

# Ashok Kapil vs Sana Ullah [Dead] And Others on 25 September, 1996

**Author: K.T Thomas**

**Bench: K.T Thomas, Kuldip Singh**

PETITIONER:

ASHOK KAPIL

Vs.

RESPONDENT:

SANA ULLAH [DEAD] AND OTHERS

DATE OF JUDGMENT: 25/09/1996

BENCH:

THOMAS K.T. (J)

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THOMAS K.T. (J)

KULDIP SINGH (J)

ACT:

HEADNOTE:

JUDGMENT:

**J U D G M E N T** THOMAS.J The controversy between the parties in this appeal has narrowed down to a very short question. A building became roofless before "allotment order' was passed under Section 16(1) of U.P. Urban Buildings [Regulation of Letting, Rent and Eviction] Act, 1972 [for short' the Act'] The question now remains in this appeal is: should the structure have necessarily been a roofed one on the date of allotment order?

A summary of facts, out of which the said question has emerged, is given below:

A building situated at Meerut City owned by the contesting respondents' father [Sana Ullah] was let out to one Deep Chand Gupta for a period of 5 years. On the expiry of lease period i.e. 3.8.1974, Deep Chand Gupta surrendered vacant possession of the building to the landlord. On 20.8 1974, the present appellant moved an application

before the District Magistrate [who is the competent authority for passing allotment order under the Act] for allotment of the said premises to him. Sana Ullah filed his objections on 3. 9.1974, in which he contended, inter alia, that the structure was not a "building" inasmuch as it had no roof then. The District Magistrate found that the structure was still a building and hence appellant was entitled to its allotment. The case had thereafter passed through a chequered career District Judge [the revisional authority under the Act] remanded the case on two occasions to the District Magistrate for arriving at certain findings on facts. Finally it was found that the building was a roofed structure when Deep Chand Gupta vacated it, but subsequently its tin roofs were dismantled by the owner of the building and that the structure remained roofless even on the date of allotment order. Nevertheless, allotment order was passed by the District Magistrate. Pursuant thereto the appellant occupied the building. In the revision learned District Judge held that District Magistrate had jurisdiction to allot such structure to the tenant and confirmed to the allotment order.

Landlord filed a writ petition before the Allahabad High Court challenging the aforesaid order. The High Court declined to interfere with the finding on facts that the roof of the building was removed by the appellant after Deep Chand Gupta vacated the premises but took the view that "an order of allotment under Section 16 can be made only in respect of a building and not with respect to a construction which was a building at the time when it was vacated but subsequently ceased to be so." According to the learned Single Judge as the legislature did not confer power of allotment in respect of a construction which ceased to be a building at the time of allotment, the order of allotment made in favour of respondent 4 was liable to be set aside." Writ petition was hence allowed and the allotment order was quashed. The said judgment of the Allahabad High Court is now being challenged in this appeal by special leave.

Before we proceed to consider the question set out earlier we may observe that learned counsel for the respondents assailed the concurrent finding of fact that roof of the building was pulled down by the landlord. But we made it clear that in view of the clear finding made by the District Magistrate and the learned District Judge on that issue and in view of the fact that High Court declined to disturb that finding, we would not go into that aspect in this appeal.

"Building" is defined in Section 3(i) of the Act thus:

"building, means a residential or non residential roofed structure and includes

- (i) any land (including any garden), garages houses appurtenant to such building;
- (ii) any furniture supplied by the landlord for use in such building;
- (iii) any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof."

It is clear from the definition that any structure without roof cannot fall within the ambit of the definition. Here the factual position is this: The structure remained a roofed building when it became vacant but the roof was later dismantled by the owner. So on the date of allotment order it remained rootless.

If the crucial date is the date of allotment order, the structure was not a building as defined in the Act. But can the respondent be assisted by a court of law to take advantage of the mischief committed by him? The maxim "Nullus commodum copere potest de injuria sua propria" (No man can take advantage of his own wrong) is one of the salient tenets of equity. Hence, in the normal course, respondent can not secure the assistance of a court of law for enjoying the fruit of his own wrong.

While considering the question whether District Magistrate would cease to have jurisdiction to pass allotment order in respect of a roofless structure we may refer to the relevant provisions of the Act.

Chapter III of the Act contains a fasciculus of provisions (Sections 11 to 19) dealing with allotment etc. under the heading Regulation of Letting". Section 11 prohibits the letting of any vacant building except in pursuance of an allotment order issued under Section 16. Section 12 enumerates cases in which there would be deemed vacancy of building. Section 13 declares that if any person occupies a building which fell vacant otherwise than under an order of allotment he would be deemed to be an unauthorised occupant of the building. Section 15 casts an obligation on the landlord as well as the tenant to give notice of vacancy of the building to the District Magistrate. (Landlord has to give such notice within 7 days of the occurrence of such vacancy, whereas the tenant has to give the notice within 15 days prior to the date of vacancy. Section 16(1) reads thus:

"16(1). 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);

Jurisdiction of the District Magistrate, therefore, is in respect of a building which is either vacant or which "has fallen vacant" or is about to fall vacant.

If a structure was a building as per the definition at the time when it fell vacant, the District Magistrate, no doubt, gets jurisdiction to initiate proceedings for passing allotment order. But would he lose jurisdiction merely because the structure became roofless subsequently? No doubt, if we go by the definition in Section 3(i) *stricto sensu*, the structure without roof will cease to be building. But a roofless structure can still continue to be building outside the fixed borders of the definition. It is now necessary to notice that Section 3 of the Act, which contains all the definition clauses, prefaces with the words "unless the context otherwise requires". Thus the legislature which fixed contours for different expressions through the definition clauses has also provided sufficient play at the joints for contextual adaptations. In other words, contextual variations are not impermissible

under the Act if such variations are necessary to achieve the object of the enactment. Outside the definition in Section 3 of the Act the word "building" need not necessarily be a roofed structure for even roofless structures are, sometimes, used as buildings in certain circumstances.

Stroud's "Judicial Dictionary" (Vol.I of the 5th edn.) states that. "what is a building must always be a question of degree and circumstances". Quoting from *Victoria City V. Bishop of Vancouver Island* (1921 AC 384, at p. 390). the celebrated lexicographer commented that " the ordinary and natural meaning of the word building includes the fabric and the ground on which it stands". in black's Law dictionary (5th Edn) the meaning of the building is given as " a structure or edifice in closing a space within its walls, and usually, but not necessarily, covered with a roof"

[emphasis supplied] The said description is recognition of the fact that roof is not necessary and indispensable adjunct for building because there can be roofless buildings. So a building, even after losing the roof, can continue to be a building in its general meaning taking recourse to such general meaning in the present context would help to prevent a mischief.

The upshot is, if the District Magistrate has commenced exercising jurisdiction under Section 16 of the Act, in respect of a building which answered the description given in the definition in Section 3 (i), he would well be within his jurisdiction to proceed further notwithstanding the intervening development that the building became roofless. We are inclined to afford such a liberal interpretation to prevent a wrong doer from taking advantage of his own wrong.

We therefore, allow this appeal and set aside the judgment of the Allahabad High Court. There will be no order as to costs.

However, considering the importance of the locality in which building is situate and the palpably low rent which appellant is now paying, we have no doubt, in the interest justice, the appellant should pay higher rent. After hearing the counsel on both sides regarding this aspect, we fix the monthly rent of the building at Rs.500/-. Appellant shall pay rent at the enhanced rate from 1.8.1996 onwards.