

Mohd. Azeem

Vs

District Judge, Aligarh and Others

Civil Appeal No. 360 of 1985

(Ranganath Misra, D. A. Desai JJ)

23.04.1985

JUDGMENT

RANGANATH MISRA, J. -

1. The appellant, who filed a writ application before the Allahabad High Court assailing the revisional order of the District Judge of Aligarh, is in appeal by special leave.

2. One Manzoor Hussain was admittedly the tenant of a premises located at Aligarh. He died in 1969 leaving behind a widow and three sons - Mohd. Azeem (the appellant), Mohd. Naim, Mohd. Nadeem - and a daughter Nuzhat. The widow and the sons and the daughter of Manzoor continued to live in the tenanted premises on payment of rent. It is the case of the appellant that being the eldest member of the family he was paying that rent. The Rent Control Inspector submitted a report on June 22, 1983, that Naim, appellant's brother, had built a house four or five years before in Amir Nisan, a part of the city of Aligarh and, therefore, the tenancy must be deemed to have terminated in view of the provisions contained in Section 12 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ('Act' for short). When notice was issued from the Court of the Rent Control and Eviction Officer, Aligarh, respondent 2 herein, the appellant entered contest by filing an affidavit to the effect that he has been living with 13 members of his family in the premises and rent was being collected from him following the death of his father Manzoor Hussain. Merely because Naim had built a house in 1980, the tenancy in favour of the other heirs of Manzoor Hussain would not terminate and in such circumstances the premises cannot be held to have become vacant and available for allotment to other person. The Prescribed Authority did not accept the of the appellant and held that the house in question must be to have become vacant when Naim, who was a member of the family, had built a house. Appellant carried a revision before the District Judge, respondent 1, which was dismissed. The revisional authority placed reliance on a Full Bench decision of the Allahabad High Court in the case of Smt. Rama Devi Shakya v. Additional District Judge, Lucknow (1981 All Rent Cases 305 : 1981 (UP) 1 RCC 558). The Full Bench had held :

....where one of the co-tenants builds or otherwise acquires another residential building within the meaning of sub-section (3) of Section 12, the tenant, namely, the entire set of co-tenants shall be deemed to have ceased to occupy the building under his sub-tenancy. It cannot be that the share belonging to the co-tenant in default alone shall fall vacant.

3. The writ application filed by the appellant before the High Court was summarily dismissed as the Court was of the view that it was not a fit case for interference under Article 226 of the Constitution.

4. At the hearing the decision of the Full Bench of the Allahabad High Court in Rama Devi case (1981 All Rent Cases 305 : 1981 (UP) 1 RCC 558) was placed before us. An attempt was made on the appellant's side to show that the interpretation put on Section 12(3) of the Act was erroneous and a wrong conclusion had been reached. Counsel for respondent 3 appointed by the Supreme Court Legal Aid Committee supported the judgment and relied upon its conclusion for upholding the decision of the learned District Judge.

5. Reference to some of the provisions of the Act becomes necessary before we proceed to make an analysis of the Full Bench decision. Chapter III of the Act makes provision for regulation of letting. Section 11 provides that "no person shall let any building except in pursuance of an allotment order issued under Section 16". Section 12 makes provision for deemed vacancies of buildings in certain cases. Sub-section (3) of Section 12 is relevant for the disposal of the appeal. That sub-section runs thus :

In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy :...

As the words "tenant" and "family" occur in sub-section (3), reference to the definitions of these two terms is also relevant. 'Tenant' and 'family' have been defined in clauses (a) and (g) respectively of Section 3. 'Tenant' according to the definition in relation to a building means : "a person by whom its rent is payable, and on the tenant's death - (1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death; (2) in the case of a non-residential building, his heir". 'Family' in relation to a landlord or tenant of a building, means : "his or her - (i) spouse, (ii) male lineal descendants, (iii) such parents, grand parents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her, and includes, in relation to landlord, any female having a legal right of residence in that building".

6. There is no dispute that along with Manzoor his wife, his three sons and the daughter were living in the disputed premises. After Manzoor's death, the widow, three sons and the daughter continued to live in that house. There is reference to payment of rent in the order of the Prescribed Authority and in the petition for special leave an assertion has been made that it was the appellant who had been paying the rent after the death of Manzoor. This plea has not been controverted. In the setting of things, the appellant being the eldest sons, was naturally expected to pay the rent. There is material on record to show that Azeem and Naim were already married and have been living along with their wives in the house along with other members of the family.

7. As the definition of 'tenant' indicates, on a tenant's death his heirs as normally resided with him would also be tenants qua residential buildings. Therefore, the widow, all the three sons and unmarried daughter became tenants when the Act came into force notwithstanding the fact that Manzoor had died in 1969.

8. We may now revert to Section 12(3) of the Act. Admittedly we are concerned with a residential building. It is the case of the Prescribed Authority and there is no dispute about it, that Naim has built a house in the same city some time in 1980. Naim's building a house and moving into it cannot wipe out the interest of the widow, other two sons, including the appellant, and the daughter, if in

their own right they were tenant by satisfying the requirements of the definition. The words 'if the tenant or any member of his family' obviously mean, in the facts of the case, Naim and the members of his family and do not relate to the widow, other two sons and the daughter of Manzoor. If everyone's interest was to be wiped out, Section 3 had to provide differently and instead of 'he shall be deemed to have ceased to occupy the building under his tenancy' as occurring in Sub-section (3) reference would have been made to all the tenants.

9. The ratio of the Full Bench decision to which we shall presently advert and which has been relied upon by the Prescribed Authority and the learned District Judge, is bound to lead to situations which would never have been contemplated by the legislature. For instance, if Naim or Nadeem found it inconvenient to live with the other members of the family when Manzoor died and he moved into another house with a view to living separately and the fact of such a move on his part brought about cessation of tenancy and the house Manzoor lived it was deemed to have become vacant, the widow, the other sons and the daughter of Manzoor would immediately find themselves in a very helpless condition. Or for instance, if one of the sons got an employment in a factory located within the same city and for convenience moved into a factory quarter for residence, the same result would ensue to the miserably plight of the other members. Or consider the case of a divorced daughter of the tenant living with him, when she builds or acquires a separate premises with funds provided by he ex-husband. No sooner she moves into her house, the father's tenancy comes to an end. Or take the case of an expanding family. Several sons come of age are married and many children are born to them. The accommodation becomes insufficient and one or two of the sons moves into a separate house to ease the situation. If in such premises, father's tenancy terminate and the house in which he and members of his family reside is deemed to have become vacant, the family would be visited with hardship knowing no bounds. Take the unhappy and miserable lot of a couple whose infirm son, suffering from a serious malady highly contagious, is shifted to an independent residence for exclusion. Would that too lead to termination of tenancy qua the main residential premises ?

10. In an Act intended to stabilise letting, rent and eviction by regulation, the legislature could not have evinced such intention. It is true that the legislative purpose behind Section 12 appears to be in keeping with the scheme of the Act - making available as much accommodation as possible for allotment to needy persons. That being the purpose, the legislature could not have intended to render persons rehabilitated in tenanted premises homeless. In our view, when the Act defines 'tenant' and 'family' reference to personal law is irrelevant and the concept of joint tenancy is foreign.

11. Now a reference to the Full Bench decision. The following questions had been referred to the Full Bench for decision :

1. (a) Whether the view expressed in *Budh Sen v. Sheel Chandra Agarwal* (1977 AWC 553 : AIR 1978 All 88 : 1978 (UP) RCC 131 : 1977 All Rent Cas 384) and *Ramesh Chand Bose v. Gopeshwar Prasad Sharma* (AIR 1977 All 38 : 1976 AWC 301 : 1976 Ren CJ 380 : 1976 2 All LR 711), to the effect that the heirs of a tenant are tenants-in-common and not joint tenants, is consistent with the view expressed by the Supreme Court in *Badri Narain v. Rameshwar Dayal* (AIR 1951 SC 186 : 1951 SCR 153 : 1951 SCJ 252) ?

(b) Do such heirs of a tenant become tenants-in-common interse but remain joint tenants qua the landlord ?

(c) What is the effect of one of such heirs acquiring another building as mentioned in

Section 12(3) of U.P. Act No. 13 of 1972 ?

2. Whether the view expressed in *Sri Nath Tandon v. Rent Control and Eviction Officer* (1979 All Rent Cases 351 : 1980 (UP) I RCC 320), to the effect that a member of the family who acquires another building should both have been normally residing with the tenant and also been wholly dependent on him, for Section 12(3) to be attracted, is consistent with Explanation (b) to Section 12(3) ?

12. The Full Bench proceeded on the basis that the heirs became joint tenants and answered the main problem by saying that if any member of the family of such joint tenants built or acquired a house in vacant State the tenancy would be deemed to have ceased. In framing the question for reference and in answering the referred question, the definition of 'tenant' was lost sight of. All the heirs as normally reside with the deceased tenant in the building at the time of his death become tenants. The definition does not warrant the view that all the heirs will become a body of tenants to give rise to the concept of joint tenancy. Each heirs satisfying the further qualification in Section 3(a)(1) of the Act in his own right becomes a tenant and when we come to Section 12(3) of the Act, the words "the tenant or any member of his family" will refer to the heir who has become a tenant under the statutory definition and members of his family. 'Family' having been defined, for convenience if we refer to the facts of the present appeal qua Naim, the definition would cover Naim's wife, his male lineal descendants, his mother and those who are covered by clause (iii) in the definition of family. It would not by any stretching embrace the appellant or his brother Nadeem and the sister. The Full Bench, in our view, fell into an error in working on the basis of joint tenancy running counter to the Scheme under the Act. The conclusion reached by the Full Bench, in our view is, therefore, wholly unsustainable and we cannot extend our agreement to the conclusion that when one of the members of the family built a house or moved into a vacant premises (other than the tenanted premises in occupation), there was a deemed cessation of the tenancy and a deemed vacancy occurred of the tenanted premises.

13. Now coming to the facts of the appeal, when Naim built a house and shifted into it, the tenancy of the appellant and his brother along with their mother and sister did not terminate. They continued to be tenants in their own right being covered by the definition of 'tenant' and there is no deemed vacancy as held by the Prescribed Authority, the learned District Judge and the High Court. The appeal is allowed and the decisions of the different forums referred to above are set aside with costs throughout. Respondent 2 who by making his order of deemed vacancy gave rise to the dispute which ultimately required the appeal to be brought up here, in our opinion, must alone bear the costs. Hearing fee is assessed at Rs. 2000.

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