iind Additional District Judge and ors.

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Court : Allahabad

Decided On : May-28-2004

Reported in : AIR2004All400; 2004(3)AWC2341

Judge : Tarun Agarwala, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rules 97 and 98; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 16(2); ;Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 13

Appeal No. : Writ Petition Nos. 17361 and 18108 of 1990

Appellant : Smt. Kamla Devi

Respondent : iind Additional District Judge and ors.

Advocate for Def. : H.C. Misra and ;Prakash Gupta, S.C.

Advocate for Pet/Ap. : Ravi Kant and ;S.K. Garg, Advs.

Disposition : Writ petition allowed

Judgement :

Tarun Agarwala, J.

1. The petitioner is the owner and landlord of the premises No. 208-C/3, Jokham Bagh, Civil Lines, Jhansi. The aforesaid premises was previously tenanted by Sri Ramesh Chand Agarwal, the respondent No. 4. The petitioner instituted a suit for eviction against the respondent No. 4, which was decreed in terms of a compromise. As per the compromise dated 4.10.1985, the respondent No. 4 was to vacate the premises within one year, i.e., on or before 4.10.1986. It is alleged that the respondent No. 4 did not vacate the premises in question as per the compromise decree and, therefore, the petitioner moved an application for execution of the decree, which was numbered as execution case No. 4 of 1987. Prior to the filing of the execution application, it transpires that the respondent No. 4 intimated the Rent Control and Eviction Officer on 28.8.1986 that he was going to vacate the premises, pursuant to which the Rent Control and Eviction Officer notified the vacancy on 13.9.1984. When the petitioner came to know about the vacancy, he also moved an application for release of the premises in his favour. The respondent No. 5, Suresh Prasad (in Writ Petition No. 1808 of 1990) also moved an application for allotment of the premises. The Rent Control and Eviction Officer heard the prospective allottees as well as the petitioner landlord and by an order dated 5.12.1986, the Rent Control and Eviction Officer rejected the release application of the petitioner and, by the same order, allotted the premises to the respondent No. 3, Pooran Chand Agarwal, who was another prospective allottee. The petitioner challenged the order dated 5.12.1986 passed by the Rent Control and Eviction Officer by filing a revision under Section 18 of the Act. The revision was allowed by an order dated 9.4.1987 and the allotment order was set aside and the matter was remanded back to the Rent Control and Eviction Officer to decide the release application of the petitioner. The revisional court held that the prospective allottee could not contest the release application of the landlord and that the release application alone could be considered by the Rent Control and Eviction Officer. The Rent Control and Eviction Officer by order dated 31.3.1989, again rejected the release application of the petitioner. While rejecting the release application, the Rent Control and Eviction Officer took into consideration, the evidence, which had been led earlier by the prospective allottee. The petitioner again filed a revision, being Rent Control Revision No. 86 of 1989 which was dismissed by an order dated 24.4.1990. The revisional court held that even though

the prospective allottee was not heard by the Rent Control and Eviction Officer, he could still consider and take into account the evidence led by the prospective allottee.

2. It may be stated here that pursuant to the allotment order dated 5.12.1986, the respondent No. 3, Pooran Chand Agarwal took possession of the premises in question on 8.12.1986 from Sri Ramesh Chandra Agarwal, respondent No. 4, who was the sitting tenant. It was alleged that the possession was taken by the respondent No. 3 in collusion with the respondent No. 4 in order to defeat the decree in S.C.C. Suit No. 14 of 1983.

3. It may be stated here that the compromise made in S.C.C. Suit No. 14 of 1983 was put in execution being Execution Case No. 4 of 1987. In these execution proceedings, respondent No. 3, Pooran Chand Agarwal appeared and filed an objection under Order XXI, Rule 97, C.P.C. alleging therein that he had been allotted the premises in question by an allotment order dated 5.12.1986 and that he had obtained possession on 8.12.1986 and therefore, the decree cannot be executed. The objection of the respondent No. 3 was rejected by the executing court by an order dated 2.11.1987 on the ground that the allotment order dated 5.12.1986 had been set aside by the revisional court by an order dated 9.4.1987. The executing court further directed that the possession be given to the petitioner.

4. Aggrieved by this decision, the respondent No. 3 filed a revision, being Civil Revision No. 205 of 1987, which was allowed by an order dated 24.4.1990 holding that even though respondent No; 3 had no locus standi to move an objection under Order XXI, Rule 97, C.P.C., but could place the facts before the Court indicating therein that the compromise decree had become unenforceable. The revisional court allowed the revision on the ground that the possession could not be given to the petitioner, because the premises had been allotted to the respondent No. 3 by the Rent Control and Eviction Officer.

5. Against the order dated 24.4.1990, allowing Civil Revision No. 205 of 1987, the petitioner has filed Writ Petition No. 17361 of 1990. Against the order dated 31.3.1989 passed by the Rent Control and Eviction Officer rejecting the release application and the revisional order dated 24.4.1990 in Revision No. 86 of 1989,

the petitioner has filed Writ Petition No. 18108 of 1990. Both the writ petitions have been connected and are being heard together.

6. Heard Sri Ravi Kant, the learned senior counsel for the petitioner assisted by Sri S.K. Garg, Advocate and Sri Prakash Gupta, the learned counsel for the respondent No. 3, No one has put in appearance on behalf of the respondent Nos. 4 and 5 inspite of service.

7. The revisional court in Civil Revision No. 285 of 1987, which arose from an order passed by the executing court in Execution Case No. 4 of 1987 by its order dated 24.4.1990 allowed the revision on the ground that the premises in question had been allotted to the respondent No. 3 by the Rent Control and Eviction Officer and, therefore, the compromise-decree had become enforceable and, therefore, possession of the premises could not be given to the petitioner. Admittedly, the allotment order dated 5.12.1986 had been set aside by the revisional order dated 9.4.1987. Thus, on the date when the impugned order dated 24.4.1990 was passed, there was no allotment order in favour of the respondent No. 3. The executing court also committed an error of law in holding that the respondent No. 3 being an outsider had no locus standi to file an objection under Order XXI, Rule 97, C.P.C.

8. In *Brahmadeo Choudhary v. Rishikesh Prasad Jaiswal and Anr.*, 1997 (2) AWC 1003 (SC), the Supreme Court held that even a stranger could file an application under Order XXI, Rule 97, C.P.C. and the same has to be adjudicated by the executing court under Order XXI, Rule 97 (2) read with Rule 98 of the Code of Civil Procedure.

9. Consequently, the order dated 24.4.1990 passed by the IInd Additional District Judge, Jhansi in Civil Revision No. 205 of 1987 is allowed and the matter is remanded back to the executing court to decide the objection of the respondent No. 3 under Order XXI, Rule 97, C.P.C. afresh in accordance with law within a period of three months from the date a certified copy of this judgment is produced before the said Court.

10. The release application of the petitioner was rejected by the Rent Control and Eviction Officer by an order dated 31.3.1989, against which, the petitioner filed a revision, which was also rejected by an order dated 24.4.1990 in Civil Revision No. 86 of 1989. The Rent Control and Eviction Officer rejected the release application of the petitioner taking into consideration the evidence led by the prospective allottee. The revisional court dismissed the revision of the petitioner on the ground that even though the prospective allottee was not heard, but the evidence led by him could be considered by the Rent Control and Eviction Officer. The Rent Control and Eviction Officer while considering the evidence led by the prospective allottee held that the petitioner had other properties, which he could use for his personal need and, therefore, his need was not bona fide for the release of the premises in question. The finding was arrived at on the basis of the assessment list which was provided by the prospective allottee.

11. Under Section 16 (2) (b) of the Act, the Authority is only required to consider the bona fide requirement of the landlord's release application. As per Rule 13 of the Rules, the grounds for release of the premises are spelt out in the release application. The authority is, therefore, required to consider whether the ground for release of the premises is bona fide or not. The authority is not required to consider any other aspect. If the landlord's need is bona fide, i.e., genuine, honest or reasonable, the Authority is duty bound to release the premises in favour- of the landlord. The word 'bona fide' is opposed to 'mala fide'. Therefore, the 'limited enquiry, which the Authority has to consider is whether the release application was mala fide or not. If it was mala fide, the authority would reject the application. But, if the release application was genuine, and the need of the landlord was bona fide, the Authority was required to release the premises in favour of the landlord.

12. In the present case, the Rent Control and Eviction Officer has considered the assessment list in arriving at a conclusion that the petitioner had sufficient accommodation and therefore, the petitioner does not require the premises in question. It may be stated here that no finding has been given either by the Rent Control and Eviction Officer or by the revisional court to the effect that the other accommodations as contemplated in the assessment list was in the possession of the petitioner. The assessment list by itself does not indicate nor prove that the

petitioner was in the possession of the other properties.

13. Thus, the assessment list does not indicate that the landlord was in possession of the other properties. In *Baleshwar Tewari v. Sheo Jatan Tewari and Ors.*, (1997) 5 SCC 112, the Supreme Court held that the entries in the revenue record is not sufficient to indicate that the person is in possession of the property in question. The same view was again reiterated by the Supreme Court in *Vishal Singh v. State of Madhya Pradesh*, AIR 1998 SC 308. Thus, the release application could not be rejected solely on the basis of the assessment list. The Rent Control and Eviction Officer must find that the petitioner was in possession of the properties before rejecting the application on the ground that the release application was mala fide.

14. Further, I am of the view that the authority was not required to assess the sufficiency of the accommodation with the landlord under Section 16 (1) (b) of the Act.

15. In *Prithvi Raj v. District Judge, Kanpur*, 1983 (1) ARC 675. This Court held :

'In an application for release under Section 16 (1) (b) all that is required to be considered is whether the landlord bona fide requires the disputed accommodation for his own residence, etc. The Rent Control and Eviction Officer is not required to assess the sufficiency of the accommodation with which the landlord ought, in his opinion, to be satisfied. The enquiry required to be made is whether the need set up by the landlord is bona fide or mala fide.'

16. In *Talib Hasan and Anr. v. Ist Additional District Judge, Nainital and Ors.*, 1986 (1) ARC 1, a Full Bench of this Court held that a prospective allottee has no right to be heard on the release application of the landlord. Consequently, I hold that the evidence brought on record by a prospective allottee could not be considered by the Rent Control and Eviction Officer. This view of mine also finds support by a judgment of this Court in *Hardwari Lal v. IInd Additional District Judge, Saharanpur and Ors.*, 2004 (5) ARC 430, in which it was held that neither the need nor the evidence brought on record by prospective allottee could be seen.

17. Learned counsel for the respondents placed reliance upon a decision of the Supreme Court in G.K. Pillai v. IVth Additional District Judge, Lucknow and Ors., 1986 (1) ARC 320, in which the Supreme Court remanded the matter back to the prescribed authority to reconsider the release application after hearing the landlord and the prospective allottee. In my view, this judgment is not helpful as the said judgment was passed in the peculiar facts of that case. It is settled law that a prospective allottee cannot be heard on the release application of the landlord. The prospective allottee comes into the picture only after the rejection of the landlord's application for release.

18. In view of the aforesaid, the order of the Rent Control and Eviction Officer dated 31.3.1989 rejecting the release application of the petitioner as well as the order of the revisional court dated 24.4.1990 in Civil Revision No. 86 of 1989 cannot be sustained and are quashed and the writ petition is allowed and the matter is remanded back to the Rent Control and Eviction Officer to decide the release application of the petitioner in the light of the observation made above within a period of three months from the date a certified copy of this judgment is produced before it.

19. In view of the aforesaid, the Writ Petition No. 17361 of 1990 and Writ Petition No. 18108 of 1990 are allowed and the impugned orders are quashed and the matter is remanded back as per the direction given aforesaid. In the circumstances of the case there shall be no order as to cost.