

Roshan Singh Vs. Rent Control and Eviction Officer and anr.

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Court : Allahabad

Decided On : Aug-13-2004

Reported in : 2005(2)AWC1886

Judge : Anjani Kumar, J.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 12(3A)

Appeal No. : C.M.W.P. No. 12171 of 1990

Appellant : Roshan Singh

Respondent : Rent Control and Eviction Officer and anr.

Advocate for Def. : Upendra Nath, ;S.M. Ali and ;R.K. Nigam, Advs. and ;A.R.B. Kher, S.C.

Advocate for Pet/Ap. : K.N. Saxena, Adv.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. Heard Sri K.N. Saxena, learned counsel appearing on behalf of the petitioner and learned standing counsel for the State as well as learned counsel for the

contesting respondent.

2. The petitioner-tenant, by means of present writ petition under Article 226 of the [Constitution of India](#), has challenged the order dated 16th April, 1990, passed by the Rent Control and Eviction Officer/City Magistrate, Jhansi, copy whereof is annexed as Annexure-2 to the writ petition, whereby a deemed vacancy has been declared under Section 12 (3A) of U. P. Act No. 13 of 1972 and thereafter the accommodation in question has been released in favour of the landlord-contesting respondent.

3. The facts leading to the filing of the present writ petition are that petitioner Roshan Singh, who was employed in Railway Protection Force, was posted at Jhansi and the accommodation in dispute was occupied by him. It is not disputed that the accommodation in question is covered by the provision of U. P. Act No. 13 of 1972 (in short the 'Act'). It is also not disputed that petitioner Roshan Singh has been transferred from Jhansi to Gwalior, as is clear from the report of the Rent Control Inspector, which says that the petitioner has been transferred approximately two years ago. The report also says that the family of the petitioner is still living in the accommodation in dispute and the petitioner keeps visiting there. The report also reveals that from Gwalior, petitioner has been transferred to some other place.

4. An application under Section 12 (3A) of U. P. Act No. 13 of 1972 has been filed by the landlord-contesting respondent that as the petitioner has been transferred from Jhansi to Gwalior, therefore the accommodation in question will be deemed to be vacant in view of the provision, referred to above. For the purposes of deciding the present writ petition, the provision of Section 12 (3A) of the U. P. Act No. 13 of 1972 is reproduced below :

'12. Deemed vacancy of building in certain cases.--(3A) If the tenant of a residential building holding a transferable post under any Government or local authority or a public sector corporation or under any other employer has been transferred to some other city, municipality, notified area or town area, then such tenant shall be deemed to have ceased to occupy such building with effect from the thirtieth day of June following the date of such transfer or from the date of

allotment to him of any residential accommodation (whether any accommodation be allotted under this Act or any official accommodation is provided by the employer) in the city, municipality, notified area or town area to which he has been so transferred, whichever is later.'

5. A bare perusal of the aforesaid Sub-section (3A) of Section 12 of U. P. Act No. 13 of 1972 will make it clear that : (i) after deemed vacancy there has to be a transfer of transferee to some other city, municipality, notified area or town area, and (ii) occurrence of the thirtieth June following the date of such transfer or from the date of allotment to him of any residential accommodation to the such transferee in the city, municipality, notified area or town area where he has been transferred.

6. Learned counsel appearing on behalf of the petitioner relied upon a Full Bench decision in Kapoor Chand Jain v. District Judge, Mathura and Ors., 1980 AWC 292, wherein the decision in Deep Chandra Pant v. Illrd Additional District Judge, Nainital, 1978 ARC 199, was referred for Full Bench. The Full Bench in para 4 of the judgment has held as under :

'4. This provision applies where (a) a person is a tenant of residential building, (b) the tenant holds a transferable post in any Government or local authority or a public sector corporation or under any other employer, (c) he has been transferred to some other city, municipality, notified area or town area, then such tenant is deemed to cease to occupy such building, with effect from (a) thirtieth day of June following the date of transfer, or (b) from the date of allotment to him of any residential accommodation either under the Act or any official accommodation by the employer, whichever is later.'

7. The Full Bench further says that the aforesaid provision came up for consideration in Deep Chandra's case. The question was whether vacancy will be deemed to have arisen even if no accommodation has been allotted. In that case, in this context learned single Judge has observed :

'It has been submitted that there was no evidence that the petitioner had been allotted any accommodation either under the Rent Control Act or a Government

accommodation at Almora. It is not necessary that the transferred employee should be allotted any accommodation before Sub-section (3A) can operate. The order of transfer itself brings in Section 12(3A). It operates from the thirtieth day of June following the date of such transfer. The alternative, namely the allotment of any residential accommodation is in addition to the order of transfer. If a residential accommodation is allotted subsequent to June 30th following the date of the transfer order, then the transferred employee gets a further benefit inasmuch as the vacancy will be deemed to have occurred on the date of allotment of the residential accommodation if it happens to be after the thirtieth day of June following the date of transfer. The allotment of residential accommodation is not a condition precedent to the applicability of Sub-section (3A).'

8. The Full Bench further held in paragraphs 6, 7, 8 and 9, which are as under :

'6. On further reflection, I feel that the view expressed in Deep Chandra's case was not quite correct.

7. The transfer order is the beginning of sequence of events which ultimately culminate in the creation of a vacancy. The other event on which emphasis has been laid by the Legislature is the occurrence of thirtieth day of June after the transfer order of allotment to him of any residential accommodation. Of these two events, the one which occurs later, gives rise to the fictional creation of vacancy.

8. After the order of transfer, the tenant should have been allotted a residential accommodation. If this event has happened the vacancy will come into existence with effect from the thirtieth day of June following both the date of transfer as well as the date of allotment of the residential accommodation.

9. If till thirtieth June following the date of transfer no residential accommodation is allotted or provided by the employer the vacancy will not be deemed ,to have arisen notwithstanding that the tenant may have been able to obtain some accommodation for his own residence privately.'

9. In para 13, the Full Bench further says :

'In my opinion, Sub-section (3A) will cause a vacancy to arise only if both the events, namely, the occurrence of thirtieth June as well as the allotment or provision by the employer of a residential accommodation have happened after the date of the transfer order. Deep Chandra's case was not correctly decided.'

10. In para 14, the Full Bench deals with the facts, referred to above.

11. Sri K.N. Saxena, learned counsel appearing on behalf of the petitioner relying upon the Full Bench decision contended that unless both the conditions, namely, the occurrence of thirtieth June as well as the allotment or provision by the employer of a residential accommodation have happened after the date of the transfer order, are fulfilled, the petitioner will get the benefit of this section.

12. In the case in hand, the facts are not the same as stated is clear from the admitted facts. In this view of the matter, the case decided by Full Bench, namely, Kapoor Chand Jain's case is on the facts of the said case and so far as the law is concerned, as held by the Full Bench in para 4 as well as a bare reading of Section 12(3A) of the Act demonstrates that there shall be a deemed vacancy on the 30th day of June, the incident of allotment or obtaining accommodation will apply according to my opinion, to a case where the event happens before 30th day of June following the date of transfer. In this view of the matter, the Full Bench decision, so far as it lays down the law is no way different than the plain reading of Section 12(3A) of the Act. So far as the case decided by the Full Bench and facts of this case are concerned, they are altogether different, therefore, in my opinion according to plain reading of Sub-section (3A) of Section 12 of the Act the view taken by the authority that a deemed vacancy has occurred in the facts and circumstances of the case, do not warrant any interference by this Court.

13. Learned counsel appearing on behalf of the petitioner submitted that in case I am of the opinion that the law laid by the Full Bench requires reconsideration, the matter may be referred to a larger Bench, but as stated in the preceding paragraphs of this judgment, the law laid down by the Full Bench is no way different than the bare reading of Section 12(3A) of the Act. Of course the decision of Full Bench to the facts of that case do not apply to the facts of present case. In this view of the matter, I do not find it to be a fit case to be referred to a larger

Bench.

14. In view of what has been stated above, this writ petition has no force and is accordingly dismissed. The interim order, if any, stands vacated. However, the parties shall bear their own costs.

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