

Uma Shanker Vs. Xth Additional District Judge and anr.

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Court : Allahabad

Decided On : Jul-03-2003

Reported in : 2003(4)AWC2895

Judge : S.U. Khan, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 12(4) and 16; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules - Rule 9

Appeal No. : C.M.W.P. No. 149 of 1991

Appellant : Uma Shanker

Respondent : Xth Additional District Judge and anr.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : A.N. Sinha, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

S.U. Khan, J.

1. This writ petition is directed against the order dated 20.11.1990, passed by XIIth Additional District Judge, Kanpur in Rent Revision No. 137 of 1989, through which the revision of Sohan Lal respondent No. 2/landlord was allowed and the order dated 31.1.1987 through which the trial court had allotted the house in dispute to the petitioner was set aside and the matter was remanded to the Rent Control Officer.

2. The petitioner filed an allotment application with regard to the house in dispute on the allegation that Harish Chandra the tenant had constructed his own house in the same vicinity. The house was got inspected. The Rent Control Inspector without intimating either the landlord respondent No. 2 or the tenant Harish Chandra, allegedly inspected the house and submitted report. The Rent Control and Eviction Officer/City Magistrate, Kanpur Nagar, without issuing any notice either to the landlord-respondent No. 2 or the tenant Harish Chandra declared the vacancy on 27.1.1987. Even after declaration of vacancy no notice was sent to the landlord-respondent No. 2 and within four days i.e., on 31.1.1987 the house was allotted to the petitioner.

3. The revisional court has recorded a finding that there was no evidence or material available on the record to suggest that until passing of allotment order, Harish Chandra tenant had actually vacated the house in dispute. The revisional court placing reliance upon 1982 ARC 53 (All-HC), has held that, it was not necessary to intimate the parties before making the inspection. The revisional court has also held that as order dated 27.1.1987, declaring the vacancy was not challenged in the revision, hence no fault could be found with regard thereto on the ground that, it was passed without notice to the landlord. The revisional court set aside the allotment order only on the ground that after declaring vacancy notice under Rule 9 (3) was not given to the landlord and it adversely affected his right of release.

4. In view of Supreme Court authority in 1985 (2) ARC 73, it was necessary to issue notice to the landlord before inspection as well as before passing vacancy order. It is shocking to note that no notice was issued to the landlord either before inspection or before passing vacancy order or before allotting the house to the

petitioner. The allotment order was passed within four days from the order declaring the vacancy. After expiry of about 16 years, it will not be proper to pass any remark against the Rent Control Officer, who did all these things.

5. The allotment order dated 31.1.1987, against which the revision was filed, was based upon the order dated 27.1.1987, declaring the vacancy, hence the revisional court could very well look into the validity of the order declaring the vacancy. Under first proviso to Section 16 of the Act, 'In case of vacancy referred to in Section 12 (4) the D. M. shall give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under Clause (a) (i.e., allotment order).' Deemed vacancy is provided for under Section 12 of the Act. However, the provision for hearing the landlord or the tenant before passing order regarding deemed vacancy is not provided under Section 12 but under Section 16 of the Act in the form of first proviso. Further, it has been provided therein that providing opportunity of hearing before declaring vacancy is condition precedent for making order of allotment. This clearly means that the allotment order will be illegal if it is based on ex-parte declaration of vacancy order. In such situation, it is not at all necessary to challenge the vacancy order either separately through writ petition or in the revision itself, which is filed against the allotment order. Ex-parte declaration of vacancy itself is a sufficient ground to challenge and set aside the allotment order. Even otherwise, on the analogy and principles of Section 105, C.P.C., which provides, 'Where a decree is appealed from any error, defect or irregularity in any order affecting the decision of the case may be set forth as a ground of objection in memorandum of appeal', error, defect or irregularity in any order passed in a case before the final decision, affecting the final decision, can be raised as ground of challenge without formally challenging the order itself. In case, the Court sets aside the final decision on the ground of illegality in an earlier order then the said earlier order also automatically stands set aside.

6. In my opinion, therefore, the learned Additional District Judge was not right in holding, that the vacancy declaration order could not be set aside as it had not been challenged. Consequently, vacancy declaration order dated 27.1.1987, is also set aside on the ground that it was passed without issuing notice to the

landlord.

7. Consequently, the writ petition is dismissed with the modification that no further proceedings in pursuance of remand order passed by learned Additional District Judge, dated 20.11.1990, need be taken by the Rent Control and Eviction Officer. However, liberty is granted to the petitioner to file fresh allotment application and in case such application is filed, it must be decided in accordance with law after due notice to the landlord at every stage.

8. Learned counsel for the petitioner placed reliance upon an authority of Supreme Court reported in 1987 (1) ARC 239, and contended that the petitioner might be permitted to retain possession of the accommodation in dispute until release application of the landlord was decided as the learned Additional District Judge had remanded the matter only for consideration of release and allotment. The said authority is not applicable as through this judgment, vacancy order and entire proceedings have been set aside.

9. The petitioner is granted threemonths' time to vacate the premises indispute.

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