

CASE NO.:
Appeal (civil) 5451 of 1994

PETITIONER:
SWAROOP NARAIN SRIVASTAVA

RESPONDENT:
IVTH ADDL. DISTRICT JUDGE AND ORS.

DATE OF JUDGMENT: 08/08/1994

BENCH:
K. RAMASWAMY & N. VENKATACHALA

JUDGMENT:
JUDGMENT

1994 SUPPL. (2) SCR 438

The Judgment of the Court was delivered by

VENKATACHALA, J. Special leave sought for in this petition is granted and we have heard learned counsel for the parties on the merits of the appeal.

For a residential building fallen vacant under sub-sections (3) & (4) of Section 12 of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 - "The Act", if under sub-section (1) of Section 16 of the Act, an application is received from the landlord of that vacant building for its release in his favour and another application is received from the former tenant of that vacant building for its reallocation in his favour, which of those two applications require priority in the matter of their disposal by the District Magistrate concerned, is the question arising for our consideration in this appeal.

As it would be advantageous to refer to the facts, which have given rise to the said question, brief mention of those facts could be made before its consideration.

Shri Swaroop Narain Srivastava, the appellant in this appeal, is the landlord of House No. 395/31, Raj Bhawan, Kashmiri Mohalla, Lucknow - "the disputed house". By an allotment order made under the Act, that disputed house had been allotted in favour of one Sita Ram Shakya and he became its tenant.

Since Sita Ram Shakya, the tenant of the disputed house, died on 18.5.1973. Respondent No. 2, the wife of the deceased. Respondent 3 and 4, the sons of the deceased, and Dr. R.R.P. Singh, another son of the deceased, became the joint tenants of the disputed house as the heirs of the deceased living with him. However, when one of the said tenants of the disputed house Dr. R.R.P. Singh, by an allotment order made under the Act in his favour on 30.3.1975, got allotted another house in the same locality, a question arose whether the disputed house had fallen vacant by operation of subsections (3) & (4) of Section 12 of the Act. That question ultimately came up for consideration before a Full Bench of the Allahabad High Court on a reference made to it in a writ petition before that High Court. It was held by its order dated 12.3.1981 that the disputed house had fallen vacant under sub-sections (3) & (4) of Section 12 of the Act, when one of the Joint tenants of the disputed house was allotted a separate residential house in the same locality under the provisions of the Act; Subsequently, the writ petition which had been filed in the High Court disputing the decision of the Revisional Authority that the disputed house had fallen vacant, was dismissed by an order made by the High Court on 23.4.1981. As a result of the dismissal of the said writ petition, an application which had been made by the appellant under Section 16(1)(b) of the Act for release of the

disputed house in his favour and an application which had been made under Section 16(1)(a) of the Act by respondents 2 to 4 for re-allotment of the disputed house in their favour came up for consideration before the Additional District Magistrate (city) Lucknow in case No.62/193 of 1982. that Additional District Magistrate considered the said application made by the appellant for release of the disputed house in preference to the other application made by the respondents 2 to 4 for reallotment of the disputed house in their favour and granted the application made by the appellant for release of the disputed house in his favour, as in his view, when there was an application for release of the vacant building made by the landlord and when there was an application made by the former tenants for reallotment of the vacant building, the consideration of the application of the landlord had to be done on a preferential basis. On such consideration of the application for release of the disputed house made by the appellant, the Additional District Magistrate found on the basis of evidence placed before him that the appellant-landlord required the disputed house for his bond fide use and occupation. Consequently, he made a release order in respect of the disputed house in favour of the appellant on 24.8,1982. However, he allowed one months time to respondents 2 to 4 to vacate the disputed premises so as to enable the appellant to occupy it. The litigation did not come to an end there. Respondents 2 to 4 questioned the correctness of the order of the Additional District Magistrate by filing a Revision Petition RR No. 111 of 1982 in the Court of the District Judge, Lucknow. The IVth Additional District Judge, Lucknow, who heard that Revision Petition allowed it by setting aside the order of Additional District Magistrate, Lucknow dated 24.8,1982 and remitting the case to Additional District Magistrate (City), Lucknow with a direction to him to decide the reallotment application made by respondents 2 to 4 in preference to the application made by the appellant for release of the disputed house in his favour. When the appellant filed a writ petition W.P. No. 6189 of 1982 against the said order of the Court of the IVth Additional District Judge in the High Court of Judicial at Allahabad, that High Court dismissed the writ petition upholding the impugned order of the IVth Additional District Judge, Lucknow. The said orders of the IVth Additional District Judge, Lucknow and of the High Court are appealed against by the appellant in the present appeal by special leave.

The disputed house, a residential building, of which the appellant was the landlord, had fallen vacant under sub-sections (3) & (4) of Section 12 of the Act, as is held by the Full Bench of the Allahabad High Court in its judgment dated 12.3.1981. This aspect of the case was not disputed before us. Therefore, the only question which requires our consideration in this appeal is whether the application for release of the vacant disputed house was rightly decided by the Additional District Magistrate in preference to the application for reallotment of that vacant disputed house made by respondents 2 to 4, or whether the application for reallotment of the vacant disputed house made by respondents 2 to 4 alone required to be considered on preferential basis as is held by the District Court in a revision petition before it and the High Court in the writ petition before it. The District Court and the High Court as seen from their judgments have taken the view that the application for reallotment made by respondents 2 to 4 required prior consideration and disposal as against the application for release made by the appellant because proviso (b) of sub-rule (6) of Rule 20 when enabled respondents 2 to 4 to seek reallotment of the disputed house which had fallen vacant according to sub-section (3) of Section 12 of the Act, that application for reallotment of the disputed house made by Respondents 2 to 4 required to be considered on a preferential basis. According to them, such preferential consideration of reallotment application made by respondents 2 to 4 would be necessary to obviate the hardship, which they may have to suffer in the event of the vacant disputed house, is not allotted in their favour. In our view, the District Court, as well as, the High Court had fallen into a grave error in thinking that the hardship to which the former tenants could be out could be obviated in the event the building which had become vacant on account of its falling vacant under sub-sections (3) & (4) of Section 12 of the Act is

allotted to them, when such view cannot receive support either from the provisions of the Act or from the provisions of the U.P. Urban Buildings (Letting Rent & Eviction) Rules, 1972 - 'the Rules', All that has happened is when sub-rule (6) of Rule 10 of the Rules prohibited the making of the application by certain persons, proviso (2) thereto enables persons like respondents 2 to 4 who must be deemed to have vacated the residential building to make an application for reallotment of such building. If that be so, permissibility to make an application for reallotment by respondents 2 to 4, cannot entitle them for prior consideration and disposal of their application for reallotment by the District Magistrate in preference to the application for release made by the landlord, the appellant or any other applications of the persons who are given preferential claim for allotment of a vacant building under the provisions of the Act and the Rules. Sub-section (1) of Section 16 of the Act which permits the filing of applications before the District Magistrate by the landlord for release of the building fallen vacant and by others for reallotment of such building insofar as is material reads :

"16. Allotment and release of vacant building. - (i) Subject to the provisions of the Act, the District Magistrate 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): or

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

Provided that in the case of vacancy referred to in sub-section (4) of section 12, the District Magistrate shall give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under clause (a)."

Requirement of the proviso is admittedly fulfilled because of the holding of the Full Bench of the High Court that the disputed house had fallen vacant.

When Rule 10 of the Rules which provides for allotment procedure is seen, nowhere it is provided that an application for allotment of vacant building should be considered in preference to the application made for release of the vacant building by the landlord. On the other hand, Rule 13 which provides the procedure for consideration of the application made for release of a vacant building by the landlord, by its sub-rule (4) requires that landlord's application for release under the Rules shall, as far as possible, be decided within one month from the date of its presentation and no allotment in respect of a building covered by an application in that Rule shall be made unless such application has been rejected. Thus, when the sub-rule (4) of Rule 13 expressly states that unless an application made by the landlord for release of a vacant building is rejected, no allotment of the vacant building covered by that application could be made, it in terms requires consideration of the application for release of vacant building at the first instance in preference to other application for allotment. There-fore, it must be held that the Rule requires the consideration of the application for release made by the landlord in respect of the vacant building and decision thereon in preference to consideration of any other application for allotment Or re-allotment made in respect of that vacant building. If that be our answer to the question under consideration the orders of the District Court and the High Court appealed against in this appeal become unsustainable and require to be interfered with.

In the result, we allow this appeal, set aside the order dated 15.12.1982

of the Court of Additional District Judge made in Rent Revision No. 111 of 1982 and order dated 28.4.1983 of the High Court made in W.P. No, 6189 of 1982 and restore the order dated 24.8.1982 of the Additional District Magistrate (City), Lucknow made in Case No. 62/193 of 1982 with the modification that the respondents 2 to 4 or any person claiming, through them who may be in possession of the disputed house shall put the appellant in possession of the same forthwith. However, in the facts and circumstances of this Civil Appeal respondents 2 to 4 shall pay to the appellant-landlord costs of this appeal which we quantify at Rs. 20.000:

JUDIS