

Ashok Kumar Thard and Others Vs. Hirdesh Khandelwal and Another

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Court : Allahabad

Decided On : May-25-2001

Reported in : 2001(3)AWC1868

Judge : B.K. Rathi, J.

Acts : Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972
- Sections 12, 16 and 18; [Constitution of India](#) - Article 226;

Appeal No. : C.M.W.P. No. 21206 of 2001

Appellant : Ashok Kumar Thard and Others

Respondent : Hirdesh Khandelwal and Another

Advocate for Def. : A.N. Sinha, Adv.

Advocate for Pet/Ap. : Rajesh Tandon, ;Some Narayan Mishra and ;B.C. Rai,
Advs.

Disposition : Petition Disposed

Judgement :

B.K. Rathi, J.

1. The premises in dispute is house No. 47/7-A. Maniram Bagia, Kanpur Nagar, which is residential. It was declared vacant by the R.C. & E.O. by order, dated

31.1.2001. Annexure-18 to the petition. Thereafter an application for release was moved by the respondents, who are landlords. The premises has been released in their favour by order dated 23.4.2001 by R.C. & E.O., Annexure-19 to the petition. Against that order of release, the petitioners preferred a revision under Section 18 of the U. P. Act No. XIII of 1972, (hereinafter referred to as the Act), being Revision No. 24 of 2001. The said revision has been dismissed on 15.5.2001 by judgment, Annexure-21 to the petition. Therefore, present petition has been filed invoking extraordinary jurisdiction of this Court under Article 226 of the [Constitution of India](#).

2. I have heard Sri Rajesh Tandon, learned senior advocate for the petitioners and Sri A. N. Sinha, learned counsel for the respondents.

3. It has been argued by Sri Rajesh Tandon, senior advocate for the petitioners, that the learned Incharge District Judge has dismissed the revision only on the ground that the petitioners are illegal occupants and they have no right to challenge the order of release. In support of the judgment, the learned Incharge District Judge has also referred to several decisions. It has been argued that he has misinterpreted the decisions and these cases have no application. That it is true that an illegal occupant cannot challenge the release order. However, it is contended that admittedly, the petitioners are in possession of the premises in dispute and the vacancy has been declared on the basis that they are illegal occupants ; that, therefore, they have right to challenge the release order on the ground that there is no vacancy ; that in a revision under Section 18 of U. P. Act No. XIII of 1972, the question of vacancy can also be challenged.

4. As against it, it has been argued by Sri Sinha, that against the order declaring the vacancy, dated 31.1.2001, the petitioners have already preferred a writ petition in this Court which is pending but no stay order has been granted in that case. It has been argued that the vacancy has already been challenged in the High Court and that could not be challenged in a revision under Section 18 of the Act.

5. I have considered the arguments. The question for decision is whether the law provide that in a revision under Section 18 of the Act against the order of release, can the vacancy be challenged. U has been argued by the learned counsel for the

petitioners that the learned Incharge District Judge, while deciding the revision was bound to consider whether the vacancy exists irrespective of the fact that the writ petition has already been filed against the order of declaration of vacancy in this Court. That no order in that writ petition has yet been passed. Therefore, from the arguments, the only question that arise for decision in this case is whether it was incumbent on the Incharge District Judge to consider the correctness of the order, declaring the vacancy in the revision before him.

6. Learned counsel for the respondents has referred to the decision of this Court in *Geep Industrial Syndicate Ltd. v. Vinod Kumar Agarwal* 1997 (1) ARC 396. In this case, the premises was declared vacant. The occupant challenged the order of vacancy but the order of vacancy was affirmed even by the Supreme Court. Thereafter, the premises was released in favour of the landlord. In the circumstances, it was held that he has no focus standi to contest the release application or to file a revision against the order of release. It was further observed that the matter regarding release is between landlord and R.C. & E.O. The other case referred to is the decision of the Apex Court in the case of *Narayani Devi v. Mahendra Kumar Tripathi*, 1998 (1) ARC 153. It is very short judgment of the Apex Court. It was held that against the final order of allotment or release after declaration of vacancy, revision can be filed under Section 18 of the Act. However, it has been held that the revision by the person who claim himself to be tenant would not lie. The other case referred to is *Brij Pal Singh v. 1st Additional, District Judge*, 1992 (1) ARC 1974. In this case, it was held that an unauthorised occupant cannot be permitted to contest the release proceedings and file revision against the order of release.

7. However, in this matter the important decision of the Apex Court is the leading case of *Ganpat Roy*. The correctness of this decision has been doubted by the Supreme Court in *Achal Misra v. Rama Shankar Singh*, 2000 (2) ARC 446. It was observed that 'in view of the aforesaid provisions, it cannot be said that the question of vacancy. If not challenged by a separate writ petition on its notification, cannot be questioned in the revision filed under Section 18 of' the Act. The question of vacancy pertains to jurisdictional facts and can very well be challenged in the revision filed against allotment order passed by the District Magistrate. In

case it is found that there is no vacancy, the order of allotment has to be set aside. We, therefore, feel that the decision in Ganpat Roy's case holding that the validity of vacancy cannot be agitated in a revision under Section 18 of the Act appears to be incorrect. Since the decision in Ganpat Roy's case is by a three Hon'ble Judges, we feel it appropriate that this appeal be decided by larger Bench.'

8. Therefore, the Apex Court has clearly laid down that the question whether the vacancy exists or not is a jurisdictional matter and the R.C. & E.O. had the jurisdiction to order release or to allot the premises only if there is a vacancy. The law does not provide any appeal or revision against the order declaring vacancy. The revision has been provided by Section 18 of the Act, against the final order of release or allotment. Therefore, while deciding the revision against the order of release, the revisional court can certainly see whether the vacancy exists or not and the R.C. & E.O. had jurisdiction to release the premises. No doubt, it is true that in case it is found that there is a vacancy, the occupant will not be entitled to challenge the release order. However, he can definitely challenge the vacancy and the Jurisdiction of R.C. & E.O. to release the allotment.

9. In view of this, the order of the Incharge District Judge, Annexure-21 to the petition, suffers from legal infirmity. The order is, accordingly, quashed. The matter is sent back before the District Judge, who shall re-admit the revision on its original number and shall re-decide it in the light of the observations made in the Judgment. He may either dispose of the revision himself or may send it for disposal to any officer subordinate to him.

10. The petition is disposed of finally.