

Shitla Prasad Singh Vs. Additional District Magistrate (Supply)/Rent Control and Eviction Officer, Kanpur Nagar and anr.

Shitla Prasad Singh Vs. Additional District Magistrate (Supply)/Rent Control and Eviction Officer, Kanpur Nagar and anr.

SooperKanoon Citation : sooperkanoon.com/474875

Court : Allahabad

Decided On : Apr-16-2002

Reported in : 2002(2)AWC1681

Judge : B.K. Rathi, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 3 and 12(1)

Appeal No. : C.M.W.P. No. 42791 of 2000

Appellant : Shitla Prasad Singh

Respondent : Additional District Magistrate (Supply)/Rent Control and Eviction Officer, Kanpur Nagar and anr.

Advocate for Def. : K.K. Arora, A.G.A.

Advocate for Pet/Ap. : Shiv Nath Singh and ;D.P.S. Chauhan, Adv.

Disposition : Petition allowed

Judgement :

B.K. Rathi, J.

1. This petition has been filed for quashing the order declaring vacancy passed under Section 12 of the U. P. Act No. XIII of 1972 on 11.9.2000 by the Additional District Magistrate/Rent Control and Eviction Officer, Kanpur Nagar.

2. The premises in dispute is numbered as 46/156, Halsi Road, Kanpur Nagar, which is non-residential. Sri V. K. Katiyar, opposite party No. 2, applied for the allotment of the said premises. On his application, a report was called for from the Rent Control Inspector. who submitted the report that the shop is in illegal possession of Sri Ram Sharan Singh, son of the petitioner. After this report, notices were issued to the parties and ultimately, the shop was declared vacant under Section 12 of the U. P. Act XIII of 1972 (hereinafter referred to as 'the Act') by the impugned order, dated 11.9.2000, passed by the Additional District Magistrate (Supply)/Rent Control and Eviction Officer, Kanpur Nagar. Aggrieved by that order, the present petition has been preferred.

3. I have heard Sri S. N. Singh, learned counsel for the petitioner and Sri K. K. Arora, learned counsel for the opposite party No- 2 and the learned A.G.A. I have also perused the affidavits.

4. In this case, it is undisputed that the shop in dispute, was in the tenancy of Surajpal Singh, who was the uncle of the petitioner. The petitioner and Surajpal Singh were running coal business In the disputed shop In the name and style M/s. Surajpal Singh Shitla Prasad Singh since 1954. According to the petitioner, Sri Surajpal Singh died in the year 1963 and since then, the petitioner became exclusive tenant of the disputed shop and is also paying rent, Now the business in the said shop is being carried on in the name and style M/s. Surajpal Singh and Co., and Ram Sharan Singh, son of the petitioner, is the sole proprietor of the said firm.

5. On behalf of the opposite party, it has been contended that it is Incorrect that Surajpal Singh died in the year 1963. On the other hand, it is alleged that he died much after 5th July. 1976 : that, therefore, the possession of Shitla Prasad Singh is not according to law and he is an illegal occupant. The extract of Municipal assessment for the years 1973-1978, 1978-1983, 1983-1987 and 1987-1992 have been filed to show that the name of Surajpal Singh have been recorded In these

assessments as tenant in the disputed shop. It has been argued that from these documents, it is clear that Surajpal Singh was alive till the year 1987 ; that, therefore, the vacancy was rightly declared.

6. I have considered the arguments.

7. The petitioner has filed death register, which is Annexure-1, which shows that Surajpal Singh died on 15.8.1973. The copy of the municipal assessment for the year 1963 to 1968 has also been filed, which is Annexure-7, in which Shitla Prasad Singh, petitioner, has been shown as tenant and the name of Surajpal Singh is not mentioned. This shows, that Shitla Prasad Singh was the tenant of disputed premises in the year 1963-1968. Rent receipts, issued in the name of the petitioner since 1968 has also been filed. Documents have also been filed by the petitioner to show that he is carrying on business in the shop and was paying rent, sales tax, etc.

8. In the circumstances, it appears that Shitla Prasad Singh, petitioner, is carrying on business in the disputed premises since much before 5th July. 1976, and, therefore, his tenancy has been regularised and is not an unlawful occupant.

9. It has also been argued by Sri K. K. Arora, learned counsel for the opposite party No. 2, that the Rent Control Inspector has found that the business in the disputed premises is being carried on by Sri Ram Sharan Singh, the son of the petitioner. The petitioner in paragraph No. 8 of the petition has also alleged that the business of coal in the name and style M/s. Surajpal Singh and Co., is being carried on by his son Sri Ram Sharan Singh, who is the sole proprietor of the business. It is, therefore, contended that Ram Sharan Singh is carrying on the business in the disputed premises and not the petitioner and, therefore, the shop in dispute was rightly declared vacant.

10. The learned counsel for the opposite party has referred to the decision of the Apex Court in Mohammed Kasam Haji Gulambhai v. Bakerah Fatehali, AIR 1988 SC 3214. In that case, the premises in question was a shop. It was let out to the tenant. The tenant entered into a partnership with his four sons for carrying on the business of sale of medicines in the suit premises and a partnership deed was

executed between them. The partnership was at will and under Clause (7) thereof, it was provided that 'only the tenant-father will be the exclusive proprietor and owner of the goodwill of the business place and all other rights of the business. Subsequently a new partnership deed between two sons of the tenant was executed and in terms thereof, the tenant-father and his two other sons retired from the business of the partnership. Various clauses of the new partnership deed showed that after the tenant-father retired from the earlier partnership, he was to have no concern right, title or interest in the new partnership which was not carrying on business in the suit premises, though in the same name. The rent was also paid by one of the two partners of the new partnership. The landlord filed a suit for eviction on the ground of subletting.

On these grounds, it was held :

'...under the new partnership, it was the sons of the tenant -father who were in complete control of the suit premises and were exercising exclusive possession for the same to the exclusion of the tenant-father. That tenant-father would occasionally visit the shop premises does not advance the case that he (tenant-father) could exercise his rights over the shop premises.'

11. I have carefully considered the law laid down in the above case. It does not apply on the facts of the present case. In the present case, the tenant had already died in the year 1963, therefore, if there was subletting, it was in the year 1963 and stood regularised.

12. The other reason is that the cited case relates to Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947). The provisions of the same does not appear to be similar to the provisions of the U. P. Act XIII of 1972. Word 'family' has been defined in Clause (g) of Section 3 and it includes male lineal descendants. Therefore, Ram Sharan Singh is the member of the family of the petitioner and is, therefore, a legal occupant.

13. Clause (b) of sub-section (1) of Section 12 provides for the deemed vacancy in case when the tenant has allowed it to be occupied by any person, who is not a member of the family of the petitioner. Ram Sharan Singh is a member of the

family of the petitioner as defined in Clause (g) and therefore, there can be no vacancy under Section 12 of the Act.

14. The Rent Control and Eviction Officer has, therefore, wrongly held that there was vacancy.

15. In my opinion, the approach of the Rent Control and Eviction Officer is totally erratic and he has decided the matter against the provisions of law.

16. Before parting with this case, I may also refer to the decision of Hon'ble Sudhir Narain. J. in Smt. Brij Bala Jain u. Smt. Amarjeet Kaur and others, 1996 (3) AWC 1624: 1996 ARC 474. In this case, it was held that in case a tenant keeps a partner for sixteen years, the vacancy cannot be declared after such a long period. In the present case, the petitioner is in lawful possession of the premises since 1963 and the same cannot be said to be vacant under Section 12 of the Act.

17. After considering the arguments, I am of the view that the order of the Additional District Magistrate (Supply) /Rent Control and Eviction Officer declaring vacancy cannot be sustained and is fit to be set aside.

18. The petition is, accordingly, allowed and the impugned order of the Additional District Magistrate (Supply)/Rent Control and Eviction Officer, dated 11.9.2000 is quashed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com