

Govind Prasad Vs. Rent Control and Eviction Officer and ors.

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Court : Allahabad

Decided On : Mar-22-2002

Reported in : 2002(3)AWC1878

Judge : S.K. Singh, J.

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

Appeal No. : C.M.W.P. No. 14099 of 1993

Appellant : Govind Prasad

Respondent : Rent Control and Eviction Officer and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : A.K. Upadhayay, Adv.

Judgement :

S.K. Singh, J.

1. By means of this writ petition, the petitioner has prayed for issuance of a writ in the nature of certiorari quashing the order dated 14.1.1993 (Annexure-6 to the writ petition) passed by the respondent No. 1 by which the vacancy has been declared.

2. The dispute in the present writ petition relates to the accommodation known as House No. 6/245 Belanganj, Agra. The respondents happened to be the owner of the aforesaid premises and the petitioner is the tenant at monthly rent of Rs. 7. On 15.10.1991, an application was filed by the respondents under Section 16 (1) (b) of the Act for release of the premises on the ground that the petitioner/ tenant has acquired a residential building, i.e., No. 11-T/B-667, situated in Trans Yamuna Colony, Agra in a vacant state and as such, premises will be deemed to be vacant and thus available for release. The respondents further claimed that their family consists of six persons and due to growing need of the family members, the premises require release. The contest was put by the petitioner on the ground that he has not acquired any residential building in vacant state. It was stated that his mother, during life time of his father applied for E.W.S. quarter in the year 1972 which was allotted in her favour but she died in 1976. It was further stated that although, the quarter was allotted to the petitioner's mother, but its money was deposited by one Darshan Dayal Singhal and it was never acquired and occupied by the petitioner. It has also been stated that the registered agreement was executed in favour of wife of Darshan Lal Singhal about aforesaid E.W.S. quarter and thus the petitioner has no alternative accommodation. In view of the aforesaid rival claim, a report was called by the Rent Control and Eviction Officer upon which on 1.11.1991, the Rent Control Inspector submitted his report to the effect that the quarter No. 11-T/B-667 in Trans Yamuna Colony was allotted in the name of petitioner's mother and after her death, it came to be recorded in the name of the petitioner. The respondent No. 1 on consideration of rival claims of the parties and in view of the material as has come on record, came to the conclusion that the petitioner has acquired accommodation in his name and therefore, under the provisions of Section 12 of the Act, the premises in question will be deemed to be vacant and thus passed the impugned order, against which the petitioner has come up before this Court.

3. Learned counsel for the petitioner submits that the view as has been taken by respondent No. 1 that the premises in question will be deemed to be vacant is clearly erroneous as the petitioner has never become owner or came in occupation of house No. 11-T/B-667, Trans Yamuna Colony, Agra. Learned counsel submits that although, the said quarter was allotted in the name of

petitioner's mother, but as the entire money was paid by Darshan Lal Singhal and thereafter, registered agreement was executed in favour of Smt. Nargis Singhal wife of Darshan Singh to purchase the said house, the petitioner never became owner of the aforesaid house. Learned counsel submits that family of the petitioner consists of large number of members and he is in tenancy of the premises in question since more than 50 years and thus by the order of respondent No. 1, the petitioner has to suffer irreparably. Lastly, it has been argued that as the house No. 11-T/B-667, Trans Yamuna Colony, Agra, was allotted prior to the commencement of Act No. 13 of 1972 and thereafter the provisions as contained in Section 16 (1) (b) of U. P. Act No. 13 of 1972 will not be attracted and the premises in question cannot be declared vacant. In support of the aforesaid submissions, learned counsel has placed reliance on the decision in B. N. Kohli v. District Magistrate and Ors., 1982 ARC 388, Hafiz Shafat Ali v. State of U. P. and Ors., 1979 ALR 472 and Budhmal Gupta v. Vinod Gupta. 1979 ARC 441.

4. In response to the aforesaid submissions, learned counsel for the respondents has argued that it is an admitted fact that the House No. 11/TB-667, Trans Yamuna Colony, Agra was allotted in the name of petitioner's mother and on her death, the name of the petitioner has been recorded in Municipal records. Copy of assessment register 1987-92 has been filed in which in column No. 5, the name of the petitioner has been shown as 'in self occupation of the owner'. Learned counsel further submits that once it is established that a house has been acquired by the petitioner under the provisions, he will be deemed to have ceased to occupy the premises. It has been submitted that subsequent sale or letting out the building so occupied, will not take away the effect of deeming provision. Learned counsel referred the provisions of Section 12 of U. P. Act No. 13 of 1972 which reads as under :

'12. Deemed vacancy of building in certain cases :

(1) A landlord or tenant of a building shall be deemed to, have ceased to occupy the building or a part thereof if.

.....

(3) In the case of a residential building, is the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, under his tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy : Besides aforesaid provisions, learned counsel for the respondents has placed reliance on the decisions in Sri Nath Tandon v. R.C.E.O. and Ors., 1979 ARC 351, Mangi Lal v. Additional District Judge and Ors., 1980 ARC 55, Smt. Kamla Devi v. R.C.E.O. and Ors., 1992 (2) ARC 233 and Yukti Bhadra Dixit v. R.C.E.O. and Ors., 1993 (II) ARC 150.

5. In the light of the aforesaid submissions, it appears that there is no dispute about the fact that at one point of time, the quarter, i.e., 11/TB-667, Trans Yamuna Colony, Agra was allotted in favour of the petitioner's mother and thereafter, it came to be recorded in the name of the petitioner in occupation as owner. A reading of the provisions as contained in Section 12 of the Act shows that it is on acquisition of a building in a vacant state, the tenant will be deemed to have ceased to occupy tenanted building. The aforesaid provisions do not contemplate a situation that although a tenant, if acquires building in a vacant state, but if subsequently he lets out or transfers the same then whether he will be saved with the presumption as is to be drawn in the light of the provisions of Section 12 of the Act. It appears that if the presumption as is to be drawn in view of the proof of contingencies as it is provided under Section 12 of the Act, is diluted, then every tenant will get rid of the acquired building on a given point of time by letting it out or by letting the same or by carving a device and mode which may not be said to be the intention of the aforesaid provisions. Section 12 (3) creates a legal fiction for treating the vacancy of an accommodation, if the condition laid down therein is satisfied. This view has been taken by a Division Bench of this Court in the decision in 1979 ARC 351 in the case of Sri Nath Tandon v. R.C.E.O. and Ors.. The submission of learned counsel for the petitioner about non-applicability of the Act also do not hold field in view of the decision as has been given by this Court in Mangi Lal v. AD.J., 1980 ARC 55. On the question of deemed vacancy in given set c/f facts, reference can be made to the decision as has been in Smt. Kamla Devi v. R.C.E.O., 1992 (3) ARC 233.

6. The respondent No. 1 after referring rival contention of the parties has given specific finding that the petitioner, has acquired building in his name which is in the same city and, therefore, the subsequent event and development is not to be scrutinised as for the purposes of claim of the respondents and to satisfy the condition as required under Section 12 of the Act and acquisition of a building in his name itself is sufficient. The finding recorded by the authority below on factual aspect is finding of fact which is not to be interfered by this Court. On a consideration of the entire facts and submissions, it appears that there is no error in the judgment of respondent No. 1 and thus it requires no interference.

7. For the reasons stated above, this writ petition fails and is dismissed without any order as to costs.

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