MADHU GOPAL

v.

VI ADDITIONAL DISTRICT JUDGE & ORS.

SEPTEMBER 26, 1988

[SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972/U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972. Section 16(5)(a)/Rule 10(9)—Review of order of release/Allotment—A landlord even though not in actual possession can ask for review of the order.

The petitioner in the Special Leave Petition is the tenant, Respondent No. 3 was one of the five co-owners of the petition premises.

On January 28, 1978, one of the co-owners who had sole possession of the shop vacated the shop and sent intimation of the vacancy to the Rent Controller under the U.P. Urban Buildings (Regulation of Letting and Eviction) Act, 1972. The petitioner filed allotment application for the said shop and he was the sole applicant.

The Rent Control Officer directed the petitioner to appear in the allotment proceedings, called for a report from the Inspector, found one of the co-owners to be in possession of the shop and that he had discontinued the business and was going to let out the shop. The 3 other co-owners never objected to the petitioner's tenancy on the allotment order. The allotment letter was accordingly passed on 12th February, 1978, and possession was taken up by the petitioner thereafter.

On or about 25th February, 1978 the 3rd respondent who was a non-occupant owner filed an application under section 16(5) of the Act i.e. after 25 days of the allotment, for review of the order. The Rent Controller allowed the review application and cancelled the allotment order.

The Additional District Judge having dismissed the revision petition, the petitioner filed a writ petition in the High Court.

The question about the maintainability of the review application

under section 16(5) of the Act at the instance of a non-occupant owner having arisen the matter was referred to a Full Bench and by a majority, the Bench came to the conclusion that such an application was maintainable.

Dismissing the Special Leave Petition,

HELD: 1. A landlord, even though not in actual possession at the time of the possession of the property, can ask for review of the order of release or allotment. [280G]

2. A landlord has a right to the property. The section should not be so construed as to defeat the right to possession of property in appropriate cases unless the intention of the Legislature is manifest. [280F]

3. Section 16(5)(a) speaks of 'where the landlord or any other person'. Hence, two categories of persons are contemplated i.e. a landlord, or any other person. [280C]

4. The requirement of the sub-section, to be in lawful occupation of the building or any part thereof, applies only in case of any other person claiming to be in lawful occupation and not in case of landlord. The Section has used the expression "or" and so the expression "or" is disjunctive of these two categories to be treated separately. Hence, the requirement to be in lawful occupation, is not there is case of an application by the landlord. [280C-D]

5. The proviso puts an embargo of 7 days in making the application for review. It can only apply to those who were in lawful occupation at the time of the making of the original Order. It cannot curtail the rights of the landlord, as such, it only affects any other person who was in lawful occupation. [280E-G]

Niren Kumar Das v. *The District Judge, Pilibhit & Ors.*, AIR 1977 Allahabad 47, approved.

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 6577 of 1988.

From the Judgment and order dated 27.4.1988 of the High Court of Allahabad in C.M.W. No. 3777 of 1987.

G.L. Sanghi and Manoj Prasad for the Petitioner.

A The Jugment of the Court was delivered by

SABYASACHI MUKHARJI, J. This application for leave to appeal under Article 136 of the Constitution arises from the judgment and order of the High Court of Allahabad, dated 27th April, 1988 by the judgment under challenge the Division Bench by majority directed B the Addl. City Magistrate or the Officer at present exercising the power of Distt. Magistrate under Rule 10(9) of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Rules 1972 to issue notice on all the five landlords mentioned in the petition within one week of the filing of the certified copy of the Order, and thereafter to make an Order in accordance with law and in the light of the observations made in the said Judgment. The petitioner before the High C Court, who is the petitioner herein also, was directed not to be dispossessed until disposal of the matter by the High Court.

This application is by the tenant-petitioner. The premises in question had five co-owners, namely, Veeresh Saxena, R.C. Saxena, D D.C. Saxena, Smt. Shanti Saxena and B.S. Saxena, respondent No. 3. Until January, 1978, Veeresh Saxena was in sole and exclusive actual physical possession of the shop and carried on business in it. In January, 1978 the present petitioner filed allotment application for the shop and he was the sole applicant. On 28.1.1978, Veeresh Saxena vacated the shop and sent intimation of vacancy to the Rent Control E Officer under the U.P. Urban Buildings (Regulation of Letting & Eviction) Act, 1972 (hereinafter called the Act). The Rent Control Officer, then, directed him to appear in the allotment proceedings. The Inspector reported that Veeresh Saxena was found to be in possession of the shop, discontinuing the business and was going to let out the shop. On the Inspector's report being pasted on the Notice Board F of the Rent Controler Office, neither B.S. Saxena nor the other 3 co-owners filed any objection. Veeresh Saxena filed an affidavit before the Rent Control Officer that he wanted to let out the shop to the petitioner. The 3 other co-owners never objected to the petitioner's tenancy on the allotment order throughout the last 10 years. The allotment letter was accordingly passed on 12th February, 1978. G The possession was, thereafter, taken up, it was alleged by the petitioner in the special leave petition. The petitioner had alleged that he had invested more than Rs.2 lakhs in the shop, but B.S. Saxena, who was a non-occupant owner, on or about 25th February, 1978 filed an application under section 16(5) of the Act, after 25 days of allotment, for review of the Order. It was alleged by the petitioner that the H evidence was overwhelmingly in support of the fact that he had taken

possession of the premises on or about 4/5th February, 1978. The Rent Controller, however, on the said application of B.S. Saxena allowed the review application and cancelled the allotment order. A revision against the said order was filed before the learned Judge under section 18 of the Act. The learned Addl. Distt. Judge dismissed the revision. The petitioner, thereafter, filed a writ petition in the High Court of Allahabad.

The question arose about the maintainability of the review application under section 16(5) of the Act. It is upon this point that the matter has been agitated before us. There was a difference of opinion about the maintainability of the review application at the instance of a non-occupant owner and the matter was referred to a Bench of 3 learned Judges and by majority the Division Bench came to the conclusion that such an application was maintainable. The petitioner herein contends that the High Court was wrong in the view it took on the construction of Section 16(5)(b) of the Act.

The relevant provisions of the said sub-section read as follow:

> "(5)(a) Where the landlord or any other person claiming to be lawful occupant of the building or any part thereof comprised in the allotment or release order satisfies the District Magistrate that such order was not made in accordance with clause (a) or clause (b), as the case may be, of sub-section (1), the District Magistrate may review the order:
>
> Provided that no application under this clause shall be entertained later than seven days after the eviction of such person.
>
> (b) Where the District Magistrate on review under this sub-section sets aside or modifies his order of allotment or release, he shall put or cause to be put the applicant, if already evicted, back into possession of the building, and may for that purpose use or cause to be used such force as may be necessary.
>
> (6) x x x
>
> (7) Every order under this section shall subject to any order made under sec. 18 be final."

A The contention is that a landlord who was not in actual physical possession until making of the allotment orde or is evicted in pursuant thereof, is not competent to make an application for review of the allotment order or release order under section 16(5)(a) & (b) of the Act. Admittedly, as mentioned hereinbefore, the respondent applicant was not in occupation when the Order was made. He was, however, indisputably a landlord. So, the question is whether on the construction of the section, a landlord who is not in actual physical possession at the time of the release order, is entitled under the law to apply for review of the order. The High Court held that he is entitled.

We are of the opinion that the High Court was right. Section 16(5)(a) speaks of 'where the landlord or any other person'. Hence, there are two categories of persons contemplated i.e. a landlord, or any other person. The requirement of sub-section, to be in lawful occupation of the building or any part thereof, applies only in case of any other person claiming to be in lawful occupation and not in case of landlord. The Section has used the expression "or" and so the expression "or" is disjunctive of these two categories to be treated separately. Hence, the requirement to be in lawful occupation, is not there in case of an application by the landlord.

Mr. G.L. Sanghi, learned counsel appearing for the tenant, has sought to argue that by virtue of the proviso a landlord who was not in occuaption, was not entitled to apply. We are unable to accept this. The proviso puts an embargo of 7 days in making the appliction for review. It can only apply to those who were in lawful occuaption at the time of the making of the original Order. It cannot curtail the rights of the landlord, as such, it only affects any other person who was in lawful occupation. In any event, it is a well-settled principle of construction that unless clearly indicated, a proviso would not take away substantive rights given by the Section or the sub-section. A landlord has a right to the property. The Section should not be so construed as to defeat the right to possession of property in appropriate cases unless the intention of the Legislature is manifest. We find no such clear intention in the facts of this case.

We are, therefore, of the opinion that the High Court came to the correct conclusion that a landlord, even though not in actual physical possession at the time of the possession of the property, can ask for review of the order of release or allotment. It must be borne in mind that this view was also expressed by Mr. Justice N.D. Ojha, as our learned brother then was, in his judgment in *Niren Kumar Das* v. *The*

District Judge, Pilibhit & Ors., AIR 1977 Allahabad 47. We agree with that interpretation. A

In that view of the matter, there is no substance in the contentions urged in the specil leave petition. The application is, therefore, rejected. B

N.V.K. Petition dismissed.