

Mangal Singh Vs. Ivth Additional District Judge, Varanasi and Others

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Court : Allahabad

Decided On : Feb-10-1998

Reported in : 1998(3)AWC1977

Judge : B. Dikshit, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 16, 18 and 34(4); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rules 25 and 25(1)

Appeal No. : Civil M.W.P. No. 2636 of 1998

Appellant : Mangal Singh

Respondent : ivth Additional District Judge, Varanasi and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Namwar Singh, ;Sanjeev Singh and ;Sudhir Singh, Advs.

Judgement :

B.Dikshit, J.

1. This writ petition is directed against an order passed by IVth Additional District Judge, Varanasi on an application of the petitioner in revision filed under' Section 18 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 [in

short 'Act') wherein the petitioner claimed that revision stands abated for want of substitution of legal representatives of Bal Mukund Singh, who was an opposite party in revision before Court below. The petitioner claims himself as legal representative as well as son of Bal Mukund Singh.

2. Learned counsel for petitioner argued that proceedings in revision abated as no application for substituting the legal representatives of Bal Mukund was moved within one month from the date of his death, as contemplated under Rule 25 (1) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules. 1972. The learned counsel relied on the cases of Ram Naresh Tripathi v. IInd Additional Civil Judge, Kanpur, 1980 AWC 558 and Smt. Sebra v. District Judge, Meerut, 1983 AWC 109. In support of his argument.

3. Rule 25 of U. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Rules, 1972 has been framed keeping in view Section 34 (4) of the Act. Section 34 (4) of the Act is as follows :

'34. Powers of various authorities and procedure to be followed :

X X X X (4) Where any party to any proceeding for the determination of standard rent of or for eviction from a building dies during the pendency of the proceeding, may continue after bringing on the record :

(a) in the case of the landlord or tenant, his heirs or legal representatives :

(b) in the case of an unauthorised occupant, any person claiming under him found in occupation of the building.'

On other hand Rule 25 of U. P. Urban Buildings (Regulation of Letting. Rent and Eviction] Rules. 1972 is as follows :

'25. Bringing legal representatives on record :

(1) Every application for substituting the names of the heirs or legal representatives, the claimants or occupants of any person who was a party to any proceedings under the Act and died during the pendency of the proceedings shall be preferred within one month from the date of the death of such person.

(2) The application shall contain the names and addresses and other details of the heirs or legal representative and their relationship with the deceased and. be accompanied by any affidavit in its support, and thereupon, the application shall be decided after a summary inquiry by the authority concerned.'

From bare reading of Section 34 (4). It is apparent that this provision has been limited in its application to proceedings for determination of standard rent or for eviction from a building. Section 34 (4) does not cover allotment proceedings. The revision giving rise to this petition is a revision against an allotment order passed under Section 16 of the Act whereby the application of Late Bal Mukund Singh for allotment of shop was allowed. As allotment proceedings happens to be proceedings different from those which are proceedings for determination of standard rent or eviction under the Act. Section 34 (4) is to be considered inapplicable to revision filed against an order allotting the shop in question. The argument of learned counsel for petitioner that the revision abated is liable to be rejected keeping in view that the language of Section 34 (4) cannot be extended to it. This takes us to case law cited by learned counsel for petitioner.

4. The first case cited by learned counsel for petitioner is of Ram Naresh Tripathi v. IInd Additional Civil Judge, Kanpur. 1980 AWC 558. The case does not support the contention raised. It nowhere holds that proceedings under Section 16 of the Act or revision arising therefrom will abate. On the other hand, it has been laid down in the case that the language of sub-section (4) of Section 34 is not even prohibitory so that it could be argued that omission on the part of the heirs and legal representatives to get themselves substituted is fatal. The said observations indicate that such an omission cannot be fatal. Abatement deprives a person of his right to continue the proceedings and as it cannot be fatal, therefore, in absence of any consequence provided in case falling under Section 34 (4), the proceedings cannot be considered to have abated.

5. The other case cited by learned counsel for petitioner is of Smt. Sebra v- District Judge, 1983 AWC 109. This case has been cited to support the contention that it was open for legal representatives of the deceased to approach the Court within the period of limitation prescribed under Rule 25 (1) for setting aside the order of

abatement but as no substitution was sought in revision, therefore, the revision abated. As observed earlier, as it has been held by this Court in the case of Ram Naresh Tripathi (supra) that non-substitution will not be fatal to the proceedings Initiated under Section 16 of the Act the revision giving rise to this petition did not abate.

6. So far present case is concerned, the petitioner has filed objection before the revisional authority. As I am of the opinion, for earlier mentioned reasons, that the revision did not abate, the petitioner by moving application praying for relief of declaration of revision as abated has now become a party to proceedings before revisional authority, his grievance that he has not been impleaded as a party to revision stands satisfied and he cannot further claim that he is not party to proceeding.

7. There is no dispute between parties that petitioner filed an objection and participated in proceedings before revisional authority wherein he claimed that revision has abated. The impugned order was passed after hearing of learned counsel for parties. As parties are before revisional authority, the revisional authority has now to proceed on the basis that petitioner has become a party to the proceedings. This will also be indicated in memo of revision by revisional authority.

8. For aforesaid reasons, subject to observations made the writ petition fails and is dismissed.

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