

GEETA GUPTA

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v.

RAMESH CHANDRA DWIVEDI & ORS.

(Civil Appeal No. 4750 of 2011)

SEPTEMBER 20, 2021

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**[AJAY RASTOGI AND ABHAY S. OKA, JJ.]**

*Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 – Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 – The appellant acquired a property by a sale deed dated 13.03.1994 – The said property included two gaddis, two godowns and a tin shed (collectively referred as disputed property), which was earlier given by the vendor/predecessors-in-title of the appellant to another person ‘D’ by way of tenancy – An application was filed u/s.16 of the Act by the second respondent for allotment of the said disputed property, on the premise that the disputed property had fallen vacant – An inspection report was prepared – The report recorded that first respondent was carrying on his business in the said disputed property and he was inducted as tenant by ‘D’ in November 1975 – The Addl. City Magistrate held that the first respondent was in continuous possession as a tenant on the basis of an agreement dated 15.11.1975 and he had become a tenant of the disputed premises – Hence, the disputed property was not vacant – A writ petition filed against the said judgment before the High Court was rejected – Before the Supreme Court, the appellant contended that on 05.07.1976, the disputed premises were vacant and after purchasing property in the year 1994, she has not received any income from the said property – Held: The first respondent has relied on the agreement dated 15.11.1975 by which tenancy on him was conferred – There is a finding recorded by the Addl. City Magistrate that the predecessors-in-title of the appellant had never raised any objection right from the year 1975 regarding the possession of the first respondent – Thus, the first respondent was in possession as a tenant prior to 05.07.1976 – So, he shall be deemed to be tenant by virtue of s.14 of the Act – There is no fault in the order of the Addl. City Magistrate – Therefore, if appellant wants eviction of the first*

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- A *respondent, she will have to take recourse to s.20 or s.21 of the Act – However, the first respondent is directed to deposit all the arrears of rent in pending proceedings u/s.30 of the Act before the Court of Civil Judge – Thus, there is no error in the view taken by the Addl. City Magistrate and confirmation of the same by the High Court.*
- B **Dismissing the appeal, the Court**
- HELD:** 1. The first respondent relied upon the agreement dated 15<sup>th</sup> November, 1975 purportedly executed by the said ‘D’ claiming to be the power of attorney holder and manager of the original owners. The first respondent is the second party to the
- C said Agreement on whom tenancy in respect of the disputed premises was conferred. The finding of fact recorded by the Addl. City Magistrate is that the original owners never denied that the said ‘D’ was their attorney or manager and that the original owners neither served any notice nor filed a suit for eviction. In the counter, the first respondent has relied upon the said agreement.
- D In the rejoinder, the appellant alleged that the said document was fabricated. However, the petitioner has not produced on record anything to show that from 1975 to 1994, the original owners raised any objection to the induction of the first respondent as a tenant of the disputed premises in the year 1975.
- E Thus, the first respondent was inducted in possession as a tenant prior to 5<sup>th</sup> July, 1976. The finding recorded by the Addl. City Magistrate is that to the presence of the first respondent, the predecessors-in-title, of the appellant had never raised any objection right from the year 1975. Therefore, the Addl. City Magistrate concluded that in absence of the evidence of predecessors-in-title of the appellant, it is very difficult to accept that right from the year 1975, the first respondent continued to be in possession without the consent of the original owners. There is nothing wrong about this inference drawn by the Addl. Magistrate that the first respondent was inducted with the consent
- F of the predecessors-in-title of the appellant. This Court finds no error in the said view taken by the Addl. City Magistrate and confirmed by the High Court. [Para 12][79-B-G]
- G 2. As the first respondent was a tenant in possession on 5<sup>th</sup> July, 1976 with the consent of the original owners, he shall be
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**deemed to be a tenant by virtue of Section 14 of the said Act. A [Para 13][79-G-H]**

**3. Therefore, there is no reason to find fault with the Order of the Addl. City Magistrate. By virtue of Section 14, the first respondent gets the protection as a tenant under the said Act. Therefore, if the appellant wants the first respondent to be evicted, she will have to take recourse to section 20 of the said Act. Depending upon the circumstances, she has also an option to take recourse to section 21 of the said Act. [Para 14][80-A-B]**

**4. The first respondent is directed to deposit all the arrears of rent and thereafter, continue to regularly deposit the rent in the proceedings pending u/s. 30 of the Act before the Civil Judge. He can also pay the amount to the petitioner. The petitioner can always apply for withdrawal of the rent amount in accordance with sub-section (3) of section 30 of the said Act. If eviction proceedings are filed by the petitioner, considering the case of the petitioner that she is deprived of the benefit of the disputed premises right from year 1994, the concerned authority or the Court, as the case may be, shall give priority to the disposal of the eviction proceedings. [Para 17][80-F-G]**

*Achal Misra v. Rama Shanker Singh & Ors. (2005) 5 SCC 531 : [2005] 3 SCR 439; Ram Murti Devi v. Pushpa Devi & Ors. (2017) 15 SCC 230 : [2017] 7 SCR 872; Harish Tandon v. Addl. District Magistrate, Allahabad, U.P. & Ors. (1995) 1 SCC 537 : [1995] 1 SCR 56 – held inapplicable.*

<u>Case Law Reference</u>			F
[2005] 3 SCR 439	held inapplicable	Para 6	
[2017] 7 SCR 872	held inapplicable	Para 6	
1995] 1 SCR 56	held inapplicable	Para 6	

CIVIL APPELLATE JURISDICTION: Civil Appeal No.4750 of 2011. G

From the Judgment and Order dated 09.10.2009 of the High Court of Judicature at Allahabad in Writ A. No.12203 of 1997.

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- A        S. B. Upadhyay, Sr. Adv., Ms. Kumud Lata Das, Y. K. S. Chauhan, Ms. Indu Kaul, Advs. for the Appellant.  
Anand Verma, Ms. Chitranya Naik, Rajeev Kumar Dubey, Kamlendra Mishra, Advs. for the Respondents.
- B        The Judgment of the Court was delivered by  
**ABHAY S. OKA, J.**
- C        1. By this appeal, the appellant who was the writ petitioner before the High Court at Allahabad has taken an exception to the Judgment and Order dated 9th October, 2009 passed by the learned Single Judge of Allahabad High Court.
- D        2. The appellant is claiming to be the owner of premises No. 74/13, Collectorganj, Kanpur Nagar, Uttar Pradesh. The appellant acquired the said premises by a sale deed dated 13<sup>th</sup> March, 1994 executed by power of attorney holder on behalf of the original owners Shri Vishnu Swaroop Mishra and Shri Gopal Swaroop Mishra. The petitioner claimed that the physical possession of the premises subject matter of the sale deed was handed over to her by her vendors which includes two Gaddis, two godowns and a tin shed (collectively referred as "the disputed premises") which was earlier given by the appellant's vendor to one Dhruv Narayan Tripathi by way of tenancy.
- E        3. An application was made by the second respondent for allotment of the disputed premises by invoking Section 16 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short the "the said Act"). The application was made on the premise that the disputed premises have fallen vacant in accordance with subsection (4) of Section 12 of the said Act. On the basis of the said application, in accordance with Rule 8(2) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, an inspection report dated 20<sup>th</sup> May 1995 was submitted to the District Magistrate. The report recorded that the first respondent-Ramesh Chandra Dwivediwas carrying on business in the disputed premises in the name and style of M/s Ramesh Chandra Pravesh Kumar. It was stated in the report that first respondent informed that he was inducted as a tenant by Shri Dhruv Narayan Tripathi in the disputed premises in November 1975 at monthly rent of Rs.500/-.
- F        The District Magistrate (Addl. City Magistrate-VI) while exercising the powers under the said
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Actheld that on the basis of the agreement dated 15<sup>th</sup> November, 1975, the first respondent was inducted as a tenant by the said Dhruv Narayan Tripathi acting as a power of attorney holder and manager of the owners. He held that the original owners never objected to the action of the said Dhruv Narayan Tripathi. The Addl. City Magistrate held that the first respondent was in continuous possession as a tenant on the basis of the said agreement dated 15<sup>th</sup> November, 1975 and therefore, he has become a tenant of the disputed premises. Hence, it was held that the disputed premises were not vacant within the meaning of sub-section (4) of Section 12 of the said Act.

4. A writ petition was preferred by the petitioner against the said Judgment and Order of the Addl. City Magistrate, which was rejected by the impugned Judgment and Order dated 15<sup>th</sup> November, 1975.

5. The learned counsel appearing for the appellant in support of the appeal submitted that the said Dhruv Narayan Tripathi had no authority to induct the first respondent as a tenant on behalf of the predecessors-in-title of the petitioner. She submitted that the said Dhruv Narayan Tripathi was the tenant inducted by the predecessors-in-title of the appellant. She submitted that on 5<sup>th</sup> July, 1976, the disputed premises were vacant. She submitted that the petitioner purchased the property in the year 1994 and from that day, she has not received any income from the disputed premises. She submitted that the writ petition before the Allahabad High Court was of the year 1997 which was decided on 09<sup>th</sup> October, 2009 and that the present appeal is of the year 2011. Thus, the submission is that during the last 27 years, the appellant has not received any benefit from the disputed premises.

6. The learned counsel appearing for the appellant placed reliance on the decisions of the Apex Court in the case of **Achal Misra v. Rama Shanker Singh & Ors.**,<sup>1</sup> **Ram Murti Devi v. Pushpa Devi &Ors.**<sup>2</sup> and **Harish Tandon v. Addl. District Magistrate, Allahabad, U.P. & Ors.**<sup>3</sup>

7. The learned counsel appearing for the first respondent invited our attention to the findings recorded by the Addl. City Magistrate holding that the first respondent has been in possession of the disputed premises since 1975 and is paying rent even prior to 5<sup>th</sup> July, 1976. He invited our

<sup>1</sup> (2005) 5 SCC 531

<sup>2</sup> (2017) 15 SCC 230

<sup>3</sup> (1995) 1 SCC 537

- A attention to the deposit of the rent made by the first respondent in the Court of Civil Judge, (Junior Division) Kanpur Nagar by taking recourse to sub-section (1) of Section 30 of the said Act. He submitted that as per his instructions, the first respondent has been regularly depositing the rent in the said proceedings and even if some part of the rent is not deposited, the first respondent shall do so.
- B 8. The learned counsel appearing for the appellant by way of rejoinder to the submissions made by the learned counsel appearing for the first respondent urged that it will be unjust to drive the appellant to file a suit for eviction 27 years after she purchased the disputed premises.
- C 9. We have carefully considered the submissions. We have perused the material on record, as well as the provisions of the said Act. Sub-section (1) of Section 12 incorporates the concept of deemed vacancy of the building in certain cases. Under clause (b) of sub-section (1) of Section 12, a tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if he has allowed it to be occupied by any person who is not a member of his family. Sub-section (2) of Section 12 lays down that in case of non-residential buildings, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner, the tenant shall be deemed to have ceased to occupy the building. Sub-Section (4) of Section 12 of the said Act provides that any building or a part of which landlord or tenant has ceased to occupy within the meaning of sub-sections (1) or (2) of Section 12 shall be deemed to be vacant.
- D 10. Under clause (a) of sub-section (1) of Section 16 of the said Act, the District Magistrate is empowered to require any landlord to let any building which has fallen vacant to any person specified in the order.
- E 11. Section 14 of the said Act is material which is thus:

**“14. Regularisation or occupation of existing tenants.-**

[Notwithstanding anything contained in this Act or any other law for the time being in force, any licensee (within the meaning of Section 2-A) or a tenant in occupation of a building with the consent of the landlord immediately before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976, not being a person against whom any suit or proceeding for eviction is pending before any
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court or authority on the date of such commencement shall be A  
deemed to be an authorised licensee or tenant of such building].”

Under Section 14, a tenant in occupation of a building with the  
consent of the landlord immediately before the commencement of the  
U.P. Urban Buildings (Regulation of Letting, Rent and Eviction)  
(Amendment Act), 1976 shall be deemed to an authorised tenant. The B  
date of commencement of the Amendment Act is 5<sup>th</sup> July, 1976.

12. The first respondent relied upon the agreement dated 15<sup>th</sup> November, 1975 purportedly executed by the said Dhruv Narayan Tripathi claiming to be the power of attorney holder and manager of the original owners. The first respondent is the second party to the said Agreement on whom tenancy in respect of the disputed premises was conferred. The finding of fact recorded by the Addl. City Magistrate is that the original owners never denied that the said Dhruv Narayan Tripathi was their attorney or manager and that the original owners neither served any notice nor filed a suit for eviction. In the counter, the first respondent has relied upon the said agreement at Annexure R-4 in paragraph 5. In the rejoinder, the appellant alleged that the said document was fabricated. However, the petitioner has not produced on record anything to show that from 1975 to 1994, the original owners raised any objection to the induction of the first respondent as a tenant of the disputed premises in the year 1975. Thus, the first respondent was inducted in possession as a tenant prior to 5<sup>th</sup> July, 1976. The finding recorded by the Addl. City Magistrate is that to the presence of the first respondent, the predecessors-in-title, of the appellant had never raised any objection right from the year 1975. Therefore, the Addl. City Magistrate concluded that in absence of the evidence of predecessors-in-title of the appellant, it is very difficult to accept that right from the year 1975, the first respondent continued to be in possession without the consent of the original owners. There is nothing wrong about this inference drawn by the Addl. Magistrate that the first respondent was inducted with the consent of the predecessors-in-title of the appellant. We find no error in the said view taken by the Addl. City Magistrate and confirmed by the High Court. G

13. As the first respondent was a tenant in possession on 5<sup>th</sup> July, 1976 with the consent of the original owners, he shall be deemed to be a tenant by virtue of Section 14 of the said Act. H

- A        14. Therefore, there is no reason to find fault with the Order of the Addl. City Magistrate. By virtue of Section 14, the first respondent gets the protection as a tenant under the said Act. Therefore, if the appellant wants the first respondent to be evicted, she will have to take recourse to section 20 of the said Act. Depending upon the circumstances, she has also an option to take recourse to section 21 of the said Act.
- B        15. We have carefully perused the decisions relied upon by the appellant. The decision in the case of **Achal Misra** (supra) holds that an order notifying vacancy under section 12 of the said Act can be challenged by filing a writ petition or it can be challenged after an order of allotment is made by adopting a remedy under section 18 of the said Act. Even the decision in the case of **Harish Tandon** (supra) has no bearing on the controversy in this appeal. Lastly, the decision in the case of **Ram Murti Devi** (supra) does not deal with the issue involved. It deals with the issue of unlawful subletting. None of these decisions have any application to the facts of this case.
- D        16. Though there is no merit in the appeal, it will be necessary to ensure that the first respondent regularly pays rent in respect of the disputed premises. In the objections filed by the first respondent, he has specifically taken a stand that the first respondent has filed Misc. Case No. 284/70/04 in the Court of Civil Judge, (Junior Division)at Kanpur Nagar under sub-section (1) of Section 30 of the said Act. The learned counsel appearing for first respondent claimed that the entire amount of rent has been deposited in the said case.
- F        17. We direct the first respondent to deposit all the arrears of rent, if any, up to 31<sup>st</sup> August, 2021 within a period of six weeks from today and thereafter, continue to regularly deposit the rent in the aforesaid proceedings. He can also pay the amount to the petitioner. The petitioner can always apply for withdrawal of the rent amount in accordance with sub-section (3) of section 30 of the said Act. If eviction proceedings are filed by the petitioner, considering the case of the petitioner that she is deprived of the benefit of the disputed premises right from year 1994, the concerned authority or the Court, as the case may be, shall give priority to the disposal of the eviction proceedings.
- G        18. Subject to what is directed above, there is no merit in the appeal and the same is accordingly dismissed.