

Manmohan Singh Sharma Vs. Additional District Judge and ors.

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Court : Uttaranchal

Decided On : Aug-21-2004

Reported in : 2005(1)ARC79

Judge : Rajesh Tandon, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 7(2), 7A, 11, 12, 12(1), 12(2), 12(3), 12(3A), 12(3B), 12(4), 13, 13A, 15, 16, 16(1), 18, 31 and 37; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976 - Sections 16(1) and 21(1); [Constitution of India](#) - Articles 226 and 227; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules - Rule 8 and 8(2)

Appeal No. : W.P. No. 799 of 2003 (M/S)

Appellant : Manmohan Singh Sharma

Respondent : Additional District Judge and ors.

Advocate for Def. : Arvind Vashistha, learned Counsel for respondent Nos. 2 and 3

Advocate for Pet/Ap. : J.P. Joshi, learned Counsel

Disposition : Petition dismissed

Judgement :

Rajesh Tandon, J.

1. Heard Sri J.P. Joshi, Advocate for the petitioner and Sri Arvind Vashistha, learned Counsel for the respondent Nos. 2 and 3.

2. By means of this writ petition the petitioner has prayed for quashing the order dated 18.8.2003, passed by the Additional District Judge, Dehradun.

3. Briefly stated the facts of the case are that the landlord respondent No. 3 has filed an application under Section 16 (1) (b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, praying that he is landlord of the premises 41, Sewak Ashram Road, Dehradun having number of flats and Smt. Saroj Bala, the then Additional District Judge, Dehradun was the tenant in a portion of the said premises on the first floor and a garage on ground floor of the said premises was under her possession. One Sri Jodh Singh Chauhan in collusion and by playing fraud got allotment of a portion of the first floor, he continued to keep his car in the said garage. The said allotment order dated 18.3.1994 was set aside by the Additional District Judge, Dehradun and the writ petition filed by Jodh Singh was also dismissed by the Additional High Court.

4. Learned Counsel for the respondent-landlord has submitted that he obtained the possession after the allotment order 18.3.1994 was set aside with regard to the first floor portion of the said premises but the possession of the garage could not be taken as the said Jodh Singh has illegally parted its possession to one Sri Man Mohan Singh who also got allotment order of the portion of the first floor and he continued his illegal possession in the said garage without allotment order which belong to the landlord.

5. Learned Counsel for the respondent Sri Arvind Vashistha, has submitted that the revisionist is in unauthorized occupation of the said garage and therefore, the same is liable to be released in his favour as the same is vacant.

6. The vacancy was declared with regard to the garage on 23.4.2001 and thereafter a release application was preferred by the landlord and the same was allowed on 22.5.2001.

7. A perusal of the vacancy order shows that the Rent Control Eviction Officer has recorded a finding that the property was purchased by the landlord-respondent in the year 1995 from one Pradeep Kumar and alongwith the property the garage has also been mentioned and Sri Manmohan Singh has unauthorizedly occupied the same without any allotment order.

8. However in the allotment order dated 22.4.1983 there is no mention of garage. When the allotment had taken place in favour of Sri Jodh Singh Chauhan, the allotment was also not made in respect of the garage and the writ petition of Sri Jodh Singh was also rejected by the Allahabad High Court on 5.6.1998.

9. The Rent Control and Eviction Officer has also recorded the finding that when Sri Pradeep Kumar has sold the premises in favour of the landlord with regard to the first floor of the building, the garage was also sold and the allotment order dated 22.4.1983 has not included garage and as such the garage is in unauthorized occupation of the petitioner.

10. In view of the aforesaid vacancy order, a release order was passed in favour of landlord-respondent after considering his requirement. The petitioner has challenged the order declaring the vacancy in the revision proceedings. The Revisional Court has also considered the entire arguments and had recorded a finding that the garage was not part of the allotment order.

11. Sri J.P. Joshi, learned Counsel for the petitioner has submitted that the present vacancy proceedings are not maintainable as no vacancy can be declared of which the petitioner is in unauthorized occupation. He has submitted that only remedy lies in Civil Court.

12. Section-11 of the Act No. 13 of 1972 contains complete prohibition to occupy without allotment order. Section-11 reads as under:-

'11. Prohibition of letting without allotment order:- Save as hereinafter provided, no person shall let any buildings except in pursuance of an allotment order issued under Section 16.'

13. In order to establish the deemed vacancy, learned Counsel has referred Section-12 of U.P. Act No. 13 of 1972, which reads as under:-

'12. Deemed vacancy of building in certain cases:-

(1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if-

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of Sub-section (3-B) shall, for the purposes of this Chapter, be deemed to be vacant.

((5) A tenant or, as the case may be, a member of his family, referred to in Sub-section (3) shall have a right, as landlord of any residential building referred to in the said sub-section which may have been let out by him before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976 to apply under Clause (a) of Sub-section (1) of Section 21 for the eviction of his tenant from such building, notwithstanding that such building is one to which the remaining provisions of this Act do not apply)

14. Section 13 also provides a restriction on the Occupant without allotment or release. It reads as under:-

'13. Restrictions on occupation of building without allotment or release.-Where a landlord or tenant ceases to occupy a building or part thereof, no person shall occupy it in any capacity on his behalf, or otherwise than under an order of allotment or release under Section 16, and if a person so purports to occupy it he shall, without prejudice to the provisions of Section 31, be deemed to be an unauthorized occupant of such building or part.

15. Admittedly the petitioner has occupied the premises without any allotment order and as such the provisions of Section 11 (a) and Section-13 are fully attracted.

16. In the matter of Geep Industrial Syndicate Ltd. Allahabad v. The Rent Control and Eviction Officer, Allahabad and Ors., 1982 (2) Allahabad Rent Cases Page 585, it has been held by the Allahabad High Court, that:-

'From the above it would appear that in case of an illegal letting or subletting, the view taken was that the contract may be binding on the parties to it, but not on the authorities, which would mean that the possession of a person who has been illegally let it would be unauthorized. Sections 11 and 13 of the present Act make that position very clear. No one now can either let out any premises without an allotment order nor can anyone occupy the same. If any one occupies the premises without an allotment order, he would not only be an unauthorized occupant but also liable to prosecution under Section 31 of the said, Act. His possessions being unauthorized cannot be recognized in the eye of law and if it cannot be recognized in the eye of law, there would be a vacancy. That would entitle the Rent Control and Eviction Officer under Section 16 to pass an allotment order.

It is interesting to note that *Udho Das v. Prem Prakash* (supra) was overruled by a Full Bench of five Judges of this Court in *Abdul Hamid v. Mohammad Ishaq*. This case, however, was not brought to the notice of their Lordships of the Supreme Court. The view taken in the later Full Bench was that a person to whom an accommodation has been let out by a landlord in contravention of the general order passed by the District Magistrate under Section 7 (2) of the Act is liable to be proceeded against under Section 7A at the instance of the person in whose favour an allotment order has been passed by the District Magistrate, even though that order was made subsequent to the accommodation being unauthorisedly let out, and occupied by the former person. As it is not necessary to explain the provisions of the Act, we need not consider the necessity of doing it. We simply have noted the above case of *Abdul Hamid v. Mohammad Ishaq* (supra) for limited purpose that although it was not a good law in view of the Supreme Court decision in

Murlidhar Agarwal v. State (supra), but now Sections 11 and 13 are in lines with the view taken in this case.

Counsel for the petitioner; however, urged that the use of the expression 'where a landlord or a tenant ceases to occupy a building or part thereof' is indicative of the fact that this section will apply only to cases contemplated by Section 12 inasmuch as the words 'ceases to occupy' have been used in Sub-section (4) of Section 12. To us, it appears that Section 13 serves the dual purpose. It may apply to a case covered by Section 12 but it has to be read alongwith Section 11 as well. Section 13 is common to both the provisions. That being so, the applicability of Section 13 cannot be restricted to cases covered by Section 12.

Section-11 prohibits a person from letting any building except in pursuance of an allotment order issued under Section 16. Since there is a prohibition imposed on the right of any person, which will include a landlord and tenant both, the person occupying the premises would be in an unauthorized possession. Such a person could not be treated to be a tenant. The authorized possession of a person gives a right or authority to occupy it, whereas unauthorized would mean that the person occupying is not possessed of rightful or legal power and, as such, no legal competency which can have any recognition in the eye of law, as a result of which the premises would be deemed to be unoccupied or unfilled, or empty. If that is so, the Rent Control and Eviction Officer under Section 16 takes within its purview also possession of a person which is not recognized in law. If a person without any authority occupies a premises, his possession would be of no value and the premises would be available to the District Magistrate for passing an allotment order under Section 16.'

17. So far as the deemed vacancy is concerned, I have already clarified in my judgment 'Gurnam Singh v. R.C. and E.O. Dehradun and Ors., 2003 (2) ARC 433, (Uttaranchal High Court) in respect of the vacancy where I have already held that in view of the provisions of Sections 11 and 13 of the U.P. Act No. 13 of 1972 the provisions of Section 16 (a) (b) are fully attracted. The observations in Gurnam Singh's case are quoted below:-

'So far as submission of the petitioner with regard to the case of Devendra Kumar Pandey, 2001 (2) ARC 516, that the question of vacancy can be raised in the suit alone. The case is distinguishable as the sitting tenant has every right to show that Section 12 (1) (a) (b) (c) are not attracted to the facts of the case in view of the provisions and scheme of the Act contained under Rule 8 as well as proviso to Section 16 of the Act. The submission of the petitioner therefore, can not be accepted in regard to filing the suit, and therefore, it is decided against him in view of the judgment of the Apex Court,

In the case of Yogendra Tiwari v. District Judge, Gorakhpur, ARC 1984 (2) 471, it has been held that the affording of number consists of two stages. Paragraph 5 to be quoted:

It is needless to stress that the making of an order of allotment by the District Magistrate under Section 16 (1) (a) of the Act consists of two stages. The first stage is actual vacancy of a building or a part thereof in consequence of an intimation given by the landlord or the tenant under Section 15, or a declaration of deemed vacancy of such building or part thereof under Section 12 (4). It is clear from the terms of the proviso to Section 16 (1) that in the case of a deemed vacancy under Section 12 (4) of the Act, the District Magistrate is required to give an opportunity to the landlord or the tenant, as the case may be, of showing that no declaration of deemed vacancy under Section 12 (4) could at all be made in his case before making an order of allotment under Section 16 (a) (a). The use of the word 'shall' in the proviso therefore, cannot make an order of allotment under Section 16 (1) (a) on the strength of deemed vacancy under Section 12 (4) until the landlord or the tenant, as the case may be, has an opportunity of being heard in the matter. The District Magistrate is required in terms of Rule 8 (2) to give an opportunity to the landlord to file his objection or make his submission, if any, to the making of an order of allotment under Section 16(1) (a). In the case of deemed vacancy referred to in Section 12 (4), he is entitled to show that none of the Clauses (a) to (c) of Section 12 (1) comes into play. The second stage is reached when there is a deemed vacancy under Section 12 (4) or actual vacancy in consequence of an intimation under Section 15.'

18. Similar view was taken in the case of Ganpat Roy AIR 1985 SC 1635 : 1985 (2) ARC 75 (SC), the Apex Court has held that the Act provides successive opportunity to the tenant when vacancy is deemed. The Apex Court has also observed that the Act provides sufficient opportunity to the petitioner to establish that there exists no vacancy. The observation of the Apex Court is quoted below:

Section 11 of the Act prohibits a person from letting any building except in pursuance of an allotment order issued under Section 16, Sub-section (2) and (4) of Section 12 provide as follows:

'(2) In the case of a non-residential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building.'

'(4) Any building or part which a landlord or tenant has ceased to occupy a building or part thereof, no person is to occupy within the meaning of Sub-section (1), or Sub-section (2), or Sub-section (3), Sub-section (3-A) or Sub-section (3-B) shall, for the purposes of this Chapter, be deemed to be vacant.'

Section 13 provides that where a landlord or tenant ceases to occupy it in any capacity on his behalf or otherwise than under an order of allotment or release under Section 16. Section 15 casts a duty on every landlord or tenant to give intimation of vacancy to the District Magistrate may, by an order, require the landlord to let any building which is or has fallen vacant or is about to fall vacant, or a part of such building, to any person specified in the order (called the allotment order) or may release the whole or any part of such building in favour of the landlord. Under the Proviso to Section 16 (1), in the case of a vacancy referred to in Section 12 (4), the District Magistrate is to give an opportunity to the landlord or the tenant, as the case maybe, of showing that the said section is not attracted to his case before making an allotment order.

Chapter III relates to the regulation of letting. Section 11 deals with a the prohibition to occupy without allotment order. Section 12 is a deeming clause. Section 12 (4) provides that the District Magistrate shall give an opportunity to the

landlord or tenant, as the case may be, of showing that the said Section 16 (1), is not applicable. Section 13 provides that where a landlord or tenant ceases to occupy a building or part thereof, no person is to occupy it in any capacity on his behalf or otherwise than under an order of allotment or release under Section 16. Section 15 casts a duty on every landlord or tenant to give intimation of vacancy to the District Magistrate. The Apex Court in *Ganpat Roy v. Additional District Magistrate* Page 1635 has observed as under:

Under the proviso to Section 16 (1), which was inserted by the 1976 Amendment Act, the District Magistrate is required in the case of a vacancy referred to in Sub-section (4) which includes a deemed vacancy under Section 12 (2) to give an opportunity to the landlord or the tenant, as the case may be, of showing that Section 12 (4) is not attracted to his case before he makes an order of allotment under Clause (a) of Section 16 (1). Thus, this proviso, however, does not apply in the case of an order of release made.....The tenant has thus no adequate or effective remedy against an order notifying a vacancy. In our opinion, the scheme of the Act would show that a tenant of premises in whose case it is found that there is a deemed vacancy has no efficacious or adequate remedy under the Act to challenge that finding. A petition under Article 226 or 227 of the Constitution filed by such a tenant in order to challenge that finding cannot, therefore, be said to be premature.

The aforesaid view of the Apex Court has been relied upon by the Division Bench of Allahabad High Court in *Sudershan Singh Bedi*, 1993 (1) ARC 121. The observations in *Sudershan Singh Bedi* (supra) are quoted below: 'The declaration of vacancy by Rent Control and Eviction Officer contemplates pleadings and evidence and the Rent Control and Eviction Officer is invested with the power of a civil Court in regulating the procedure for taking evidence etc. He is also to determine the dispute after taking into account the objections raised by the parties and has to pass reasoned order.'

19. In *Ganpat Rai v. Addl. District Magistrate*, AIR 1985 SC 1635 : 1985 (2) ARC 75 (SC) : 1985 SCFBRC 279 (SC), considering the scheme of the Act for declaration of vacancy the Court held that before declaration of vacancy an

objector has a right to be heard. The relevant paragraph of the case is quoted below:-

'It equally does not appear to be correct to hold that an order notifying the vacancy did not injury and caused no prejudice to the interest of any party because an order notifying the vacancy could be objected to and if any objections were filed they would have to be decided after considering the evidence that the objector or any other person concerned might adduce and that after an order of allotment or release was passed following upon the notification of vacancy, the aggrieved person could file a review application or an appeal under Section 18. In so holding the Court appears to have overlooked the stage for objecting to a vacancy being notified was not after it was notified but as provided by Rule 8 before it was notified and that under the same Rule 8 the notification of vacancy could only be after the objections were heard and disposed of. This Court itself pointed out in that case that the Act did not provide for hearing at the stage when the District Magistrate passed an order of allotment of lease.'

Apart from that Section 37 provides finality to the orders passed under this Act. Section 37 provides as under:-

'No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

Where an order purported to have been made and signed by exercised of any power conferred by or under this Act, a Court shall unless the contrary is proved, presume that such order was so made by that authority.'

20. Counsel for the petitioner has stated that in view of the judgment of Devendra Kumar Pandey, petitioner cannot be evicted and only remedy lies in civil Court. In the case of Gurnam Singh, the case of Devendra Kumar Pandey has already been explained. The facts of Devendra Kumar Pandey are distinguishable in as much as in that case the suit was already pending and as such directions were made.

21. However in view of the law laid down by the Apex Court as referred in the case of Gurnam Singh (supra) and the Division Bench of the Allahabad High Court in

the case of Geep Industrial Syndicate Ltd. (supra), the observations in the case of Devendra Kumar Pandey, are only per incuriam in view of the interpretation of the provisions of Sections 11, 12 and 13-A of the Act No. 13 of 1972 as stated aforesaid.

22. In view of the above, the writ petition is devoid of merit. However the petitioner is given time by 30th November 2004 to vacate the garage in question provided undertaking is given within 3 weeks and further pays the entire damages within 3 weeks.

23. Writ Petition is dismissed. No order as to costs.

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