

Mohd. Idris Vs. Rent Control and Eviction Officer/Addl. City Magistrate-iii and ors.

Mohd. Idris Vs. Rent Control and Eviction Officer/Addl. City Magistrate-iii and ors.

SooperKanoon Citation : sooperkanoon.com/491521

Court : Allahabad

Decided On : Aug-01-2006

Reported in : 2006(4)AWC3625

Judge : Rakesh Tiwari, J.

Appellant : Mohd. Idris

Respondent : Rent Control and Eviction Officer/Addl. City Magistrate-iii and ors.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. The petitioner claims to be tenant of House No. 100/186 Colonelganj, Kanpur Nagar since 1970 at the monthly rent of Rs. 375 per month.
2. It is alleged that the landlord Ahmad Shafiq refused to accept the rent of the house in dispute as such the petitioner has deposited the rent Under Section 30 of U. P. Act No. 13 of 1972 in Case No. 116/70/2004, Mohd. Ismail v. Ahmad Shafiq.
3. It is further alleged that the respondent No. 3 Mohd. Ismail S/o Ibrahim moved an application dated 4.12.2004 before R.C. and E.G., Kanpur Nagar for allotment

of the premises in dispute in his favour on the ground that there is deemed vacancy as the petitioner is living in the house in dispute without any allotment in his favour. The petitioner claims that he is living in the house in dispute since 20.5.1970 as tenant and his tenancy stands regularized by Virtue of Act No. 28 of 1976. It appears that the Rent Control Inspector submitted a report dated 31.12.2004 in the application to the effect that prima facie it appears that there is deemed vacancy in disputed accommodation. He came to this conclusion on the basis of evidence and requested the R.C. and E.O. to decide the case on merits after hearing the parties concerned. The report is as under:

tkWap ls iwoZ vkoaVu izkFkZuki= esa mfYyf[krIEcaf/kr i{kksa dks iz'uxr Hkkx dk fujh{k.k djs ds fy;s dk;kZy; ds i= okgd gjh'kadj xqlrk ds ek;/e ls lwpuk vurnZr fu;e 8 2 dh lwpukvksa dks vyx&vyxHkstk; x;k A mDr lwpukvksa es i= okgd viuh rkehth ls IEcfU/kr vk[k; dks vyx&vyxizLrqr; fd;k gS A tks vkidks voyksdukFkZ i=koyh esa ewy :i esa layXu gS A

rnksijkUr iz'uxr Hkkx dk lhfyaxfujh{k.k fd;k x;k eOu0 100@106] dusZyxat] dkuifjuxj esa ,d O;fDr mifLFkr feyk ftUgksus viuk uke eks0 lyhe crk;k vkSj buls tkapds le; eks0 bnjhl ds IEcU/k esa tkudkjh dh x;h eks0 bnjhl ds fy;s crk;k x;k fdog buds firkt gSa vkSj buds firkt mijksDr edku ds Hkwfe [k.M ,oa izFke [k.Mesa yxHkx 16] 17 o'kksZ ls iz'uxr Hkkx esa jg jgs gSaA tkap ds le; iz'uxrHkkx ds vUnj ls dqN efgyk;sa Hkh ckgj dh vksj fudyh muls Hkh iz'uxr Hkkx ds ckjsesa tkudkjh yh xbZ efgykvksa }kjk Hkh ekSf[kd :i ls crk;k x;k ;g yksx vius ifrJh bnjhl ds lkFk vk;s ifjokj lfr 16] 17 o'kksZ ls fuokl dj jgh gSa A tkapds le; iz'uxr Hkkx ds vUnj ls fujh{k.k djkus esa vleFkZrk izdV dh xbZ crk;k x;kfd ;g yksx mDr edku ds Hkwfe[k.M ,oa izFke [k.M esa jg jgs gSa A tkap ds le;eks0 bnjhl ls IEidZ LFkktfir ugha gks ldk A tcfd eks0 bnjhl ds uke ls Hksth xbZfu;e 8 2 dh lwpuk dks eks0 bnjhl }kjk fnukad 18-12-2004 dks izklr fd;k tkpqdk g SA mlds mijUr Hkh eq>s iz'uxr Hkkx ds v;/klh dh vksj ls dksbZ Hkh c;kudks vkt fnu rd miyC/k ugha dj;k;k x;k gS A

iz'uxr Hkkx ds IEcU/k esa vkl iklds iM+ksfl;ksa esa Jh eq[rrkj vgen iq= fulkj vgen fuoklh edku ua0 100@184]dusZyxat] dkuifj uxj }kjk ,d fyf[kr c;ku dks izLrqr fd;k x;k gS ftlesa mYys[kfd;k x;k gS fd eSa e0 uEcj 100@186] dusZyxat]dkuifj dh iwjh tkudkjh j[krk gWaw A edku ua0 100@186]dusZyxat] dkuifj] esa Hkk0 [k0 ij fLFkr ,d

dejk] ,d nkyku] vkaxu] ySfVu o iz0[k0 ij ,d dejk] vkaxu gS ftlds fdjk;snkj fj;kt vgen Fks tks viuh x`gLFkh dk lkjlkkeku ysdj dgha vU;= pys x;s gSa vkSj iz'uxr Hkkx dk dCtk o n[ky eks0 bnjhl dksns x;s gSa tks fj;kt vgen ds ifjokj ds lnL; ugha gSa vkSj fcuk ,ykVes UV ds voS/kkfud:i ls jg jgs g SA iz'uxr Hkkx dk fdjk;k 375 :0 izfr ekg gS A edku uEcj 100@186ds x`g Lokeh vCnqy 'kQhd gSa tks edku ua0 100@33]dusZyxat] dkuqj esa jgs gSa A c;ku tks fn;k og lp o lgh gS dksbZ Hkh ckr xyr oNqik;h ugha xbZ gS A blds lkeku dh iqf'V Jh eks0 eqerkt iq= eks0 blykefuoklh edku ua0 100] dusZyxat] dkuqj uxj }kjk fd;k x;k g SA c;ku ds lkFk eq[rk]vgen us LdwVj Mkbfoax dk;Z dh Nk;k izfr dks layXu fd;k gS c;ku vkidsvoyksdukFkZ i=koyh esa ewy:i ls layXu gSa A

;g fd e0 ua0 100@186]dusZyxat] dkuqj ds x`g Lokeh Jh v0 'kQhd fuoklh edku ua0 100@33]dusZyxat] dkuqj crk;s x;s gSa A ftuls tkWap ds le; IEidZ LFkkfir ugha gks ldk Atcfd vCnqy 'kQhd Hkou Lokeh ds uke ls fu;e 8 2 dh lwpuk dks mudks iRuh }kjkfnukad 18-12-2004 dks izklr fd;k tk pqdk gS A mlds ckn Hkh eq>s x`g Lokeh dhvksj ls vkt fnu rd fdlh izdkj dk dksbZ Hkh c;ku miyC/k ugha dj;k;k x;k gSa A

fu'd'kZr% ekSds dh tkap,oa iz'uxr Hkkx ds IEcU/k esa vkl ikl ds iM+kslh Jh eq[rk] vgen }kjk fn;s x;sc;kuksa ds vk/kkj ij iz'uxr Hkkx esa fjDrrk izrhr gksrh gSa A d`i;k U;k; fgresa IEcfU/kr i{kksa dks lquus ,oa rF;ksa dks lqfuf'pr djus gsrq vk[k; Jheku thds lsok esa vfxze vko';d dk;Zokgh gsrq lknj izsf'kr gS A

layXud % ;Fkksifj i`B 6 ek=

g0 vifBr

31-11-2004

vkj0lh0vkbZ0

eksgj vifBr A

The petitioner liled objection to the report as well as the allotment letter. It also appears that Ahmad Shafiq also moved an application Under Section 21(1)(a) of U. P. Act No. 13 of 1972 for release of the house in dispute on the ground of bona fide need. However, the R.C. and E.G./ Additional City Magistrate (III)/Kanpur

Nagar, passed order for vacancy dated 17.7.2006 and fixed 31.7.2006 in the matter that the petitioner has an alternative efficacious remedy of challenging the findings in miscellaneous proceedings before the courts below.

4. This petition is directed against the order dated 17.7.2006, declaring vacancy passed by respondent No. 1 against the petitioner Mohd. Idris S/o Mohammad Yunus.

5. The writ petition is premature in view of decision rendered by this Court in *Shyam Sundar Agarwal v. Smt. Gyanwati Devi and Anr.* 2005 (2) ARC 479, wherein relying upon a decision of Hon'ble the Apex Court in *Achal Misra v. Rama Shanker Singh and Ors.* (2005) 1 ARC 877, wherein it has been held that writ petition filed against the vacancy order is premature. In the case of *Shyam Sundar Agarwal (supra)* which is open decision of the *Achal Misra (supra)* the Court held, when any allotment/release order is passed, it will be open to the petitioner to challenge the order of declaring vacancy. The paragraphs 3 and 4 of which the reliance has been placed by learned Counsel for the petitioner as under:

3. In view of the decision of Apex Court in *Achal Misra v. Rama Shanker Singh and Ors.* 2005 (1) ARC 877 (SC), Paragraph 13 relied upon by learned Counsel for the contesting respondent is reproduced below:

13. It is thus clear that an order notifying a vacancy which leads to the final order of allotment can be challenged in a proceeding taken to challenge the final order, as being an order which is a preliminary step in the process of decision making and in passing the final order. Hence in a revision against the final order of allotment which is provided for by the Act, the order notifying the vacancy could be challenged. The decision in *Ganpat Roy's* case, which has disapproved the ratio of the decision in *M/s. Trilok Singh and Co.*, cannot be understood as laying down that the failure to challenge the order notifying the vacancy then and there, would result in the loss of right to the aggrieved person of challenging the notifying of vacancy itself, in a revision against the final order of allotment. It has only clarified that even the order notifying the vacancy could be immediately and independently challenged. The High Court, in our view, has misunderstood the effect of the decision of this Court in *Ganpat Roy's* case and has not kept in mind the general

principles of law governing such a question as expounded by the Privy Council and by this Court. It is nobody's case that there is anything in the Act corresponding either to Section 97 or to Section 105(2) of the Code of Civil Procedure, 1908 precluding a challenge in respect of an order which ultimately leads to the final order. We overrule the view taken by the Allahabad High Court in the present case and in Smt. Kurt/ Lata v. Xth Additional District Judge, Kanpur Nagar and Ors. (supra) that In a revision against the final order, the order notifying the vacancy could not be challenged and that the failure to independently challenging the order notifying the vacancy would preclude a successful challenge to the allotment order itself, in fact, the person aggrieved by the order notifying the vacancy cannot be said to have two options available. Either to challenge the order notifying the vacancy then and there by way of a writ petition or to make the statutory challenge after a final order of allotment has been made and if he is aggrieved even thereafter, to approach the High Court. It would really be a case of election of remedies.⁴ In view of the observations made in the case of Achal Misra (supra) to me it appears that the petitioner can challenge the order declaring the vacancy, along with the order of allotment/release passed by the Rent Control and Eviction Officer. This writ petition, at this stage, is dismissed as premature as and when any allotment/release order is passed against the petitioner, it will be open to the petitioner to challenge the order declaring the vacancy in the accommodation in dispute. Till any allotment or release order is passed, the petitioner shall not be evicted from the accommodation in dispute.

6. For the reasons/and the law stated above, the writ petition is dismissed as premature.