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**SooperKanoon Citation : [sooperkanoon.com/514201](http://sooperkanoon.com/514201)**

**Court : Uttaranchal**

**Decided On : Jul-30-2005**

**Reported in : 2006(1)AWC719(UHC)**

**Judge : Prafulla C. Pant, J.**

**Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 11, 12 and 16; [Transfer of Property Act, 1882](#) - Sections 53A; Bihar Building (Lease, Rent and Eviction) Control Act. 1983; [Constitution of India](#) - Articles 226 and 227**

**Appeal No. : C.M.W.P. No. 53 of 2004 (M/S)**

**Appellant : Arun Kumar**

**Respondent : Rent Control and Eviction Officer and ors.**

**Advocate for Def. : Rajendra Dobhal, Adv.**

**Advocate for Pet/Ap. : B.P. Nautiyal and; H.M. Bhatia, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

**Prafulla C. Pant, J.**

1. By means of this petition, moved under Article 227 read with 226 of the [Constitution of India](#), the petitioner has sought writ in the nature of certiorari quashing the judgment and order dated 20.1.2004 passed by the Rent Control and Eviction Officer, Dehradun, in case No. 54 of 1998, whereby vacancy has been declared in respect of the property No. 53H, ground floor, Rajpur Road, Dehradun.

2. Brief facts of the case, as narrated in the petition, are that the petitioner was initially a tenant in the aforesaid property consisting of two rooms and a bathroom, in the ground floor, since 1991. Thereafter, an agreement for sale of the said property was allegedly entered between the petitioner Arun Kumar and respondent No. 2, Ashok Kumar and an amount of Rs. 5,000 was paid to him as earnest money on 30th August, 2001. On said date, a receipt-cum-possession letter was issued by the respondent No. 2, a copy of which is Annexure-1 filed with the petition. However, respondent No. 3, Km. Poornima Pathak, thereafter moved an application (copy Annexure-2 to the petition) under Section 16 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 for allotment of said accommodation, The Rent Control and Eviction Officer on said application, invited the report of the Rent Control Inspector, who submitted his report dated 7.9.1998 (copy Annexure-3 to the petition). However, the petitioner alleges that his possession in the property is protected under Section 53A of the [Transfer of Property Act, 1882](#), and his occupation cannot be said to be an unauthorized occupation. The petitioner has admitted that the document which was executed by the respondent No. 2 was impounded vide order dated 27.12.2002, as the same was not sufficiently stamped. Meanwhile, the petitioner has filed a suit for specific performance of contract against the respondent No. 2, impleading respondent No. 3 also, as a party therein. After considering the objection of the petitioner, the Rent Control and Eviction Officer passed order dated 20.1.2004 (copy Annexure-6 to the petition), whereby vacancy has been declared in respect of the property in question holding that petitioner Arun Kumar is in unauthorized occupation of the accommodation in question. The petitioner had challenged said order on the ground that his occupation was not un-authorized one as his possession is protected under Section 53A of the [Transfer of Property Act, 1882](#).

3. Respondent No. 2 (the landlord) did not contest this petition, but respondent No. 3 (applicant for allotment) has filed a counter-affidavit, wherein she has stated that since the petitioner was allowed to occupy the accommodation in question as tenant by the landlord (respondent No. 2) without an allotment order, as such, since 1991, the possession of the petitioner in the accommodation was an unauthorized occupation. Challenging the agreement between the petitioner and respondent No. 2, it has been stated in the counter-affidavit that it was neither a registered document nor a valid agreement. It is further stated that petitioner did not file any objection relating to protection under Section 53A of the [Transfer of Property Act, 1882](#) before the Rent Control and Eviction Officer, nor is he entitled to said protection. However, she has admitted that a suit has been filed by the petitioner for specific performance of contract but the answering respondent has alleged that it has no effect on the question of vacancy, which has been determined by the Rent Control and Eviction Officer (respondent No. 1).

4. I heard learned Counsel for the parties and perused the record.

5. It is not disputed between the parties that the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, (Act No. 13 of 1972) is applicable to the building in question. It is also not disputed between the parties that petitioner was inducted as tenant by respondent No. 2 (landlord) in the year 1991, without any allotment order. Section 11 of the U. P. Act No. 13 of 1972, reads as under :

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

Section 12 of said Act further provides 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.

(2) ...

(3) ...

(4) ...

(5) ...

Impugned order shows that the vacancy has been declared under Section 12 of the aforesaid Act, i.e., the U. P. Act No. 13 of 1972. The reasons mentioned in the Impugned order show that the Rent Control and Eviction Officer has found that since the occupation of Arun Kumar (petitioner) is unauthorized in the building (in violation of Section 11 and clause (b) of Section 12, quoted above), as such, he has declared it a vacant building. Respondent No. 3 is applicant for allotment of the house in question. In the circumstances, since the U. P. Act No. 13, 1972 is applicable to the building, and the petitioner was inducted in the year 1991 by the landlord (respondent No. 2) in violation of Sections 11 and 12 of said Act, as such, the finding of the Rent Control and Eviction Officer that occupation of the petitioner is unauthorized, since 1991, cannot be said to be erroneous or against the law.

6. Now, only question before this Court is, whether, the possession of the petitioner is protected under Section 53A of the [Transfer of Property Act, 1882](#), if so, its effect

The Section 53A of the [Transfer of Property Act, 1882](#), reads as under :

53A. Part Performance.--Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in

possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or

continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

A plain reading of aforesaid section clearly shows that a transferee who is already in possession if continues in possession on account of contract with the transferor he can protect his possession but, at the same time, the protection provided under the aforesaid Section 53A is available only against the transferor or the person claiming under him. Neither the Rent Control and Eviction Officer, nor respondent No. 3, Poornima Pathak are transferor nor any person claiming right under him. At the most, it is respondent No. 2, Ashok Kumar, the landlord who can be said to be a transferor (if the alleged agreement is treated to be valid). In other words possession of transferee is protected only against transferor. As such, the impugned order passed against the landlord (the alleged transferor) by the respondent No. 1, remains unaffected. However, this Court is not inclined to express any view as to the validity of the alleged agreement and impounding of the document for being insufficiently stamped, as a civil suit No. 632 of 2002, appears to have been pending before the civil court regarding the specific performance of contract between the petitioner and respondent No. 2.

7. Learned counsel for the petitioner drew my attention to the principle of law laid down in *Rajendra Tiwary v. Basudeo Prasad* 2001 AIR SCW 4708, and it is argued that the Rent Control and Eviction Officer has no authority to go into the question of title of the accommodation in question and he should have not declared the vacancy till the title is declared by the civil court. I have gone through the aforesaid case law. In its paragraph 16, the Apex Court has held that under the Bihar Building (Lease, Rent and Eviction) Control Act. 1983, the Court has no power to enquire into the title of the plaintiff. But the aforesaid case law does not help the present petitioner for the reason that nowhere in the impugned order, the Rent Control and Eviction Officer has entered into the controversy of title. Rather, it is admitted fact that respondent No. 2, Ashok Kumar, is the owner of the building in question and even if he has executed any agreement of sale in favour of the petitioner, the sale deed is yet to be executed, as such, neither said controversy was before the Rent Control and Eviction Officer nor has it given any finding as to the validity of the agreement.

8. In view of aforesaid discussion, there appears no illegality in the impugned order dated 20.1.2004 declaring vacancy in respect of accommodation in question. Therefore, the petition is liable to be dismissed. The same is dismissed. No order as to costs.