

Veer Singh Vs. Rent Control and Eviction Officer and ors.

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Court : Allahabad

Decided On : Dec-20-2004

Reported in : 2005(1)ARC521

Judge : Vikram Nath, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 14 and 16

Appeal No. : Civil Misc. Writ Petition No. 14961 of 2002

Appellant : Veer Singh

Respondent : Rent Control and Eviction Officer and ors.

Advocate for Def. : Rama Goel, Adv. for respondent No. 2

Advocate for Pet/Ap. : K.K. Tripathi, Adv.

Disposition : Petition allowed

Judgement :

Vikram Nath, J.

1. This present petition was originally filed by the tenant/occupant challenging the order of vacancy dated 27th March, 2002, passed by the Rent Control and Eviction Officer, Kanpur. Subsequently by means of amendment the order dated

1st May, 2002 of the Rent Control and Eviction Officer releasing the premises in dispute in favour of landlord under Section 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act), was also challenged.

2. Dispute relates to a Shop No. 119 (old) 257 (new) Darshan Purwa, Kanpur Nagar. The petitioner, alleges to be a tenant of the said shop since 1970 and alleges to be carrying on business of Parchoon of general merchandise. The original landlord of the shop in dispute was Durga Prasad. By means of sale deed dated 13th November, 2000 the shop in dispute was sold to Smt. Jyoti Gupta, (respondent No. 2). On an application filed by one R.K. Verma (respondent No. 3) seeking allotment of the shop in dispute the present proceedings were initiated. Report was called for from the Inspector who submitted a report dated 20th December, 2000 stating that the petitioner, was the tenant since 1970 and had been regularly paying the rent to the landlord Durga Prasad. The report further mentioned that even landlord Durga Prasad stated that petitioner was in possession since 1970. On receipt of the report of the Inspector, notices were issued to the landlord and the petitioner from the Court of Rent Court and Eviction Officer. Both the parties contested the question of vacancy. Rent Control and Eviction Officer after considering the material evidence on record and the contention of rival parties came to the conclusion that the occupation of the petitioner, could not be said to from 1970 and with effect from the 1st, February, 1982 pursuant to the agreement dated 29th January, 1982 between the petitioner, Veer Singh and the landlord Durga Prasad. The Rent Control and Eviction Officer accordingly vide judgment dated 27th March, 2002 held that there was vacancy in shop in dispute and it was open for allotment/release under Section 16 of the Act. Aggrieved by the said order, the present writ petition has been filed.

3. I have heard Sri K.K. Tripathi, learned Counsel for the petitioner and Km. Rama Goel learned Counsel representing the respondent No. 2.

4. The contentions raised by the learned Counsel for the petitioner, are as follows:

(i) Durga Prasad erstwhile owner having stated before Rent Control Inspector at the time of inspection and also in his affidavit filed before the Rent Control and

Eviction Officer had admitted the possession of the petitioner from 1970 with his consent, the petitioner occupation stood regularized under Section 14 of the Act and as such there could not be any vacancy.

(ii) The Rent Control and Eviction Officer having based his finding only upon the agreement dated 29th January, 1982 that it did not mention about the prior occupation and possession of the petitioner, was vitiated in law.

(iii) The request of the petitioner for verifying the correctness of the signature of Dura Prasad on the affidavit by calling expert opinion having been rejected, adverse inference could not have been drawn regarding the said affidavit merely because after the death of Durga Prasad his son had filed an affidavit setting that their father was not in condition to have come to the city for signing the affidavit only a few days prior to his death on account of serious and prolonged, illness resulting into his death.

(iv) The other evidence in the form of rent receipts filed by the petitioner, has been ignored not on the ground that it is not signed by Durga Prasad but on mere whims of the Rent Control and Eviction Officer on the ground that the paper of the rent receipts appear to be new and not old relating to the year 1970.

5. In view of these contentions the one and only question, which requires consideration, is as to whether the rent receipts, the affidavit and the agreement all contained the signatures of Durga Prasad or of different persons amounting to forgery by the petitioner.

6. The Counsel for the respondent landlady has contended that the petitioner, having failed to challenge the order rejecting the application for expert verification, it is not open to the petitioner to raise the same before this Court. It is further contended that there was no necessity of any expert opinion regarding the signatures of Durga Prasad, as his sons had filed affidavit denying the signature of Durga Prasad on his affidavit and the rent receipts.

7. I have examined the record and I do not agree with the contention of learned Counsel for the respondent that there was no justification for any expert opinion

relating to signature of Durga Prasad. In my view Durga Prasad was best person to have confirmed as to whether the petitioner, was in occupation with his consent since 1970 or not. The rent receipts and the affidavit of Durga Prasad required to have been tested carefully. The Rent Control and Eviction Officer ought to have called for an expert opinion on the document on record which were being disputed as having not been executed by Durga Prasad. The Rent Control and Eviction Officer having failed to call for a expert and that to even an application filed on behalf of the petitioner, committed serious irregularity denying opportunity to the petitioner, to prove his occupation since 1970.

8. The other objection of the Counsel for the respondent that petitioner having failed to challenge the order dated 5th December, 2001 of the Rent Control and Eviction Officer rejecting the application for expert evidence also cannot be accepted. In writ jurisdiction this Court can always consider the matter with a view to advance substantial justice between the parties and not go into technicalities. In my opinion the order rejecting application for expert evidence being an interlocutory order could not have been challenged separately and its validity can be considered in the present petition while considering the final order of vacancy. As already held the order rejecting the application was not correct.

9. In the facts and circumstances, it would be appropriate that the matter may be sent back to the Rent Control and Eviction Officer to call for a expert opinion regarding the signature of Durga Prasad on the affidavit as well as the rent receipt with admitted signatures of Durga Prasad on the agreement and also the sale deed in favour of the respondent No. 2.

10. In the circumstances, the writ petition succeeds and is allowed. The order of Rent Control and Eviction Officer dated 27th March, 2002 is set aside and the matter is remanded back to the Rent Control and Eviction Officer with the observations that he may decide the matter afresh in the light of the observations made above after seeking expert opinion on the signatures of Durga Prasad. The Rent Control and Eviction Officer will decide the question of vacancy within a period of four months from the date of production of certified copy of this order.

