

**Basant Lal Vs. Additional District Judge Vi and ors.**

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**Court :** Allahabad

**Decided On :** Oct-31-2002

**Reported in :** 2003(1)AWC287

**Judge :** Anjani Kumar, J.

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

**Appeal No. :** C.M.W.P. No. 21409 of 1998

**Appellant :** Basant Lal

**Respondent :** Additional District Judge Vi and ors.

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** Daya Shanker Mishra, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Anjani Kumar, J.**

1. By means of this petition under Article 226 of the Constitution of India, the petitioner, Basant Lal, who alleges himself to be a tenant of the shop in question, challenges the order dated 27.4.1993 passed by the Rent Control and Eviction

Officer, Jaunpur, declaring the shop in question to be deemed vacant under Section 12 of the U. P. Act No. 13 of 1972, hereinafter called the 'Act'.

2. Aggrieved by the aforesaid order, the petitioner, Basant Lal preferred a revision before the revisional authority as contemplated under Section 18 of the Act. The revisional authority while dismissing the revision vide its judgment and order dated 19th May, 1998, affirmed the finding recorded by the Rent Control and Eviction Officer, Jaunpur, regarding the shop being deemed vacant.

3. The facts leading to the filing of the present writ petition are that there is an allotment order dated 28th November, 1975 in favour of the petitioner, a copy of which has been annexed as 'Annexure-1' to the writ petition. Though, it has been disputed by the landlady but assuming this to be an allotment order in favour of the petitioner - tenant, Basant Lal. The facts as set up in the writ petition further reveals that the allottee. Basant Lal, the petitioner in the present writ petition is carrying on partnership business in the name and style of M/s. Ram Chandra Sons. On 29th October, 1985, Smt. Nirmala Devi landlady filed an application under Sections 12 and 16 of the Act before the Rent Control and Eviction Officer, Jaunpur, that the accommodation may be declared deemed vacant and may be released in her favour. The Rent Control Inspector after inspecting the shop in question in presence of the parties submitted his report before the Rent Control and Eviction Officer/ Prescribed Authority. On 6th August, 1988, on the basis of the material on record, the Rent Control and Eviction Officer declared the accommodation to be deemed vacant. On 20th August, 1988. erstwhile landlord. Ram Adhar, has transferred the building in question wherein the shop is situated in favour of Smt. Nirmala Devi and when the petitioner-tenant went to offer rent to Smt. Nirmala Devi, she refused to accept the same and, therefore, the rent was deposited by the petitioner-tenant under Section 13 of the Act.

4. Aggrieved by the order passed by the Rent Control and Eviction Officer declaring vacancy in the shop in question and releasing the same in favour of Smt. Nirmala Devi-landlady, a revision was preferred before the revisional authority being Revision No. 164 of 1989 which was allowed by the revisional authority vide its order dated 19th October, 1989. The order passed by the Rent Control and

Eviction Officer dated 6th August, 1988 was set aside and the matter was remanded back to the Rent Control and Eviction Officer for decision in accordance with law after affording opportunity to both the parties. After affording opportunity to both the parties, the Rent Control and Eviction Officer by his order dated 27th April, 1993, declared the vacancy, against which a review application was filed. The same was also rejected and thereafter, a revision, as stated above, was again filed before the revisional authority which was registered as Revision No. 111 of 1993.

5. The Rent Control and Eviction Officer in his order dated 27th April, 1993, which was passed after remand, affirmed that two grounds have been raised by the petitioner-tenant, Basant Lal :

(1) Whether the tenancy of Basant Lal is legal ;

(2) Even assuming that the tenancy was legal, whether the action of Basant Lal in permitting Lallan Prasad and Munni Lal, who are partners of the firm M/s. Ram Charan & Sons would amount to deemed vacancy.

6. So far as the first part is concerned, Basant Lal has relied upon the allotment order dated 28th November, 1975 and further his possession on 5th July, 1976, when the U. P. Act No. 13 of 1972 was amended. So far as the allotment order dated 28th November, 1975 is concerned, in the office of the District Supply Officer, no file is available nor the same could be traced out. Therefore, in the absence of any material, the allotment order cannot be said to be valid. So far as second aspect of the matter, namely, possession on 5th July, 1976 of Basant Lal is concerned, it will make him entitled for regularisation as tenant. The Rent Control and Eviction Officer has recorded a finding that there is no evidence on record from which it can be inferred that the possession of Basant Lal was since 5th July, 1976 and further that the said possession was with the consent of the landlady. Thus, Basant Lal, according to the Rent Control and Eviction Officer, has failed to establish his tenancy in his name and for this reason, continuance of a person without allotment order or authority of law will lead to the declaration of the deemed vacancy under Section 12 of the Act. In the alternative, so far as continued possession of Basant Lal as alleged to be in accordance with law. The

fact that the firm is being run from the premises under the name and style of Lallan Prasad and Munni Lal in which Lallan Prasad and Munni Lal are admittedly partners. Lallan Prasad and Munni Lal are neither family members of Basant Lal within the meaning of word used under the Act nor any permission from the Rent Control and Eviction Officer has been obtained from entering them as partner by Basant Lal.

7. In this view of the matter, even assuming that there was a tenancy coming down from November, 1975, on the basis of the allotment order, Basant Lal cannot escape from eviction on the ground as there being deemed vacancy under Section 12 of the Act and the Rent Control and Eviction Officer by his order dated 24th April, 1993, declared the accommodation to be vacant.

8. Aggrieved thereby, Basant Lal preferred a revision before the revisional authority, who affirmed the findings recorded by the Rent Control and Eviction Officer with regard to his being not a legal and valid tenant on 5th July, 1976 with the consent of the landlady. There is no evidence with regard to the allotment order of November, 1975 and have also affirmed the finding with regard to the firm M/s. Ram Charan & Sons in which Lallan Prasad and Munni Lal were, admittedly, partners and who are also, admittedly, not family members of the Basant Lal. Thus, the revision was dismissed, findings of the Prescribed Authority were affirmed ; accommodation was released in favour of the landlady.

9. Sri Daya Shanker Mishra, learned counsel arguing for the petitioner has tried to assail the finding and has asserted that once the allotment order of November, 1975 is set up by Basant Lal, the finding to the contrary that there is no record available in the office of the District Supply Officer and, therefore, the allotment cannot be said to be genuine, cannot be sustained. This argument though attracted but deserves to be dismissed on the ground that had the allotment order was in fact made, it was always open to Basant Lal to have produced the receipt of payment of rent to the erstwhile landlord Ram Adhar but no such evidence has been brought on record and this supports the findings recorded by the Rent Control and Eviction Officer and affirmed by the revisional authority.

10. As earlier stated, there is another aspect of the matter which proceeds on the assumption that there is a valid allotment order in favour of Basant Lal but the fact that Lallan Prasad and Munni Lal having been taken as partners by Basant Lal, are no partner in the firm M/s. Ram Charan & Sons, definitely attracts the provisions of Section 12 of the Act and, in my opinion, neither Rent Control and Eviction Officer nor the revisional authority has committed any error in rejecting the case of the petitioner-Basant Lal.

11. My aforesaid view is supported by a decision of Apex Court in Hartsh Tandon v. Additional District Magistrate, Allahabad, U. P. and Ors., 1995 (1) AWC 106 (SC) : 1995 (1) ARC 21. The Apex Court has observed as under :

'But the special feature of Sub-section (2) of section is that there is a deeming clause in the said sub-section. If the said subsection had provided that where a tenant carrying on business in the building admits a person who is not a member of his family as a partner, it shall amount to subletting of the premises, then there is no scope for investigation and examination as to whether, in the process of inducting such person as a partner in the business in fact that there has been a subletting of the premises. But Sub-section (2) says in clear and unambiguous words that once a person who is not a member of the family is admitted as a partner in the business by the tenant, 'the tenant shall be deemed to have ceased to occupy the building.'

12. In view of what has been stated above, this petition has no merit and deserves to be dismissed and is hereby dismissed. The interim order, if any, stands vacated. There is no order as to costs.

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