

Achal Misra

Vs

Rama Shanker Singh & others

Civil Appeal No. 3322 of 1998

(Mr. V.N. Khare and Mr. Y.K. Sabharwal, JJ.)

17.08.2000

ORDER

This appeal is directed against the judgment and order dated 29.1.97 passed by the Allahabad High Court, bench at Lucknow. The facts giving rise to this appeal, are these:

The house in dispute originally belonged to late Dr. C.P. Tandon, who was in occupation of the house till his death on 24.8.77. After his death, his son late Dr. K.K. Tandon, became the owner/landlord of the house. Dr. K.K. Tandon died on 10.6.78 in England. After his death, his wife Smt. Asha Tandon became its owner as landlady. But she was also in England at the time of the death of her husband. On 28.8.78, respondent No.1 applied for allotment of the whole house in question in his favour. On 11.9.78, the rent control inspector submitted his report stating therein that first floor of the premises is vacant under Section 12 of the U.P. Urban Building s (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act), and, therefore, allotment proceedings may be taken. Before sending the report, the rent control inspector did not comply with the requirements of sub-rule (2) of rule 8 of the Rules which requires that the inspection of the premises to be carried out in the presence of landlord as far as possible and that the inspector should elicit information from two respectable persons of the locality. On 15.9.78, the Additional District Magistrate on the basis of the inspector's report issued notice inviting objections for allotment of the first floor of the suit premises. Respondent No.3 filed objections to the aforesaid notice, inter alia, stating that no portion of the suit premises is vacant. However, the Additional District Magistrate on 23.10.78 declared entire house as vacant. The Additional District Magistrate by an order dated 8.11.78 allotted the ground floor of the house in favour of respondent No.1 and on 10.11.78, the Additional District Magistrate by another order allotted the first floor of the suit premises in favour of respondent No.2. This Court in Dr. Tirlok Singh and Co. vs. District Magistrate, Lucknow and Ors. [1976 (3) SCC 726] was of the opinion that any notification of vacancy in respect of premises causes no prejudice to the interests of any party. Since a notification of the vacancy is a step-in-aid of an order of allotment or release and it is only when such an order of allotment or release is passed that the landlord or the tenant, as the case may be, can have a grievance. An order of allotment and release are, in the first instance, reviewable by the District Magistrate himself and on order passed by the District Magistrate under Section 16 is appealable under Section 18 and in view of such an alternative remedy, the writ petition filed under Article 226 of the Constitution against notification of vacancy is premature and cannot be entertained by the High Court. Acting upon the decision in the aforesaid case, the appellant instead of filing a writ petition under Article 226 of the Constitution preferred two revision petitions against the order passed by the Additional District Magistrate notifying vacancy and allotting the ground floor and first floor of the premises in favour of respondent Nos. 1 and 2, respectively before the District Judge, Lucknow. The Additional District Judge who heard the matter found that notification of vacancy was totally unfounded and,

further, was in contravention of sub-rule (2) of rule 8 of the Rules. The Additional District Judge found that since there was no vacancy, the premises could not have been allotted to the respondents. Consequently, the revisions were allowed and orders notifying the vacancy as well as allotment were set aside. The allottees thereafter preferred a writ petition in the High Court challenging the order passed by the Additional District Judge allowing the revision filed by the landlady.

During pendency of the writ petition, this Court in Ganpat Roy and Ors. vs. Additional District Magistrate and Ors. [1985 (2) SCC 307] held that the view taken by this Court in Tirlokh Singh's case (supra) that no prejudice is caused by the a notification of vacancy and, therefore, the writ petition filed under Article 226 is not maintainable is erroneous. While holding so, this Court held thus:

"It equally does not appear to be correct to hold that an order notifying the vacancy did no injury and caused no prejudice to the interests 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 that the stage for objecting to a vacancy bbeing notified wasn't after it was notified but, as provided by Rule 8, before it was notified and that under the said Rule 8 the notification of vacancy could only be made after the objections were heard and disposed of.

In such an event, it would be difficult to say that he can exercise his right of review on the ground that there was no vacancy. This would apply equally where an order of release is made. Further, the revision which is provided for under Section 18 is against an order of allotment or release and not against a notification of vacancy and an issue, which was concluded earlier and on the basis of the finding on which the District Magistrate had proceeded to allot or release the premises, cannot be re-agitated in revision..The tenant has thus no adequate or effective remedy against an order notifying a vacancy".

In substance this Court in Ganpat Roy's case (supra) held that validity of notification of vacancy cannot be challenged in a revision filed under section 18 of the Act since notification of vacancy is not an order passed under section 16 of the Act.

When the matter came up before the High Court, the High Court relying upon Ganpat Roy's case allowed the respondents' writ petition holding that it was not open to the landlord to challenge the notification of vacancy in revision as they not challenged the same by way of a writ petition and, therefore, they are debarred from challenging the validity of vacancy in a revision filed under Section 18 of the Act.

After we heard the matter, we find the appellant having filed the revision petitions in pursuance of mandate of this Court in Tirlokh Singh's case, she cannot be left without remedy in view of Ganpat Roy's case (supra). Moreover, in Ganpat Roy's case, this Court was considering as to whether a petition under Article 226 of the Constitution against notification of vacancy is maintainable or not. In that connection, this Court found that the notification of vacancy causes prejudice to landlord or a tenant and since there is no equally efficacious remedy available under the Act, therefore, a petition under Article 226 is maintainable. This Court did not hold that landlord or tenant had no remedy at all under the Act.

On examination of provisions of the Act and Rule, we find that Rule 8(2) of the rule provides that the inspection report of the inspector is required to be pasted on the notice board in the office of the District Magistrate for information of the general public and after the notice is pasted, a tenant or a landlord has a right to file an objection, and if any objection is filed within three days from the date of pasting of the report, the said objection is required to be decided by the Rent Controller. It is after the said objection is decided, the vacancy is notified. Under proviso of sub-section (1) of Section 16 of the Act, the District Magistrate is further required to give an opportunity to the landlord or the tenant, as the case may, to show that there is no vacancy as contemplated under sub-section (4) of Section 12 of the Act. It is only after hearing of such objections, if filed, the District Magistrate can allot the premises. Under sub-section (5) of Section 16 of the Act, the landlord or the tenant has a further right to file a review against the order of allotment if such order is not passed in accordance with clause (a) or clause (b), as the case may be, of sub-section (1) of Section 16. Any person, who is aggrieved against any final order passed under Section 16 of the Act, is entitled to file revision under Section 18 of the Act before the District Judge on grounds enumerated therein.

In view of the aforesaid provisions it cannot be said that question of vacancy if not challenged by a separate writ petition on its notification, cannot be questioned in the revision filed under Section 18 of the Act. The question of vacancy pertains to jurisdictional facts and can very well be challenged in the revision filed against allotment order passed by the District Magistrate. In case it is found that there is no vacancy the order of allotment has to be set aside. We, therefore, feel that the decision in Ganpat Roy's case holding that the validity of vacancy cannot be agitated in a revision under Section 18 of the Act, appears to be incorrect. Since the decision in Ganpat Roy's case is by a three Hon'ble Judges, we feel it appropriate that this appeal be decided by larger bench. Let the record of the case be placed before the Hon'ble the CJI for appropriate orders.