

Smt. Sarvati Devi Vs. 8th Addl. District Judge, Agra and Others

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Court : Allahabad

Decided On : May-10-2000

Reported in : 2000(3)AWC1877

Judge : Sudhir Narain, J.

Acts : U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 12, 15, 16 and 16(5); U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rules 8(2), 9(3) and 14

Appeal No. : C.M.W.P. No. 3980 of 1984

Appellant : Smt. Sarvati Devi

Respondent : 8th Addl. District Judge, Agra and Others

Advocate for Def. : B.D. Mandhyan, Adv. and ;S.C.

Advocate for Pet/Ap. : Prakash Gupta, Adv.

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the order of allotment dated 16.4.1983 and the order of respondent No. 1 dated 20.1.1984 dismissing the revision against the said order.

2. The petitioner is owner and landlady of the house in question situate in Mohalla Satta, Tehsil Etmadpur, district Agra. She purchased it from its previous owner Satya Prakash Kulshrestha, respondent No. 4 by a registered sale deed dated 21.3.1983 and was put in possession as owner of the said house.

3. Her version is that on 16.4.1983, there was a marriage of the son of one Bhagwan Das in the town of Etmadpur. She had gone with her entire family to attend the marriage at the house of Bhagwan Das after locking the house in question. She With her family stayed at the house of Bhagwan Das in that night on 16.4.1983. She along with her family returned to the house in the next morning, she found that the locks have been broken open and Uday Dhiraj, respondent No. 3 was in its occupation. The petitioner requested him to vacate the said house but he mishandled females and males and informed her that the house in question has been allotted in his favour on 16.4.1983 and he was in, its possession in pursuance to the said order.

4. The petitioner made enquiry from the office of the Rent Control and Eviction Officer and the record revealed that respondent No. 3 had filed an application for allotment on which Rent Control Inspector submitted a report on 2.4.1983 mentioning that Satya Prakash Kulshrestha, respondent No. 4 was owner of the property in house. He was in service outside Agra. The house was locked for 10 years and it appeared to him that it was vacant. The Rent Control and Eviction Officer on 6.4.1983, directed that the file be placed on 15.4.1983. On 15.4.1983. he passed an order that as no objection was filed, the application be put up on 16.4.1983. On 16.4.1983 he passed allotment order in favour of respondent No. 3 and on the same day. he Issued Form B and Form C prescribed in the Rules for delivery of possession and on the same day. respondent No. 3 took the possession of the disputed house.

5. The petitioner filed an application for review of the said order under Section 16 (5) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (In short the Act) before the Rent Control and Eviction Officer. She also filed a revision against that order. Respondent No. 1 dismissed the revision on 20.1.1984. These orders have been challenged in the present writ petition.

6. I have heard Sri Prakash Gupta, learned counsel for the petitioner and Sri B. D. Mandhyan, learned counsel for the contesting respondent No. 3.

7. The core question is whether there was any vacancy of the disputed accommodation either in law or on facts. There is no dispute that Satya Prakash Kulshrestha, respondent No. 4 was owner of the property. He had sold the property to the petitioner by a registered sale deed dated 21.3.1983, a copy of the sale deed has been annexed as Annexure-1 to the writ petition. In the sale deed, it is mentioned that the possession has been delivered to the petitioner in pursuance to the execution of the sale deed. The petitioner having obtained possession, the previous owner could not be held to be in possession of the property. The Rent Control and Eviction Officer had passed the order on the basis of the report submitted by the Rent Control Inspector that the house in question had remained locked for 10 years and it should be treated as vacant and that Satya Prakash Kulshrestha was its owner but he was in service outside Agra. The Rent Control Inspector did not give any notice either to the petitioner or its previous owner respondent No. 4 before inspecting the disputed house. It was necessary for him to issue notice under Rule 8 (2) of the Rules framed under the Act before making local inspection of the building in question. There is nothing to show that the Rent Control Inspector gave any notice to the owner of the property or made any effort to give such notice. He is alleged to have elicited the fact from two persons, namely, Babu Ram and Rais. Satya Prakash Kulshrestha had already sold the property to the petitioner by registered sale deed dated 21.3.1983 and there was no occasion that Satya Prakash Kulshrestha, its previous owner would have been in its occupation.

8. Respondent No. 1 took the view that Satya Prakash Kulshrestha, the previous owner had given an application to the Rent Control and Eviction Officer for allotment on 4.1.1983 stating that the house was vacant and as he himself had given the application that the house may be allotted to any person, the accommodation should be treated as vacant and the previous landlord was not required any notice to be given. The contention of the petitioner is that such an application on the record was a forged document. It was the duty of the Rent Control and Eviction Officer to examine that the application dated 4.3.1983

addressed to Tehsildar was a genuine application by the landlord. It was incumbent upon him to give notice to such owner if he wanted to rely upon such document. A photostat copy of the application has been annexed as Annexure-3 to the writ petition. The application is of dated 4.3.1983 alleged to have been sent by post and on 6.4.1983 an order was passed on it 'keep on file'. If any one sends application by post, it cannot be assumed that such named person has given application unless the person who is alleged to have sent the papers is summoned and enquiry is made from him. Secondly on 21.3.1983. he had already sold the property to the petitioner and the Rent Control Inspector had submitted a report on 2.4.1983. The Rent Control Inspector did not give any notice to the previous owner, who is alleged to have given the application to the Rent Control and Eviction Officer intimating that the house in question was vacant and may be allotted to any one. Thirdly, the allotment order has not been passed on the basis that the previous landlord himself had filed an application intimating about the vacancy and the allotment order may be passed on the basis of such application.

9. Respondent No. 1 has further taken the view that the petitioner was a tenant of the premises in question before the property was purchased and it shall be taken that the tenant had vacated the house after its purchase by such tenant. This view is manifestly illegal. If a tenant, who was already in possession of the property as a tenant and subsequently purchased the property, status is changed from tenant to owner. He does not vacate the house but continues to occupy the house. Section 15 of the Act, contemplates physical vacancy and Section 12 of the Act contemplates deemed vacancy though in fact there is no physical vacancy. The tenant, who occupies the house, had not vacated nor it was a case covered by Section 12 of the Act. There cannot be any vacancy if a tenant purchases the property under his tenancy.

10. Respondent No. 1 further observed that the petitioner should have filed objection before the Rent Control and Eviction Officer in this respect. The petitioner was never given notice by him. The entire proceedings were taken behind her back and surreptitiously the possession was also taken by the respondent No. 3 on the date the allotment order itself was passed.

11. The landlord is also entitled to a notice by the Rent Control and Eviction Officer before the applications for allotment are to be considered. Rule 9 (3) of the Rules provides that the Rent Control and Eviction Officer shall issue a notice to the landlord intimating him the date fixed for considering the allotment applications. The Rent Control and Eviction Officer did not issue any such notice. Respondent No. 1 has substituted his own reason that as the landlord himself had intimated the vacancy and expressed his intention that it may be allotted to any one, it was not necessary to issue a notice to him. The Rent Control and Eviction Officer had not taken this view. He was, in fact, in haste to pass the allotment order. Respondent No. 1 has substituted his own reasons without considering the fact that the Rent Control and Eviction Officer had not passed the allotment order on the basis of the said application. He passed the allotment order on the basis of the report of the Inspector that the house was found locked and, therefore, it should be deemed as vacant. Secondly there cannot be any presumption that any application received in the office purporting to have been given by a person, is of the same person. The Rent Control and Eviction Officer has to make an enquiry as to whether the application has been given by the same person. There was no reason that the previous owner would have intimated the vacancy with a further prayer that it may be allotted to any one when he was selling the property to the petitioner.

12. There is another aspect that the allotment order was passed on 16.4.1983 directing the respondent No. 4 to let it out to respondent No. 3. Respondent No. 4 was not owner on the said date. He had already sold the property to the petitioner by a registered sale deed on 21.3.1983 and, therefore, no direction could have been given to respondent No. 4 who was then neither owner nor landlord of the property in question.

13. Respondent No. 3, in a highhanded manner, illegally dispossessed the petitioner on 16.4.1983, the date on which the allotment order was passed. The Rent Control and Eviction Officer had issued two different forms on the same date. Form B was issued directing the previous owner, respondent No. 4 to let the premises in question to respondent No. 3. He further issued Form C under Rule 14 of the Rules directing respondent No. 4 to deliver possession to the allottee-respondent No. 3. Rule 14 provides that an order in Form C shall be served upon

the person who is in unauthorized occupation of the building directing him to vacate the same and deliver vacant possession thereof to the person named in the order within such period as may be specified in the order, which shall in no case be less than a week from the date of service of the order upon him. The order in Form C was issued in the name of respondent No. 4 who was then not the owner of the property. Secondly, the order indicates to deliver the possession on or before 16.4.1983 in violation of Rule 14 which prescribes that minimum one week's time shall be given to the occupier to vacate the accommodation. Respondent No. 3 took possession on the same date. It is clear from the facts and circumstances of the case, that the Rent Control and Eviction Officer colluded with the allottee, the respondent No. 3, and he in violation of the statutory law, passed the allotment order and also got evicted the petitioner who was a lawful occupant as owner of the house in question. Respondent No. 1 also while disposing the revision clearly misdirected himself and dismissed the revision filed by the petitioner.

14. In view of the above, the writ petition is allowed and the orders dated 16.4.1983 and 20.1.1984 are hereby quashed. Respondent Nos. 2 and 3 are directed to restore the possession to the petitioner within 24 hours from the date of production of a certified copy of this order.

15. The Senior Superintendent of Police, Agra, shall take steps for restoration of the possession to the petitioner within 24 hours from the date, the order is produced before him.