

Habib Ahmad Vs. Ivth Additional District Judge and ors.

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Court : Allahabad

Decided On : Sep-17-2003

Reported in : 2004(2)AWC1683

Judge : N.K. Mehrotra, J.

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

Appeal No. : Writ Petition No. 97 of 2002 (Rent)

Appellant : Habib Ahmad

Respondent : ivth Additional District Judge and ors.

Advocate for Def. : D.C. Mukherjee, (C.S.C.)

Advocate for Pet/Ap. : G.C. Sinha, Adv.

Disposition : Petition dismissed

Judgement :

N.K. Mehrotra, J.

1. This is a writ petition under Article 226 of the Constitution of India for issuing a writ in the nature of certiorari for quashing the orders dated 6.4.2002 and 15.5.2002 (Annexures-15 and 17 to the writ petition) passed by the opposite

parties Nos. 2 and 1 respectively and further for quashing the order declaring the vacancy dated 2.6.2000 (Annexure-11) and for a writ of mandamus commanding the opposite party No. 2 Rent Control and Eviction Officer, Pratapgarh not to evict the petitioner from his house in compliance of the order dated 6.4.2002 passed by the opposite party No. 2.

2. The case of the petitioner is that he is the tenant of Kothari situated in Mohalla Begum Ward at Pratapgarh numbered by the Municipal Board as House No. 110. The opposite party No. 3 has started saying that the petitioner is the tenant of Kothari No. 111 and Smt. Prabhawati is the tenant of Kothari No. 110 and moved an application before the Rent Control and Eviction Officer, Pratapgarh saying that Smt. Prabhawati is an unauthorised occupant to Kothari No. 110 and the same may be declared vacant. On coming to know about these proceedings, he made representation before the District Magistrate on 27.5.1987 stating therein that he is the tenant of Kothari No. 110. On his protest the Rent Control and Eviction Officer got inspected the premises and found that the petitioner is occupying Kothari No. 110 and Smt. Prabhawati is occupying Kothari No. 111. The Rent Control and Eviction Officer, even after clear report of the Inspector declared Kothari No. 110 vacant treating Smt. Prabhawati to be its tenant and proceeded for its allotment. The petitioner lodged formal objection on 12.8.1987 before the Rent Control and Eviction Officer, Pratapgarh and has stated that Smt. Prabhawati has no concern with Kothari No. 110 and she is occupant of Kothari No. 111. The opposite party No. 3 filed counter objection and stated that there was no dispute of Kothari occupied by the petitioner but stated that the petitioner is occupant of Kothari No. 111. The Rent Control and Eviction Officer, Pratapgarh finally passed the order on 27.2.1991 and held that the petitioner is tenant of Kothari No. 110 and Smt. Prabhawati is tenant of Kothari No. 111 and both the Kotharies are not vacant and therefore, are not available for allotment. After that the opposite party No. 3 Uma Shanker moved an application under Section 16 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 for release of Kothari No. 111. A notice was issued to the petitioner and he also filed objection.

3. After hearing the parties, the Rent Control and Eviction Officer, Pratapgarh declared Kothari No. 111 vacant and treated the petitioner to be its tenant. After

that the disputed Kothari was sold to Dinesh Kumar and others by the opposite party No. 3. The opposite parties Nos. 4 and 5 moved another application for release under Section 16 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter to be referred as 'Act') on 9.7.2001 and an order under Section 12 of the Act was passed on the application of the opposite party No. 3 Uma Shanker by which Kothari No. 111 was declared vacant. According to the petitioner this order was not revisable. The Rent Control and Eviction Officer, Pratapgarh passed the order of release in favour of the opposite parties Nos. 4 and 5 on 6.4.2002. This order was passed on the basis of the order dated 2.6.2000 passed under Section 12 of the Act by which the vacancy in Kothari No. 111 was notified. The petitioner preferred a revision against the order of release dated 6.4.2002. This, revision was dismissed on 15.5.2002 on the ground that the revision against the vacancy dated 2.6.2000 is not maintainable and the petitioner cannot take shelter of the release order dated 6.4.2002 for quashing the order of vacancy dated 2.6.2000. The main contention of the petitioner to challenge this order passed in revision is that the opposite party No. 1 has failed to exercise its jurisdiction vested in him in quashing the order of vacancy dated 2.6.2000.

4. The opposite parties Nos. 4 and 5 filed the counter-affidavit stating therein that as a matter of fact the Kothari No. 110 was occupied by Smt. Prabhawati and Kothari No. 111 is in unauthorised occupation by the petitioner who in fact is not previously living and using the said premises and had shifted in his own house. It is further contended by the opposite parties Nos. 4 and 5 that the Kothari No. 111 is not in possession of the petitioner. They have supported the order of vacancy and further the orders of release mainly on the ground that the petitioner is in unauthorised occupation of Kothari No. 111.

5. Heard the learned counsel for the petitioner and the opposite parties Nos. 4 and 5.

6. It is admitted case of the petitioner that he is the tenant of Kothari, which is numbered as House No. 110. Annexure-6 is the order of the Rent Control and Eviction Officer, Pratapgarh in which it was held that the petitioner is the tenant of

Kothari No. 110 and Smt. Prabhawati is the tenant of Kothari No. 111. The order notifying the vacancy-dated 2.6.2002 (Annexure-11) relates to Kothari No. 111, situated in Begum Ward, Pratapgarh. The order of release-dated 6.4.2002 (Annexure-15) relates to Kothari No. 111 of Mohalla Begum Ward, Pratapgarh. It is against this order of release dated 6.4.2002 that a revision was filed and that revision also relates to Kothari No. 111 for which the release order was passed on 6.4.2002. It is Annexure-17. At the time of the arguments, the learned counsel for the petitioner has given a statement that he has no grievance for notifying the vacancy relating to Kothari No. 111 and the order of release in favour of the opposite party for Kothari No. 111. All these facts go to show that the petitioner has no concern with Kothari No. 111. In these circumstances, the writ petition challenging the order notifying the vacancy, the order of release of Kothari No. 111 and the order passed in revision is not maintainable. The petitioner cannot challenge these orders because admittedly, he has no concern with Kothari No. 111.

7. At the time of the argument, the learned counsel for the petitioner has submitted that all these orders have been passed making him a party in these proceedings and the eviction order from Kothari No. 111 is being issued against him. Therefore, he has the locus to file this writ petition. In my opinion if the petitioner is neither the tenant of Kothari No. 111 nor in possession in Kothari No. 111, he cannot claim any right over it in the writ petition and if, he claims any possession, he can be evicted on the basis of the release order in favour of the opposite parties Nos. 4 and 5. The order of release can be enforced against the person who is found in possession of Kothari No. 111 either against Smt. Prabhawati or the petitioner or any person whosoever claims his possession through the petitioner on Kothari No. 111.

8. In view of the above, the writpetition is dismissed.