

Ramji Lal Varshney and Another Vs. Additional District Judge, Aligarh and Others

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Court : Allahabad

Decided On : May-10-2000

Reported in : 2000(3)AWC2306

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 12, 16 and 16(1)

Appeal No. : C.M.W.P. No. 10743 of 1984

Appellant : Ramji Lal Varshney and Another

Respondent : Additional District Judge, Aligarh and Others

Advocate for Def. : S.C., A.N. Bhargava and ;G.P. Bhargava, Adv.

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

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the order passed by the Rent Control and Eviction Officer declaring the disputed accommodation as vacant on 30.4.1981

and thereafter rejecting the application of the landlord-petitioners for the release of the disputed accommodation on 10.10.1983, and allotting the same to respondent No. 3, on 19.10.1983 and the order of the revisional authority dated 20.7.1984, affirming the said order in revision.

2. The dispute relates to House No. 1886, Mendu Gate. Hathras, district Aligarh. One Ram Babu and Smt. Bhu Devi were owners of this property. Har Prasad was a tenant of two rooms of first floor of the disputed house. Ram Babu and Smt, Bhu Devl filed Suit No. 98 of 1975 for recovery of arrears of rent, ejectment and damages against their tenant Har Prasad. The suit was decreed on 3.4.1979 and thereafter the landlords obtained possession of the portion in occupation of their tenant Har Prasad. Kishan Singh, respondent No. 3 filed an application for allotment of the said portion of the disputed house on 19.11.1979. The Rent Control and Eviction Officer asked the Rent Control Inspector to submit a report. He submitted a report on 10.12.1979 stating that the landlords had obtained the possession of the disputed house from Har Prasad and the same be treated as a vacant. The Rent Control and Eviction Officer issued notice to Ram Babu and Smt. Bhu Devi but as they were not served, he directed the service by publication. Ram Babu and Smt. Bhu Devi, the erstwhile owners of the property, sold the disputed house to Ramji Lal Varshney, and his wife Smt. Bahutl Devi alias Laxmi Devl, petitioner Nos. 1 and 2 respectively by registered sale deed on 29.4.1981, and delivered the possession of the said house to them.

3. The Rent Control and Eviction Officer declared the disputed accommodation as vacant on 30.4.1981. Respondent No. 3 filed an application on 13.5.1981, stating that the erstwhile owners of the property had sold the property to the petitioners and notices may be issued to them. The petitioners, on coming to know the order of vacancy, filed objection on 5.6.1981 stating that the previous landlords had sold the property to them and they were in its possession. The house was never vacant. On 24.6.1981, they filed another application again taking the objection against the vacancy and further praying that the disputed house be released in their favour. The Rent Control and Eviction Officer maintained the order declaring the vacancy and rejected the application filed by the petitioners for release on 10.10.1983 and, thereafter, passed an order directing for allotment of the disputed

house to respondent No. 3 on 19.10.1983. The petitioners, aggrieved against these two orders, filed two separate revisions before the District Judge. Respondent No. 1 has dismissed the revisions by the impugned order dated 20.7.1984.

4. The dispute between the parties involved two questions. Firstly, as to whether there was any vacancy and secondly, whether the Rent Control and Eviction Officer was justified in rejecting the release application filed by the petitioners in case he found the disputed accommodation as vacant.

5. The main thrust of the submission of the learned counsel for the petitioners is that the erstwhile owners Ram Babu and Smt. Bhu Devi were in possession of the disputed house and after they having executed the sale deed in their favour on 29.4.1981, delivered possession to them and a person obtaining possession from the previous landlord continues in possession as owner of the property and the said accommodation cannot be treated as vacant under law. He has placed reliance upon the decision Smt. Parmeshwari and another v. Jagdish Sharma and others. 1976 AWC 703, wherein it has been held that if an Owner executes sale deed of his house belonging to him and, delivers possession to the purchaser, the possession of such purchaser will be as of owner and the house in his possession cannot be deemed as vacant. This case has to be examined on the facts of the present case. The erstwhile owners of the property had filed Suit No. 98 of 1975 for recovery of arrears of rent and ejectment against their tenant Har Prasad. The suit was decreed on 3.4.1979. They had executed the decree and obtained possession from the tenant. Respondent No. 3 on coming to know of this fact filed application for allotment on 19.11.1979. The Rent Control and Eviction Officer asked the Rent Control Inspector to submit a report. He submitted a report that the tenant had vacated the accommodation and handed over its possession to the landlords and the accommodation was vacant. It was incumbent upon the previous landlord to have obtained an order of release from the District Magistrate Rent Control and Eviction Officer under Section 16 of U. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act. 1972 (in short 'the Act'). The landlord is entitled to obtain possession from his tenant when he vacates it voluntarily or under the orders of the Court or any other authority. The possession of the landlord will be

lawful but if he wants to continue in possession, he is to apply for release of the said accommodation under Section 16 [1] (b) of the Act. The previous landlord had not filed any application for release of the disputed house and in the meantime respondent No. 3, had filed application for allotment. In these circumstances, the accommodation vacated by Har Prasad in pursuance to the decree passed in Suit No. 98 of 1975 will be treated as vacant under law.

6. There is, however, a dispute as to the extent of the accommodation in possession of Har Prasad. The version of the petitioners was that Har Prasad was a tenant of two rooms on the first floor of the house in question. The Rent Control and Eviction Officer has declared the entire house as vacant without examining this question. Petitioner No. 1, had filed an affidavit dated 4.1.1982 and in para 4 of the affidavit, he had categorically stated that Har Prasad was tenant of only two rooms on the first floor of the house. The Rent Control and Eviction Officer had appointed Naib Tehsildar to submit a report. He submitted a report wherein he had given the details of the accommodation in the entire house. It was found that on the ground floor, there were six rooms besides bathroom, etc. and on the second floor, there were five rooms. The entire house was constructed in an area of 115 sq. metres. The Rent Control and Eviction Officer did not record any finding as to what was the portion in occupation of Har Prasad. The accommodation obtained by the previous landlord from Har Prasad can only be treated as vacant under law but in respect of Other portions which were either in possession of the landlord or was never under the tenancy of any person, could not be treated as vacant under law as held in Smt. Parmeshwari's case (supra).

7. There is another controversy that the petitioners had let out one room 'baithak' to one Dr. R. P. Misra after they obtained the possession from the previous landlord after purchasing the house in the year 1981. The Rent Control and Eviction Officer had declared the vacancy on 30.4.1981 while the petitioners had purchased the property on 29.4.1981, The Rent Control and Eviction Officer had not passed order of declaring vacancy on 30.4.1981 on the ground that any portion was let out by the petitioners to Dr. R. P. Misra. Dr. R. P. Misra had filed affidavits stating that in fact he had his own clinic at another place but while he had gone out to take part in 13th ceremony on the death of his father, Hlra Lal and

others broke open lock of the shop and took forcible possession and in that situation, petitioner No. 1 permitted him to open his clinic in his 'baithak' for about a month. He never paid any rent but lived only for a short time as a licensee. The Rent Control and Eviction Officer had appointed Commissioner from time to time and it was found that Dr. R. P. Misra was there. Dr. R. P. Misra made a statement before the Commissioner to this effect. It appears that he filed an affidavit subsequently stating that he was a tenant but later on he was examined as a witness on 10.3.1983 and again he made it clear that he was never a tenant but only a licensee for a short time. The Rent Control and Eviction Officer held that Dr. R. P. Misra was in possession and, therefore, the accommodation should be treated as vacant. Firstly he did not record as to the extent of the accommodation which was in possession of Dr. R. P. Misra and secondly whether his status was that of a licensee for a short time. Admittedly Dr. R. P. Misra had left the accommodation subsequently and the petitioners were in possession. The disputed accommodation cannot be treated as vacant of which Dr. R. P. Misra was occupying as a licensee for a short time.

8. Another question is whether the Rent Control and Eviction Officer was justified in rejecting the application of the petitioners for the release of the disputed accommodation even if the accommodation was treated as a vacant. Respondent No. 2, rejected the application without examining the need set up by the petitioners. He took the view that the landlords had purchased the property on 29.4.1981 but they had filed an application for release on 20.12.1982 after about 18 months and that indicated that they did not need the disputed house. Secondly, they did not disclose as to what they did in respect to the accommodation, which they were occupying prior to the purchase of the property by them on 29.4.1981.

9. I have examined the record and found that the respondent Nos. 1 and 2, totally failed to consider the material evidence produced on the record. The petitioners had filed an application on 24.6.1981 challenging the vacancy and also prayed for release of the disputed house, a copy of such application is Annexure-2 to the writ petition. The petitioners had also filed affidavit on 19.8.1981 and 4.1.1982 (Annexures-3 and 5 respectively to the writ petition) and they categorically stated about their need. They again filed another formal application on 20.12.1982.

praying for release of the disputed house. It was their second application to avoid any further technicality in respect of filing an application under Section 16 (1) (b) of the Act. The observation of respondent No. 2 that the application was filed for release after 18 months is not correct. The petitioners further had categorically stated in para 6 of their affidavit dated 4.1.1982 (Annexure-5 to the writ petition) that they were living with their family in a rented house and after the purchase, they are living in the disputed house. They had categorically stated that they do not own and possess any other house except the disputed house and it was purchased only for their personal need. Similar assertion was made in the affidavit filed by petitioner No. 1 on 19.8.1981 (Annexure-3 to the writ petition). Respondent No. 1 totally ignored to consider the averments made in the affidavit. The petitioners had further stated that there were nine members in their family and they were living in the disputed house. The Rent Control and Eviction Officer had asked a report from the Naib Tehsildar. He submitted a report on 26.1.1983 and in his report, he indicated the total numbers of the rooms in the house and the members of the family of the petitioners. He disclosed the names of 9 family members of the petitioners but this report has been totally ignored by respondent No. 2 while considering the release application filed by the petitioners.

10. Lastly, it may be noted that he was considering the objection of the prospective allottee in regard to the application filed by the petitioners for the release of the disputed house. In Talib Hasan and another v. Ist Additional District Judge, Nainital and others, 1986 (1) ARC 1, it has been held that the prospective allottee has no right to participate in the proceedings and contest the release application filed by the landlord. Respondent No. 1, dismissed the revision without examining the record of the case.

11. In view of the above, the writ petition is allowed and the orders dated 30.4.1981, 10.10.1983, 19.10.1983 and 20.7.1984 are hereby quashed. The Rent Control and Eviction Officer, respondent No. 2 is directed to decide the matter afresh in accordance with law keeping in view the observations made above.

12. Considering the facts and circumstances of the case, the parties shall bear their own costs.

