

Waqf Mohammad Hussain Through Its Mutwalli and Another

Vs

Additional District Judge and Others

Civil Appeals Nos. 5767-5768 of 1997

(Dr. A. S. Anand, S. Saghir Ahmed JJ)

24.09.1998

ORDER

1. These appeals call in question an order of the High Court of Allahabad in CMWP No. 7855 of 1990 and CMWP No. 10826 of 1988 decided on 28-7-1997 by one and the same order.
2. The subject-matter of dispute is a portion of House No. 29/39, Kanpur Road, Allahabad. By an order dated 31-5-1988, it was allotted in favour of Respondent 3 (petitioner in CMWP No. 7855 of 1990). It appears that the house was previously in the occupation of Shri R. B. Sethi, Advocate, who shifted to Bombay in 1983 where he died on 8-7-1983. After his death, his son Vinay Sethi paid the rent of the premises for six months. On an application filed by the appellants, the Rent Control and Eviction Officer, taking into consideration the reports of the Inspector dated 23-4-1984 and 7-4-1986, recorded the finding that Shri Ashok Kumar Srivastava was not staying in the premises as a guest but was an unauthorised occupant. The Rent Control and Eviction Officer on the basis of the material on the record also returned the finding that with effect from 12-4-1984, i.e., the date from which Shri Ashok Kumar Srivastava was found to be in unauthorised occupation, there was no vacancy within the meaning of Section 12 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and it was held that the premises in question would be deemed to be vacant since 12-4-1984. That being the position, the appellants ceased to have any right to nominate any person for allotment under Section 17 of the Act after the expiry of the prescribed period. The nomination made by the appellants in this case on 1-3-1986, being beyond the prescribed period, did not merit any consideration and the learned Rent Control and Eviction Officer rightly did not consider it. The revisional court fell in complete error in ignoring this aspect of the case and overlooking the legal position that after there is a deemed vacancy within the meaning of Section 12 of the Act, the right to nominate the tenant under Section 17(1) of the Act cannot be exercised after the prescribed period. The High Court, therefore, rightly reversed the finding of the revisional court and restored the order passed by the Rent Control and Eviction Officer. We do not find any error to have been committed by the High Court in the established facts of this case. The appeals, therefore, have no merits, they fail and are dismissed with costs.