

**Smt. P. Jacob Vs. Additional District Judge, Kanpur Nagar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/481439](http://sooperkanoon.com/481439)

**Court :** Allahabad

**Decided On :** May-08-2002

**Reported in :** 2002(3)AWC2236

**Judge :** Anjani Kumar, J.

**Acts :** Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 16(5); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules - Rule 20

**Appeal No. :** C.M.W.P. No. 19038 of 2002

**Appellant :** Smt. P. Jacob

**Respondent :** Additional District Judge, Kanpur Nagar and ors.

**Advocate for Def. :** K.K. Tripathi, S.C.

**Advocate for Pet/Ap. :** Amna Mumtaz, Adv.

**Disposition :** Writ petition dismissed

**Judgement :**

**Anjani Kumar, J.**

1. This petition was dismissed by me vide my order dated 8.5.2002, for the reasons to be recorded later on. Now here are the reasons for dismissing the

aforesaid writ petition.

2. This writ petition has been filed by petitioner Smt. P. Jacob under Article 226 of the Constitution of India challenging the order passed by Additional City Magistrate Vth/ Rent Control and Eviction Officer, Kanpur Nagar dated 3.4.2001 in Case No. 130 of 2001, Annexure-18 to the writ petition, whereby the application dated 27.5.2000 filed by the petitioner Smt. P. Jacob under Section 16 (5) of the U.P. Act No. 13 of 1972, (hereinafter shall be referred to as the 'Act'), read with Rule 22 (b) and (f) for review of the order dated 24.5.2000 and the application dated 30.3.2001 for Advocates' commission have been rejected by respondent No. 2. The Rent Control and Eviction Officer has found that no grounds are made out for review of the order under Section 16 (5), read with Rule 22 (b) and (f) of the Act, inasmuch as the main dispute was with regard to the fact as to whether the petitioner is residing in house No. 664, Fethfulganj, or 665. Fethfulganj, Kanpur Nagar, but this fact is clarified by the documents available on record from where it is clearly apparent that house No. 664, Fethfulganj, Cantt., Kanpur Nagar situated at plot No. 605/1173/11 in which Hazi Jafar AH is residing, who had purchased the said house on 20.5.1999 along with his brother, and the present petitioner is residing in house No. 665, which is owned by Abdul Aziz and not in house No. 664. With regard to the house No. 665, the vacancy has been declared on 25.6.1997 and the same was released in favour of the landlord vide release order dated 15.9.1997. Thereafter, petitioner filed a revision against both the orders, i.e., release order as well as declaration of vacancy being Rent Revision No. 50 of 1997 before the District Judge, Kanpur Nagar, who has transferred the same for disposal to Xth Additional District Judge, Kanpur Nagar. The Xth Additional District Judge vide its order dated 24.5.2000 dismissed the aforesaid revision holding that petitioner being an un-authorised occupant cannot challenge the order of declaration of vacancy or the release order and further relying upon certain principle decisions of the High Court has held that an unauthorised occupant has no right to challenge the order of declaration of vacancy, release order as well as the order of allotment. After the rejection of the aforesaid revision, petitioner filed the present writ petition.

3. The Rent Control and Eviction Officer has stated that it is clear and settled that both the orders, i.e., declaration of vacancy and the release order have attained the finality when the revision filed by the petitioner against the said orders has been dismissed by the Revisional Authority and petitioner has not challenged the order dated 15.9.1997 passed by the Revisional Court by means of a writ petition before this Court. In these circumstances, there is no occasion to review of the order dated 24.5.2000 because the same has been finalised by the higher authority, namely, the Revisional Court. Aggrieved thereby, petitioner filed a review application before respondent No. 1, the Revisional Court, who has rejected the review application against the order dated 30.4.2001 and upheld the findings recorded by the respondent No. 2, whereby the revision filed by the petitioner has been rejected. The reason given by the Revisional Court and affirming the order of the Rent Control and Eviction Officer, the respondent No. 2 is the same that once an order attained the finality, it is not open to challenge in the writ petition.

4. Before this Court, again same arguments were advanced. I have heard learned counsel for the parties and also gone through the records of the case, in my opinion, this writ petition deserves to be dismissed as both the courts below have recorded concurrent findings of fact, which cannot be said to suffer from any error of law. In the teeth of the concurrent findings recorded by the authorities below, this Court will not exercise its discretionary jurisdiction under Article 226 of the Constitution of India in favour of the petitioner, who has already taken one chance to challenge the order of declaration of vacancy and thereafter challenging the same by means of a revision, but she did not challenge the order passed by the Rent Control and Eviction Officer by means of writ petition before this Court and instead she approached the Rent Control and Eviction Officer again under Section 16 (5) of the Act for the review of the order, which has already become final by the Revisional Court. Thus, the Rent Control and Eviction Officer has not committed any error in rejecting the application for review and the Revisional Court has also not committed any error of law in dismissing the revision and thereafter review of it. The writ petition, therefore, has no force and is accordingly dismissed. The interim order, if any, stands vacated. However, in the facts and circumstances of the case, the parties shall bear their own costs.

