SUPREME COURT OF INDIA

Ram Narayan Sharma

Vs.

Shakuntala Gaur

C.A.No.3159 of 2002

(D.P. Mohapatra and Brijesh Kumar JJ.)

29.4.2002

JUDGMENT

Brijesh Kumar, J.

1. Leave granted.

2. The order, dismissing a writ petition, preferred by the present appellant in the High Court, has been impugned by means of the appellant in hand. The VIth Additional District Judge, Muzaffarnagar passed an order dated 30.10.1999 in revision, setting aside the order of allotment in favour of the appellant and releasing the accommodation in question, in favour of the respondent-landlady on the ground of her *bona fide* requirement. A learned Single Judge of Allahabad High Court by order dated 16.11.1999 upheld the order passed in revision.

3. The dispute as evident, relates to the letting and release of the accommodation in question governed by the provisions of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, hereinafter to be referred to as `the Act'. It appears that one Bankey Lal was the owner and landlord of House No. 179/18, Sanjay Marg, South Bhopa Road, Muzaffar Nagar. The ground floor of the house was in the tenancy of one Trilok Chand who vacated the premises and the appellant moved an application for its allotment under Section 16(1)(a) of the Act. This petition was registered as Suit No. 63/89. Bankey Lal, the landlord of the house died during pendency of the proceeding for allotment. The appellant moved for substitution of the heirs of late Bankey Lal and brought on record his two sons namely Ravi Mohan Bhatnagar and Mohan Bhatnagar. They did not turn up to contest the application for allotment through served. By order dated 3.8.1990 the Rent Control and Eviction Officer allotted the premises to the appellant who also entered into possession of the same. Later, however, Ravi Mohan Bhatnagar, son of late Bankey Lal who was brought on record as one of his heir, filed a revision No. 19 of 1990, challenging the order of allotment on the ground that late Shri Bankey Lal had also left behind another son Shri Hari Mohan and a daughter Smt. Swaraj as his heirs but they had no notice of the proceedings. Needless to mention that

the revisionist, namely, Ravi Bhatnagar, though served had not taken any such or other objection before allotment of the accommodation to the appellant.

4. Later on, however, Hari Mohan and Mohan Bhatnagar namely, the other two sons of late Shri Bankey Lal, as a consequence of settlement, in arbitration proceedings, undisputedly became owners of the house in question. That is to say Ravi Mohan Bhatnagar was now left with no interest in the property at all so to be entitled to prosecute revision filed by him against allotment order. His brothers also never at any stage showed any interest against allotment in favour of the appellant. A further development which needs to be noted is that Hari Mohan Bhatnagar and Mohan Bhatnagar transferred the property on 15.9.1994 in favour of Smt. Shakuntala Gaur, the respondent who was already a tenant of the first and second floors of the house. She moved an application No. 83A in revision RCA No. 19 of 1990 for being impleaded as revisionist No. 2 along with Ravi Mohan Bhatnagar. Ravi Mohan Bhatnagar on the other hand moved an application and rightly, not pressing his RCA No. 19 of 1990.

5. The Addl. District Judge, however by order dated 15.1.1996 allowed the RCA No. 19 of 1990 filed by Ravi Mohan Bhatnagar and set aside the order of allotment dated 3.8.1990 which was passed in favour of the appellant, on the ground that Hari Mohan Bhatnagar and Smt. Swaraj, other two heirs of Bankey Lal had no notice of the proceedings of allotment. The Addl. District Judge also seems to have allowed the application moved by the respondent for being impleaded as revisionist No. 2 but no order appears to have been passed on the application of Hari Mohan Bhatnagar not pressing the revision. The case was remanded to the Rent Control and Eviction Officer to dispose of the same on merits. A writ petition preferred against the order dated 15.1.1996, it is informed had been rejected.

6. During the proceedings before the Rent Control and Eviction Officer, after the remand, the respondent moved an application dated 15.2.1996 for release of the accommodation in her favour saying that she *bona fide* required the same. The case was decided by order dated 27.3.1997 passed by RC & EO in Suit No. 63 of 1989, recording a finding that the respondent did not have *bona fide* need of the accommodation and dismissed the Revision and her application for release moved in Suit No. 63 of 1989. As a consequence thereof an order of allotment was again passed on 31.3.1997 by the Rent Control and Eviction Officer.

7. The respondent preferred two revisions No. 4 of 1997 and 5 of 1997 in the Court of the Addl. District Judge, impugning the orders dated 27.3.1997 and 31.3.1997. The learned Addl. District Judge allowed the revisions, setting aside the order of allotment dated 31.3.1997 passed in favour of the appellant and released the accommodation in favour of the Respondent. The writ petition preferred against the order passed in the two revisions mentioned above was dismissed by order dated 16.11.1999 which is under challenge in this appeal.

8. Learned counsel for the appellant apart from raising other grounds has urged that scope of revision under Section 18 of the Act is limited and reappraisal of evidence for recording findings of fact is not permissible. Hence, the order of revisional court suffers from infirmity of exceeding its jurisdiction in exercise of its revisional power and the High Court erred in

not taking note of the same and further submits that the application for release of the accommodation moved by the respondent could not be entertained.

9. Before dealing with questions raised, it may be better to peruse the provisions as contained under Sections 16 and 18 of the Act which read as follows:

> "16. *Allotment and release of vacant building.* -
>
> (1) Subject to the provisions of the 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); or
>
> (b) release the whole or any part of such building, or any land appurtenant thereto, in favour of the landlord (to be called a release order);
>
> [Provided that in the case of a vacancy referred to in sub-section (4) of Section 12, the District Magistrate shall give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under clause (a)].
>
> 2. No release order under clause (b) of sub-section (1) shall be made unless the *District Magistrate is satisfied that the building or any part thereof or any land appurtenant thereto is bona fide required*, either in its existing form or after demolition and new construction, by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purpose or for purposes of any profession, trade, calling or where the landlord is the trustee of a public charitable trust, for the objects of the trust, or that the building or any part thereof is in a dilapidated condition and is required for purposes of demolition, and new construction, or that any land appurtenant to it is required by him for constructing one or more new buildings or for dividing it into several plots with a view to the sale thereof for purposes of construction of new buildings.
>
> ----------
>
> ----------
>
> (a)----------
>
> (b) in the case of business purposes, the names of proprietors or partners of the business;

(c) the date, which shall not be earlier than seven days after the date of the order, by which the landlord shall deliver possession to the allottee;

(d) such other particulars as may be prescribed.

---

(7) *Every order under this section, shall subject to any order made under Section 18, be final.*

(8) *The allottee shall, subject* to the provisions of sub-sections (5) and (9) of *Section 18, be deemed to become tenant of the building from the date of allotment* or where he is unable to obtain possession by reasons of a stay order or of any other person having occupied or continued to occupy the building, *from the date on which he obtain possession*.

18. *"Appeal against order of allotment or release.* - (1) No appeal shall lie from any order under Section 16 or Section 19, whether made before or after the commencement of this section, but any person aggrieved by a final order under any of the sections may within fifteen days from the date of such order prefer a revision to the District Judge on any one or more of the following grounds, namely. :-

(a) that the District Magistrate has exercised a jurisdiction not vested in him by law;

(b) that the District Magistrate has acted in exercise of his jurisdiction illegally or with material irregularity.

(2) The revising authority may confirm or rescind the final order made under sub-section (1) or may remand the case to the District Magistrate for re-hearing and pending the revision may stay the operation of such order on such terms, if any, as it thinks fit.

Explanation. - the power to rescind the final order under this sub-section shall not include the power to pass an allotment order or to direct the passing of an allotment order in favour of a person different from the allottee mentioned in the order under revision.

(3) Where an order under Section 16 or Section 19 is rescinded, the district Magistrate shall on an application being made to him on that behalf place the parties back in the possession which they would have occupied but for such order or such part thereof as has been rescinded, and may be that purpose use or cause to be used such force as may be necessary."

10. From a perusal of the provisions quoted above namely, Sections 16 and 18 of the Act, it is clear that a person is entitled to make an application under sub-section (1)(a) of Section 16 for allotment in respect of a building which has or is about to fall vacant. Under clause (1)(b) the landlord is entitled to move an application for release of the accommodation Sub-s. (7) of Section 16 provides that every order passed under Section 16 shall be final subject to any order passed under Section 18 of the Act. The order passed under Section 16 can be interfered with in exercise of revisional jurisdiction under Section 18 of the Act in cases where the District Magistrate had exercised jurisdiction not vested or has failed to exercise the jurisdiction or has exercised it illegally or with irregularity. Under sub-s. (2) of Section 18, the revisional authority is entitled to confirm or rescind or remand the case to the District Magistrate for re-hearing.

11. The revisional court while dealing with Revisions No. 4 & 5 of 1999 held that the position of the appellant was that of a prospective allottee vis-a-vis application for release moved by the respondent-landlady. The revisional court placing reliance upon certain decisions of the High Court on the point, held that a prospective allottee has no right to file objection or to be heard against an application moved by the landlord for release and that the release application has to be heard and disposed of first. Therefore, the revisional court further held that the RC & EO erred in considering the application of the appellant for allotment and in not taking into account the affidavit filed by the landlady making averments regarding her *bona fide* need for the accommodation. So far the question of scope of the power of the revisional court under Section 18 of the Act is concerned, the revisional court relying upon the decision reported in - *Lokesh Kumar Dwivedi v. IInd Addl. District Judge, Lucknow*[1]; *Mahkar Singh v. Vith Addl. District Judge, Meerut*[2] and *Taukhid Khan v. Special Judge, Nainital*[3] held that in appropriate cases the revisional court has power to pass an order of release of the accommodation in favour of the landlord instead of remanding the matter. Thus holding that the petitioner being in a position of prospective allottee had no right to be heard in the matter of release of the accommodation in favour of the landlord. On consideration of the affidavit of the landlady the revisional court found that her requirement was *bona fide* thus passed an order of release of accommodation in her favour.

12. In the writ petition the High Court found the appellant was rightly treated as a prospective allottee and the need of the landlady having been found to be *bona fide* by the revisional court, it committed no error in releasing the accommodation in her favour. So far the legal position is concerned, we feel that there is hardly any doubt that a prospective allottee shall have no right to oppose an application for release moved by the landlord. The need of the landlord is *bona fide* or not is a matter for satisfaction of the District Magistrate and on being so satisfied, an order of release can be passed. The Release application is to be disposed of first before passing an order on the application for allotment.

13. In the present case we find that the position is very peculiar which has not been properly appreciated in correct perspective. Undisputedly the accommodation in question had fallen vacant and the appellant had applied for its allotment but in the meantime landlord Bankey Lal died. The appellant brought on record two sons of late Bankey Lal as his heirs and legal representatives viz. Ravi Mohan Bhatnagar and Mohan Bhatnagar but they filed no objection

and order of allotment was passed on 3.8.1990 in Suit No. 63/89. The appellant also got possession of the accommodation. Later however same Ravi Mohan Bhatnagar who was substituted and had chosen not to file any objection though served, preferred a revision (on) the ground that Hari Mohan Bhatnagar and Smt. Swaraj, the other who heirs of Bankey Lal had no notice although they had not raised any such objection. Later Hari Mohan Bhatnagar and Mohan Bhatnagar became owners and landlord of the house on March 20, 1994. Even after becoming the landlord of the accommodation, Hari Mohan Bhatnagar and Mohan Bhatnagar raised no objection regarding allotment and tenancy of the appellant. Later they sold the property in favour of the respondent on 15.9.1994. Ravi Mohan Bhatnagar moved application for not pressing Revision No. 19 of 1990 filed by him against allotment in favour of the appellant. The position that emerges is that respondent was not the landlady when the accommodation was allotted to the appellant in 1990 nor on March 20, 1994 when Hari Mohan Bhatnagar and Mohan Bhatnagar became landlords thus on Ravi Mohan Bhatnagar's interest in property as an heir of Bankey Lal coming to an end, the revision No. 19 of 1990 filed by Ravi Mohan Bhatnagar even if it was pending, it was an inconsequential and infructuous petition having no life so as to be prosecuted by him. The respondent had purchased the house from Hari Mohan and Mohan Bhatnagar and not from Ravi Mohan Bhatnagar who obviously was left with no right or interest in the property. She moved an application for release thereafter on 15.2.96. It may be particularly noted that the order of allotment passed on 3.8.1990 was in operation on March 20, 1994 when Hari Mohan Bhatnagar and Mohan Bhatnagar became owners of the accommodation. Between Bankey Lal and his heirs including Ravi Mohan Bhatnagar and the landlady-Respondent there stood her vendors having ownership rights of their own which they transferred to her. She had no connection with Bankey Lal or his heirs so as to be entitled for moving an application under Section 16(1)(b) for release of accommodation already allotted to the appellant before her predecessor-in-interest had acquired rights in property exclusively. The appellant therefore could not be treated as a prospective allottee nor the respondent as owner subsequent to allotment could take up Revision filed by Ravi Mohan Bhatnagar whose interest as an heir of Bankey Lal had ceased on the property vesting in Hari Mohan and Mohan Bhatnagar by virtue of arbitration.

14. In such a situation as indicated above the landlady namely the respondent in case had any *bona fide* requirement of the accommodation could only move for eviction of the appellant under the provisions of Section 21 of the Act. Section 21 reads as under :

> "21. *Proceedings for release of building under occupation of tenant.* - (1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists namely –
>
> (a) that the building is *bona fide* required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust ;

(b) that the building is in a dilapidated condition and is required for purposes of demolition and new construction :

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds, mentioned in clause (a) unless a period of three years has elapsed since the date of such purchase and the landlords has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years;
--------- ---------"

15. Perhaps due to the hurdle in the way of the landlady for moving an application for eviction under Section 21(1)(a) for a period of three years by virtue of proviso, she tried to find a short cut to be impleaded as one of the revisionists in RCA No. 19 of 1990 in which the Respondent Mohan Bhatnagar was not left with any kind of interest nor even semblance of any right to challenge the allotment.

16. In the facts and circumstances indicated above the Revisional Court and the High Court both erred in considering the appellant as a "prospective allottee". His position was more akin to an allottee in possession. The only course open to the Respondent was to move under Section 21(1)(a) of the Act for his eviction.

17. The release application under Section 16(1)(b) of the Act moved by the Respondent was misconceived. The order passed on the infructuous proceedings namely Revision No. 19/90 would be inconsequential and shall not enure any benefit either to Ravi Mohan Bhatnagar who had filed the revision nor to the respondent who moved application for impleadment as a revisionist. Initially also Ravi Mohan Bhatnagar had no justifiable reason to file the revision once having failed to file objections to the allotment application in the year 1990 more particularly on the ground that notice was not served upon some other heirs of late Bankey Lal. Whatever right, if at all he had to file the revision as one of the heirs of Bankey Lal, he had lost the same after the property came to be owned by Hari Mohan Bhatnagar and Mohan Bhatnagar on March 20, 1994 by virtue of arbitration award in their favour. So far respondent is concerned, her impleadment as one of the revisionists rightly or wrongly would also be inconsequential since she had purchased the property from Hari Mohan and Mohan Bhatnagar as the owners and predecessor-in-interest in the property and not from heirs of late Bankey Lal. It is thus clear that there is no reason to treat the appellant as prospective allottee. The *bona fide* requirement of the respondent could not be considered in the infructuous proceedings of the Revision 19/1990. The order passed in infructuous proceedings is inconsequential and ineffective. She could not be permitted to do something indirectly which was impermissible directly, in view of proviso to sub-section (1) of Section 21 of the Act namely, she could not get the premises vacated on the ground of her *bona fide* requirement within three years of purchasing the property.

18. In the result the appeal is allowed and the order of the High Court as well as of the revisional court are set aside and that of the Rent Control and Eviction Officer is restored. In case the appellant has been dispossessed from the premises in pursuance of the orders passed by the revisional court or the High Court, the Rent Control and Eviction Officer will take steps to restore possession of the premises to him. The appellant on getting possession of the premises will pay to the respondent-landlady arrears of rent for the period he was in occupation of the premises, within three months. It will however be open to the respondent if so advised to move any appropriate application as may be permissible under the law for eviction of appellant. There shall, however, be no order as to costs.
Appeal allowed.

[1]*1981 ARC 34*
[2]*1994 ALR (2) 107*
[3]*1996(1) ARC 505*