

PETITIONER:
MOHD. NAZIR

Vs.

RESPONDENT:
BECHAND PRASAD & ORS.

DATE OF JUDGMENT: 28/02/1997

BENCH:
M.M. PUNCHHI, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

A building in the town of Banaras was statedly in possession of a dancing girl; it having been owned by respondent No. 1 herein. That dancer is stated to have associated with her two musicians to carry on her vocation. That duo us respondent Nos. 2 and 3 herein. All the three respondents are represented by the same learned counsel. At a point of time, by an executive drive, all the dancing girls were statedly driven out of the area where the building in dispute stood located. The building, according to the claim of the landlord, was not available for regulation of letting. The authorities concerned took a contrary view and considered that the building was lettable. An order under Section 16 of the U.P. Urban Buildings (Regulation of Letting, Rent And Eviction) Act, 1972 [the Act] was passed in favour of the appellant herein - Mohd. Nazir - on 17.5.1972 in respect of the above-mentioned building. According to him, he was put in possession of the property in pursuance of the allotment order but he was ousted therefrom by the landlord and the dancing girl with her two musicians were put back in possession. The dancing girl is now dead and it is the musicians who continue to be in possession of the building under the protective umbrella of the landlord.

In such distress, the appellant moved the District Magistrate under Section 16(4) of the Act for being restored possession thereof or, in other words, to be again put in its possession. The District Magistrate spurned his request on the footing that the law enjoined the allottee being put in possession of the building only once and that obligation the District Magistrate had duly fulfilled. It was taken that in the eye of law, the appellant was in possession over the property. On such view taken, the appellant was constrained to move the Civil Court against the landlord seeking restoration of possession of the building. The Civil Court recorded a finding that since the appellant was never put in possession, the question of restoration could not and did not arise. Shielded with that finding, the appellant again approached the District Magistrate under Section 16(4)

of the Act, requiring the said Authority to put him in possession as per the Civil Court's finding he had never been put in possession. The District Magistrate this time allowed the request of the appellant and ordered his being put in possession. The landlord and the musicians took up the matter in revision before the District Judge who confirmed the order of the District Magistrate. The High Court, however, in writ proceedings at the instance of the landlord and the musicians, upset the order of the District Magistrate, taking the view that the District Magistrate had no power to reinstate the appellant in possession when earlier, as per averment, possession had been delivered to the appellant. Further, the view taken was that the Civil Court's judgment was not binding on the District Magistrate and that the doctrine of res judicata was applicable.

The reasons advanced by the High Court in upsetting the valid and just orders of the District Magistrate were totally out of tune of the requirements of Section 16(4) of the Act. The said provision reads as follows:

"(4) Where the allottee or the landlord has not been able to obtain possession of the building, allotted to him or, as the case may be, released in his favour, or any part thereof, the District Magistrate, on an application of the allottee or the landlord, as the case may be, may by order evict or cause to be evicted any person named in the order as well as every other person claiming under him or found in occupation, and may for that purpose use or cause to be used such force as may be necessary and but or cause to be but the allottee or the landlord in possession of the building or part."

It is plain from the language employed in the provision that the District Magistrate is not only required to put the allottee in possession if he has not been able to obtain possession of the building allotted to him, he is eminently required to see that the allottee remains in possession without let or hindrance from the landlord or his henchmen, as otherwise the right conferred under sub-section (4) of Sec. 16 would be illusory and be a breeding ground for unnecessary litigation. It would in a sense upset the entire scheme of the Act if the mighty landlord, or some people at his behest, can have their way in ousting the tenant and the District Magistrate not helping him retain it. Beyond this, we consider it unnecessary to go into this aspect of the matter. The District Magistrate has not only to put back in possession the allottee but is otherwise empowered to pass all consequential and incidental orders to maintain possession of the allottee. In the wake thereof, the High Court committed an error in upsetting the just, legal and equitable orders of the District Magistrate. In this view of the matter, We unhesitatingly upset the impugned orders of the High Court and restore that of the District Magistrate, requiring the appellant to be put in possession of the building forthwith by evicting the unauthorised occupants/contestants. No question of res judicata arises in the fact situation.

The appeal is thus allowed. No costs.

JUDIS