

**Ashok Kumar and ors. Vs. First Additional District Judge, Nainital and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/660214](http://sooperkanoon.com/660214)

**Court :** Supreme Court of India

**Decided On :** Jan-09-1981

**Reported in :** AIR1981SC771b; 1981(1)SCALE50; (1981)1SCC427; [1981]2SCR504; 1981(13)LC76(SC)

**Judge :** P.N. Bhagwati and; S. Murtaza Fazal Ali, JJ.

**Acts :** Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 16(1)

**Appeal No. :** Civil Appeal No. 1154 of 1974

**Appellant :** Ashok Kumar and ors.

**Respondent :** First Additional District Judge, Nainital and ors.

**Advocate for Def. :** Bishamber Lal, Adv. for Respondent No.3

**Advocate for Pet/Ap. :** R.K Garg,; Vijay K. Jain and; R.K. Gupta, Advs

**Prior history :** Appeal By Special Leave From the Judgment and Order dated 16-11-1978 of the Allahabad High Court in Writ Petition No. 1086/76.

**Judgement :**

**Fazal Ali, J.**

1. This appeal by special leave is directed against an Order dated November 16, 1978 of the High Court of Allahabad dismissing the writ petition filed by the appellants.

2. The facts of the case fall within a narrow compass and may be summarised thus.

3. The premises in question which are situated in Nainital were commonly known as 'Waverly Quarters' and properly called as 'Hotel Waldrof'. According to the appellants the premises were rented out to one Keshar Singh on an annual rent of Rs. 14,000 on November 17, 1953 and the allotment of Hotel Waldrof to the tenant, Keshar Singh, was confirmed by the Rent Controller sometime in the year 1954. Thereafter, the tenant-Keshar Singh defaulted in the payment of rent resulting in a suit filed by the appellants for his eviction. This suit was filed on 9-4-72 for ejectment and for recovery of arrears amounting to Rs. 26,743, due up to June 4, 1971. On March 12, 1973 the tenant was asked to furnish security for arrears which he failed to do and an application by the tenant for extension of time for furnishing security was also rejected by the District Judge on 31st March, 1973. On April 25, 1973, the landlord-appellant in anticipation of the premises falling vacant filed an application before the Rent Control and Eviction Officer, Nainital (hereinafter referred to as the 'Eviction Officer') under Section 16 of The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972) (hereinafter referred to as the 'Act') for release of the building in question. On this application, the Eviction Officer directed the Inspector to submit a report on the question as to whether or not the premises had fallen vacant. Meanwhile as the tenant had not deposited the rent as directed by the Court, nor furnished the security his defence was struck off and the appellant's suit for eviction was decreed on 9-5-1973.

4. After the decree for ejectment was passed against the tenant, Respondent No. 3, Harbans Singh, filed an application on 11-5-1973 in the court of District Judge, Kumaon, Nainital on the allegation that he was a partner of Keshar Singh in the business of Hotel Waldrof with the consent and permission of the landlord and had purchased the moveables of the aforesaid Hotel from Keshar Singh. He further

prayed that the landlord-appellant be directed not to dispossess him (Harbans Singh). This application was, however, rejected by the District Judge on the ground that Harbans Singh was neither a party to the ejectment suit nor was any objection filed by him during the pendency of the suit alleging that he had any share in the business. The application of Harbans Singh was accordingly rejected by the District Judge on 12-5-73.

5. Subsequently on 21-5-1973, the Rent Control Inspector reported to the Eviction Officer that the building in suit which was allotted to Keshar Singh in 1954 had fallen vacant in pursuance of the decree for ejectment obtained by the appellant. During the pendency of the suit, the original tenant, Keshar Singh had been appointed a Receiver of Hotel Waldrof but after the decree was passed, he delivered physical possession of the Hotel to the appellant-decree holder in the presence of witnesses. It appears that Harbans Singh tried to resist the delivery of possession and abused the Commissioner but to no avail.

6. Thus, having failed in his attempts, to resist the delivery of possession to the appellant, Harbans Singh filed a suit (No. 47 of 1973) in the court of District Judge against the appellant and the former tenant, Keshar Singh for setting aside the ejectment decree passed in suit No. 27 of 1972 alleging that as he had become the sole tenant, Keshar Singh ceased to be a tenant of the disputed property and the decree was wrongly passed against Keshar Singh. He also pleaded that the suit being a collusive one, the decree should be set aside. The suit filed by respondent No. 3 does not appear to have been pursued and ultimately it stood dismissed on 11-6-1975.

7. Sometime in July 1973 the appellant by means of an application informed the Eviction Officer that the landlord had been delivered possession of the Hotel and prayed that since the premises had fallen vacant, the same may be allotted to him. Respondent No. 3, however, on 8-11-1973 filed objections to the application of the landlord for releasing the accommodation on the allegation that he had filed a suit for setting aside the decree. The Rent Control Inspector on being asked to report the exact position submitted his report to the Eviction Officer who rejected the application filed by respondent No. 3 and by an order dated 18-11-1974 released

the property in favour of the appellant with the exception of the outhouses which were in possession of different tenants. Harbans Singh then filed an appeal on 11-4-1974 before the appellate authority challenging the order of the Eviction Officer. This appeal was admittedly time-barred. The appeal was, however, allowed by the appellate authority on the ground that the application filed by the landlord was not maintainable under Section 16 of the Act as the tenant had not been actually ejected when the application for notifying the vacancy was made.

8. There can be no doubt that the appellate authority took a wrong view of law in allowing the appeal because under the provisions of Section 16(1) of the Act it was not necessary that the application for notifying the vacancy should be made only after the premises have become actually vacant. Section 16(1)(a) runs thus:

16(1) Subject to the provisions of this Act, the District Magistrate may by order-(a) 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 but not appurtenant land alone, to any person specified in the order (to be called an allotment order).

(Emphasis supplied).

9. It is manifest that under Section 16(1)(a), it is not necessary that the premises must actually become vacant before an application under Section 16 could be filed before the District Magistrate. In the instant case, as a decree for ejectment was under contemplation, it was open to the appellant to have moved the District Magistrate for notifying the vacancy under Section 16(1)(a) of the Act.

10. We have already pointed out that the premises did fall vacant subsequently and the delivery of possession was also given to the landlord in pursuance of the decree of ejectment passed by the civil court. Respondent No. 3 appears to have made a futile attempt to make confusion worse confounded by representing that the premises were not vacant when he knew full well that the delivery of possession was given to the landlord in his presence and he had later filed a suit for setting aside the decree which was dismissed. Thus, it appears from the record that respondent No. 3, Harbans Singh, never came in possession of the premises in question but tried to defeat or delay the decree passed by the civil court in

favour of the appellant by various subterfuges and pretexts. However, as the appellate authority had accepted the appeal filed by respondent No. 3, the appellants were compelled to take the matter to the High Court by way of a writ petition. The High Court, however, dismissed the writ petition mainly on the ground that before notifying the vacancy, the Eviction Officer did not hear respondent No. 3. The High Court does not appear to have considered the history of the case and the various proceedings leading to the eviction of Keshar Singh and to the fact that respondent No. 3 had absolutely no claim or right to the property. At no stage could Harbans Singh prove that either he was a sub-tenant or a partner of Keshar Singh. His attempt to get the decree, passed in favour of the appellant, set aside failed.

11. In these circumstances, therefore, there was no question of his being heard by the Eviction Officer after the possession was delivered to the landlord and the vacancy was notified. If at all, such a hearing would have been futile and would have ultimately led to the same result. In these circumstances, we are clearly of the opinion that the High Court erred in law in dismissing the writ petition and up holding the judgment of the District Judge remanding the matter to the Eviction Officer. We, therefore, allow this appeal, set aside the judgment of the High Court as also that of the District Judge (the appellate authority) and restore the order of the Eviction Officer releasing the accommodation in favour of the appellant. The Appellate will be entitled to costs in this Court quantified at Rs. 2,000 (Rupees two thousand only).