

Baldeo Krishna, Advocate Vs. Rent Control and Eviction Officer and anr.

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Court : Allahabad

Decided On : Jan-30-2006

Reported in : 2006(3)AWC2461

Judge : S.U. Khan, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 12 and 30(2); Rent Control Act

Appeal No. : C.M.W.P. No. 41759 of 1992

Appellant : Baldeo Krishna, Advocate

Respondent : Rent Control and Eviction Officer and anr.

Advocate for Def. : H.S. Nigam, C.S.C.

Advocate for Pet/Ap. : R.D.B. Mishra, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.U. Khan, J.

1. List revised. No one appears for the respondents. Heard learned Counsel for the petitioner.

2. This case illustrates utter abuse of the Rent Control Act by the tenant. It is most unfortunate that tenant-petitioner happens to be a lawyer. Lawyers are expected to show more regard towards law than ordinary people.

3. Accommodation in dispute is commercial in nature. Petitioner is a lawyer, practising on the taxation side, hence he must be earning good income. Rent is Rs. 5 per month. The said rent is also not being paid by the petitioner on the ground that some persons are quarrelling for landlordship. This is excellent situation for the tenant-petitioner. The last nail in the coffin is the fact that in this writ petition landlord has not been impleaded as party. Petitioner who is tenant and respondent No. 2 Dhan Prakash, applicant for allotment are fighting for the tenanted shop and landlord is watching the drama from the gallery.

4. This writ petition is directed against the order dated 22.10.1992 passed by Rent Control and Eviction Officer/District Supply Officer, Saharanpur in Case No. 53 of 1990. Rent Control and Eviction Officer by the impugned order declared the vacancy on the ground that shop in dispute was not being used by the petitioner. In my opinion, the order is illegal. Even if a commercial accommodation is not being used, it does not give rise to vacancy under any of the provisions of Section 12 of U.P. Act No. 13 of 1972. Rent Control and Eviction Officer also found that petitioner had constructed some shops which were adjacent to the shop in dispute. This also could not give rise to vacancy in the case of commercial accommodation. Acquisition of another accommodation is a ground of vacancy only in the case of residential building.

5. Accordingly, writ petition is allowed. Impugned judgment and order declaring vacancy is set aside.

6. I have held in *Khursheeda v. A.D.J.* 2004 (1) AWC 851 : 2004 (2) ARC 64, that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act, writ court is empowered to enhance the rent to a reasonable extent. Rent of Rs. 5 per month for a shop in Saharanpur is virtually as well as actually no rent. By paying such a highly inadequate rent for several decades petitioner must have saved a lot of money. Money saved is money earned. Accordingly it is directed that with effect from February, 2006, onward petitioner

shall pay rent to the landlord @ Rs. 750 per month. If there is any dispute of landlordship, then rent at the above rate may be deposited by the tenant under Section 30(2) of U.P. Act No. 13 of 1972.

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