

Ramesh Chand Vs. Ist Additional District Judge, Agra and Others

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Court : Allahabad

Decided On : Mar-15-2000

Reported in : 2000(2)AWC1660

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972
- Sections 12, 14, 16 and 20(4)

Appeal No. : C.M.W.P. No. 13236 of 2000

Appellant : Ramesh Chand

Respondent : Ist Additional District Judge, Agra and Others

Advocate for Def. : Madhav Jain, S.C.

Advocate for Pet/Ap. : P.C. Jain, Adv.

Judgement :

Sudhir Narain, J

1. The core question in this petition is whether the disputed accommodation should be treated as vacant.

2. The facts of the present case are that respondent No. 3 is landlord of the disputed premises. He filed suit for recovery of arrears of rent and ejection in the

year 1987 against the petitioner stating that he was tenant on monthly rent of Rs. 100 in the disputed accommodation. A notice dated 13.1.1987 was given to him demanding arrears of rent and terminating his tenancy but as he failed to comply with the notice he was liable for eviction. The petitioner on the date of first hearing deposited the entire arrears of rent with interest and cost of the suit under Section 20(4) of U. P. Act No. 13 of 1972. On such deposit being made, the trial court dismissed the suit on 1.5.1992.

3. After the suit was dismissed respondent No. 3 filed an application on 21.4.1994 for release of the disputed accommodation with the allegations that the petitioner was in unauthorised occupation. He had let out the accommodation without an allotment order and as the tenancy was void, the petitioner should be treated as unauthorised occupant. The petitioner filed an objection to the said application. It was stated that he was an old tenant and was not an unauthorised occupant. He was further advised to file an application for allotment and in that application, he stated that he was in occupation of the disputed shop for the last more than 15 years with consent of the landlord.

4. The Rent Control and Eviction Officer passed ex parte order dated 8th May. 1997 declaring the accommodation as vacant on the ground that the petitioner himself had filed an application for allotment treating the disputed accommodation as vacant. The petitioner filed an application to recall the said order alleging that 10th April, 1997 was fixed for disposal of the application. The reply could not be filed on the said date. The case was adjourned for 26th April, 1997. His counsel became busy in other civil courts and he himself fell ill and as such neither his counsel nor he could appear in the case on 26th April. 1997. The application was supported with an affidavit. Respondent No. 3 filed a counter-affidavit to this application. Respondent No. 1 by order dated 4.10.1997 rejected the said application and by the same order passed order releasing the disputed accommodation in favour of respondent No. 3. The petitioner preferred a revision against this order before the District Judge. Respondent No. 1 has dismissed the revision by the impugned order dated 15.2.2000.

5. I have heard Sri P. C. Jain, learned counsel for the petitioner and Sri Madhav Jain learned counsel for the respondent.

6. Learned counsel for the respondent made statement that he does not propose to file counter-affidavit and the case may be decided on the basis of the material placed in the writ petition.

7. The Rent Control and Eviction Officer declared the disputed accommodation as vacant basically on the ground that the petitioner had filed application for allotment treating the accommodation in question as vacant. The Rent Control and Eviction Officer totally ignored the contents of the allotment application, a copy of which has been annexed as Annexure-4 to the writ petition. In his allotment application he has stated that he was in occupation of the shop in question with the consent of the landlord since last more than 15 years but as it was without allotment order, he was filing the application for allotment. He prayed that 'the applicant deserves a formal allotment order in his favour, as he badly needs the same.'

8. The version of the petitioner was that he was in possession with the consent of the landlord. His application should have been treated as an application under Section 14 of the Act. If a tenant is residing with the consent of the landlord prior to 5th July, 1976, he is entitled for regularisation of the tenancy. It was not a case where he admitted that he was totally unauthorised occupant. The Rent Control and Eviction Officer without considering the contents of the application held that the disputed accommodation should be treated as vacant as the petitioner himself had filed an application for allotment of the disputed premises.

9. Secondly, the petitioner had filed an application to recall the said order on the ground that on the date he could not appear in the case and could not lead evidence. The Rent Control and Eviction Officer rejected the application and by the same order released the disputed accommodation in favour of the landlord-respondent. He should have first decided the application to set aside ex parte order and thereafter on a separate date he should have considered the application for release filed by the landlord respondent.

10. In view of the above the writ petition is allowed. The Impugned order passed by the Rent Control and Eviction Officer dated 8th May. 1997, the order dated 4.10.1997 and the order dated 15.2.2000 are hereby quashed. The Rent Control and Eviction Officer shall decide the matter afresh in accordance with law possibly within two months from the date of production of a certified copy of this order.

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