

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5018 OF 1999@@
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Navneet Prakash Gupta & Anr.

Appellant (s)

Versus

Bishan Chand & Ors.

Respondent (s)

(With C.A.No.5058 of 1999)

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These two appeals, by Special Leave, arise from the judgment and order of the High Court of Judicature at Allahabad passed in C.M.W.P.No.24673 of 1991 on December 14, 1998. Respondent No.3 in that Writ Petition is the appellant in Civil Appeal No.5058 of 1999; he also claims to be a legal representative of one Sheela Devi, the 4th respondent therein - being one of her sons. Among the other sons and daughters, the appellants in Civil Appeal No.5018 of 1999, have chosen to file the appeal.

The dispute arises under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short 'the Act'). The facts giving rise to these appeals are so twined as to form a maze. We shall confine reference to bare facts so as to appreciate the controversy. It appears, one Seva Ram was having a Dal Mill in property bearing No.9/49 (old 7/3, Mohalla Ahata Nidhan Singh, Aligarh). The said Sheela Devi was the widow of his grand son late Ram Kishore Gupta. One Pratibha Rani filed suit No.876/72 in the Court of

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Judge, Small Causes, Aligarh. This suit was against the husband of Sheela Devi and her brother-in-law Narendra Kumar for possession. In this suit the property was described by specifying its boundaries but without giving any number. Appellants claim that this suit is in respect of an adjacent house bearing No.9/75. In the said suit the appellant in C.A.No.5058/1999 was later impleaded as the 3rd defendant. Claiming to be in possession of premises No.9/75 the appellant filed Application No.80/1973 under Section 14 of the Act for regularisation of her tenancy in 1973. By Order dated September 25, 1973 her alleged tenancy was regularised by the Rent Control & Eviction Office (hereinafter called R.C.).

The dispute now projected before us relates to premises bearing No.9/49, referred to above, which was numbered from 1952 to 1962 as 7/3 and as 14/36 from 1962 to 1975. It is only after 1975 the number of the premises is referred to as No. 9/49. Appellants claim that premises No.9/49 is separate and distinct from property No.9/75. This is denied by respondents 1 to 3 who claim that there was and is no property bearing No.9/75.

One Rajendra Kumar Varshney filed Application No.118/1983 under Section 12 of the Act praying that premises

No.9/49 be declared as vacant and be allotted to him. On January 11, 1985 that application was allowed by the R.C. declaring the vacancy but making no order of allotment in his favour. The appellant claims to have filed an application to recall that order and it is stated that pursuant to an order

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made thereon, an inspection of the premises was made and report submitted. However, the application for recall is resting at that stage. Sheela Devi also filed an application under Section 16 of the Act for release of premises No.9/49 to which respondents 1 to 3 are parties. But the learned R.C. rejected the same on September 27, 1985; however, the application of respondents 1 to 3 filed under Section 16 of the Act for release of the said premises in their favour was ordered on December 6, 1985. Sheela Devi filed U.P.U.B. revision No.69/85 against the order dated September 27, 1985 and U.P.U.B. revision No.7/86 against the order of the Rent Controller dated December 6, 1985. The appellant also challenged the said orders in U.P.U.B. Revision No.82/1985. All the three revisions came to be disposed by a common order dated May 15, 1991 by the learned District Judge, Aligarh. The orders under challenge in revision were set aside and the case was directed to be remitted to the Rent Controller for fresh disposal. Dissatisfied with the said order of the District Judge, respondents 1 to 3 filed the afore-mentioned writ petition. The High Court set aside the order of the learned District Judge and restored the order of the Rent Controller and thus allowed the writ petition by the impugned order on December 14, 1998. It is from that order that these appeals arise.

Various contentions are urged before us by the learned counsel for the parties but in the view we have taken we do not consider it necessary to refer to them. Inasmuch as the

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essence of the controversy between the parties is declaration of vacancy and allotment and releasing of premises number 9/49 and indeed the parties initiated action claiming the said reliefs, it will be necessary to advert to the relevant provisions of the Act. Section 12 which deals with deemed vacancy of the building in certain cases is in the following terms:

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"Section 12 - Deemed vacancy of building@
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in certain cases. - (1) A landlord or tenant of@
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a building shall be deemed to have ceased to occupy the building or a part thereof if -

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

(2) In the case of non-residential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building.

(3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquired in a vacant

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(5) A tenant or, as the case may be, a member of his family, referred to in sub-section (3) shall, have a right, as landlord of any residential building referred to in the said sub-section which may have been let out by him before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction)

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(Amendment) Act, 1976 to apply under clause (a) of sub-section (1) of Section 21 for the eviction of his tenant from such building, notwithstanding that such building is one to which the remaining provisions of this Act do not apply."

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Sub-section (1) of Section 12 says that a landlord or@@
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a tenant of a building shall be deemed to have ceased to@@
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occupy the building if (a) he has substantially removed his@@
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effects therefrom; or (b) he has allowed it to be occupied by
any person who is not a member of his family; or (c) in the
case of a residential building, he as well as members of his
family have taken up residence, not being temporary residence,
elsewhere. It is thus clear that before an order under
Section 12 is made it is necessary for the R.C. to reach
conclusion as to who the landlord is and who the tenant is and
whether in the circumstances, they have committed anyone of
the acts mentioned above so as to attract the deeming
provision of sub-section (1) of Section 12.

Section 16 which provides for allotment and release of vacant building, after declaring the vacancy, in the following terms:

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"Section 16: Allotment and release of@@
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vacant building. - (1) Subject to the provisions@@
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of the Act, the District Magistrate may be 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; or

(b) release the whole or any part of such building, or any land appurtenant thereto, in favour of the landlord.

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(10) Nothing in sub-section (9) shall be construed to require the District Magistrate to take any evidence or hold any formal inquiry before fixing the presumptive rent of the building allotted, and the amount mentioned in the allotment order as presumptive rent shall be subject to any agreement in writing between the parties or to any subsequent determination of standard rent after formal inquiry under Section 9:

Provided that until the presumptive rent is so revised by agreement or by an order under Section 9, the tenant shall continue to be liable to pay rent according to the presumptive rent specified in the allotment order, so however, that any subsequent order under Section 9 shall relate back to the date of commencement of the tenancy.]"

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A plain reading of Section 16 discloses that the District Magistrate now the Rent Controller is empowered to pass an order requiring the landlord to let any building which has fallen vacant and is about to fall vacant or a part of such building but not appurtenant land alone to any person specified in the matter. Clause (b) of sub-section (1) which is important for purposes of this case would indicate that an@@

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order of release of the whole or any part of the building of@@
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the land appurtenant thereto is in favour of the landlord.@@
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It is thus clear that both for purposes of declaring a vacancy or for allotment and/or release of a building it is necessary to determine, unless it is admitted, as to who among the competing claimants - the parties - the landlord is. Section 3 (j) of the Act defines landlord to mean in relation to a building a person to whom its rent is or if the building were let would be paid and includes except in clause (g) the agent or attorney or such person.

We have gone through the orders of the learned Rent Controller, the District Judge and the High Court. It appears that in the maze of the complicated facts the authorities did not address themselves to this germane question of determining as to who the landlord of premises no.9/49 is. Without such determination, no correct decision can be reached under Sections 12 and 16 of the Act. We would like to clarify that under the Act the word 'landlord' is not used, synonymous with the owner. It is employed in a sense which includes a landlord but it does not necessarily mean an owner. Every owner of a building may be a landlord but every landlord need not be an owner. The learned District Judge did allude to this point but he did not appreciate the distinction between an owner and a landlord. On the facts and in the circumstances of the case we think it would be just and proper to set aside the order of the Rent Controller, the learned district Judge and the High Court and remit the matter to the Rent Controller to decide afresh, after giving opportunity to the parties, the questions as to who falls within the meaning of the expression landlord and whether the premises can be deemed vacant and be released in favour of anyone of the parties.

In determining that question the learned Rent Controller shall also decide for purposes of those cases as to whether 9/75 and 9/49 are two different properties or two different numbers of the same property.

UPON hearing Counsel the Court made the following
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The appeals are allowed. There shall be no order as
to costs.

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(S.Thapar)

(Kanwal Singh)@@

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PS to Registrar

Court Master@@

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The signed order is placed on the file.