

**Manoj Singh and ors. Vs. Addl. District Judge and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/495261](http://sooperkanoon.com/495261)

**Court :** Allahabad

**Decided On :** Apr-27-2006

**Reported in :** 2007(3)AWC3041

**Judge :** Rakesh Sharma, J.

**Appellant :** Manoj Singh and ors.

**Respondent :** Addl. District Judge and ors.

**Disposition :** Petition dismissed

**Judgement :**

**Rakesh Sharma, J.**

1. This writ petition has been heard and disposed of in the open Court today. My reasons for dismissing the writ petition are as follows:

Heard Mohammad Saeed, learned Counsel for the petitioners, tenants and Sri S.K. Mehrotra, learned Counsel appearing for the respondent No. 3, landlord.

2. The petitioners have assailed the orders dated 23.6.2003 and 7.7.2003 passed by the Rent Control and Eviction Officer/City Magistrate in Case No. 7 of 2000 under Section 16 (1) (b) of U. P. Act No. 13 of 1972 (hereinafter referred to as the 'Act') and the order dated 16.4.2004, passed by the Additional District Judge, Unnao in Rent Revision No. 55 of 2004.

3. It emerges from record that on 18.10.2000, the landlord, Aditya Prakash Sharma, respondent No. 3, had filed a release application under Section 16 (1) (b) of the Act against the petitioners before the Rent Control and Eviction Officer/City Magistrate, Unnao, seeking release of the premises, House No. 779, Mohalla Kalyani Devi (Civil Lines), City and District Unnao. The landlord had indicated in the release application that petitioners were unauthorised occupants in the premises in dispute. One Sri Manoj Singh was initially inducted as tenant in the above mentioned house on payment of Rs. 60 per month as rent. Sri Manoj Singh had vacated the premises and had shifted to his native village, Kulha, Attora, Pargana Aaslan, Rasoolabad, Unnao. Thus, the vacancy had created under Section 12 (1) (c) of the Act. The landlord further submitted that the premises in dispute was 50-60 years' old and was in a dilapidated condition. He wanted it to be demolished and build a new house for residential purposes for his family members. The landlord's nephew, Gaurav Kumar Sharma, who was pursuing M.B.B.S. course in Lucknow Medical College, was also living with him for the last several years. The landlord wanted to settle him in private practice in the said house. All these bona fide needs were demonstrated in the release application by the landlord. The Rent Control Inspector had also indicated in his report dated 23.12.2000 that the house was 50-60 years' old. There were cracks in the wall and roof. The house was in a dilapidated condition. The landlord's family was residing in other portion of the same house. It has also come in the report of Rent Control Inspector that Km. Reeta Singh, Km. Meenu Singh and Amit Kumar Singh, were living in the house in dispute. Objections were filed by the tenants. Considering the material on record, the Rent Control Officer, had declared the vacancy and ordered for release of the premises in question in favour of the landlord. The prescribed authority had also appreciated the bona fide need of the landlord. Some other persons also had applied for allotment and their applications were rejected. Being aggrieved, the petitioners filed revision before the revisional court, i.e., Additional District Judge, Unnao, who has rejected the revision on the ground that it was not maintainable. Detailed order was passed by the Additional District Judge, Unnao on 16.4.2004.

4. The learned Counsel for the petitioners has submitted that petitioners No. 2 to 5, belong to the family of original tenant, Sri Manoj Singh, petitioner No. 1 and they

were living together. Even after vacating the premises by Sri Manoj Singh, the petitioners being members of the family have right to live as tenants. The petitioner No. 2, Sri Sunil Kumar has alleged that he is real brother of Sri Manoj Singh as such he has right to live in the house as tenant.

5. The learned Counsel for the petitioners has further submitted that there was a contract of tenancy between the petitioners and the landlord, Sri Aditya Prakash Sharma. They were not strangers but permitted to continue in the premises in dispute. The learned Counsel for the petitioners has placed reliance on the Judgments in Nutan Kumar and Ors. v. IInd Additional District Judge and Ors. 2002 (49) ALR 251 : 2003 (1) AWC 213 (SC); Nanak Ram v. Kundal Rai : [1986]2SCR839 ; Dharam Pal Jairath v. Additional District Judge and Ors. 2004 (1) ARC 60 and Munna Lal Agarwal v. R.C. & E.O. Mathura 2005 (1) ARC 144 : 2005 (2) AWC 1647, in support of his submissions. As per the petitioners' learned counsel, both the orders were without jurisdiction. It was a case where relations of landlord and tenant were existing between the parties. The learned Counsel for the petitioners has further submitted that the landlord had also sent a notice under Section 106 of Transfer of Property Act and instituted a Suit No. 3 of 2001 on 6.2.2001 for ejection of the petitioners and recovery of arrears of rent.

6. Sri S.K. Mehrotra, learned Counsel for the landlord-respondent No. 3, has opposed the writ petition. He has submitted that petitioners are unauthorised occupants in the accommodation. There was no formal allotment order issued in favour of the petitioners by the District Magistrate, Unnao or by the appropriate Rent Control Officer. The real tenant, Sri Manoj Singh has already vacated the premises to live at his native village. Sri S.K. Mehrotra has categorically submitted that no written or any kind of agreement executed between the parties to permit the petitioners No. 2 to 5, to live in the premises or to treat them as tenants. The case laws cited by the petitioners are not applicable in the present facts and circumstances of the case. The petitioners No. 2 to 5, were not family members of Sri Manoj Singh, the original tenant as defined under the provisions of the Act. The petitioners are living in a portion of the house situate in Civil Lines area in the city of Unnao unauthorisedly. The report of Rent Control Inspector itself indicates that the said house is 50-60 years' old and is in a dilapidated condition. There are

cracks in the roof and walls.

7. Sri S.K. Mehrotra, learned Counsel for the landlord has further submitted that against the order dated 23.6.2003, declaring the vacancy in the premises and the formal release order dated 7.7.2003, a Writ Petition No. 109 of 2003 was filed by the petitioners. This writ petition was dismissed by this Court with the liberty to the petitioners to file a revision. Various decisions of this Court have been cited by Sri S.K. Mehrotra, learned Counsel for the landlord-respondent No. 3, to show that unauthorised occupants have no right to continue in the premises vide Smt. Ram Kunwar and Ors. v. Illrd A.D.J., Banda and Ors. 2004 (5) AWC 4137.

8. I have heard learned Counsel for the parties and gone through the record.

9. The petitioners have failed to establish before the courts below that they are lawful tenants of the premises in dispute, i.e., House No. 779, Mohalla Kalyani Devi (Civil Lines), City and District Unnao.

10. It has borne out from the record that actual tenant, Sri Manoj Singh, has already vacated the premises to live at his native village, Kulha, Attora, Pargana Aasiwan, Rasoolabad, Unnao. He has inducted Km. Reeta Singh, Km. Meenu Singh and Amit Kumar Singh and others in the premises in question without obtaining permission and seeking formal consent of the landlord. No allotment order was issued in petitioners' favour by the District Magistrate, Unnao or the concerned Rent Control Officer as provided in the Act. There was no agreement, contract between the landlord and the tenants, permitting the petitioners to continue to live in the premises in dispute. No material has been placed on record to support the submissions of the petitioners. Since there was no agreement between the landlord and the tenant treating the petitioners as tenants in the disputed premises, the case laws relied upon by the petitioners' counsel are of no help to the petitioners. There was no valid agreement, lease executed between the landlord and the petitioners in the present case. The petitioners were residing unauthorisedly in the premises in dispute. The prescribed authority under the rent control laws, has rightly declared the premises vacant under Section 21 of the Act. A. deemed vacancy occurred in the premises after vacating the same by Sri Manoj Singh, the real tenant. This Court has noted that none of the petitioners were

members of the family of Sri Manoj Singh. Admittedly, Sri Sunil Kumar was brother of Manoj Singh who cannot be said to be a member of the family as defined in Section 3G of the Act. It is admitted between the parties that the tenancy was in the name of Sri Manoj Singh. It is not a case that the tenancy was inherited by the petitioners. Therefore, the uterine brother does not come within the meaning of word 'family' under Section 3G of the Act. This Court in the Judgments in 2004 (5) AWC 4137 (supra) and Smt. Ram Sami Devi v. Smt. Ralsa Begum and Ors. 1978 ARC 103, has held that brother of the tenant is not a member of the family. Similar view has been expressed in the cases of Mahendra Sen Jain and Anr. v. Ratanlal and Anr. 1978 AWC 552 and Shahid Alt and Ors. v. Judge Small Causes Court, Moradahad. 1998 (1) AWC 166 Ram Sanehi Lal v. District Judge, Banda and Ors. 1978 AWC 721 and S.N. Seth v. Smt. Prakashwati and Ors. 1999 (1) ARC 430.

11. It is a clear case where the petitioner No. 1, has sub-let the premises in question to other petitioners in violation of Section 25 of the Act. The petitioners were liable for eviction under Section 20 (e) of the Act and under Section 12 (1) (b) of the Act, a deemed vacancy has arisen. The law is settled that where the tenant of a building has allowed to occupy by any person who is not a member of his family, the tenant ceased to occupy the building or a part thereof and the tenant shall be deemed to have sub-let the building or a part thereof.

12. From the evidence led by the parties, it is clear that the petitioners were not lawful tenants and thus they have no right to continue in the premises any longer.

13. In view of above discussion, the writ petition is devoid of merits and the same is, accordingly, dismissed. The petitioners shall vacate the premises within one month from today. This order has been passed in the presence of the learned Counsel for the parties and the petitioners shall ensure compliance of the Court's order within the stipulated period.