

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (M/S) No. 271 of 2009

Joseph Santra and others

... Petitioners

Vs.

Suresh Bhagat and Others

... Respondents

Advocate: Mr. Siddhartha Sah, Advocate, for the petitioners
Mrs. Archana Rab, Advocate, for respondent No. 1, through
video conferencing.

Hon'ble Sharad Kumar Sharma, J.

Before venturing to answer the respective arguments, as it has been extended by the learned counsel for the parties, this Court feels it apt to precisely deal with the respective cases, as pleaded and argued by the learned counsel for the parties.

2. The instant writ petition, under Article 227 of the Constitution of India, has been preferred by the petitioners/landlord by invoking its supervisory jurisdiction, as against the impugned order dated 27.11.2008, as it has been rendered in Case No. 1 of 1998 by the Rent Control and Eviction Officer, Mussoorie, District Dehradun.

3. It is not in controversy, that the predecessor of the present petitioners and the petitioners themselves are the owners and co-owner and accordingly they are recorded landlords of the property in question, commonly called as **“Shanty, Hamilton House Estate Landour Cantt. Mussoorie”**, (hereinafter to be called as tenement in dispute). The learned counsel for the respondent contends, that the respondents, are the allottees of the premises in question by virtue of an order passed under Section 16 of

the U.P. Act No. 13 of 1972, by the Court and hence they claim that they are legally in occupation of the premises in question, which was later on sought to be declared as **“vacant”**, under Section 12 of the Act No. 13 of 1972, in pursuance to the applications for allotment as it was filed by the various successive persons, including respondent No. 3, 4, 5, herein on which various reports were filed by the Rent Control and Eviction Officer, through the Rent Control Inspector.

4. The first in the sequence would be, the report dated 06.05.1998, as it was then filed by the Rent Control and Eviction Officer, through Rent Control Inspector, whereby a direction was solicited for the purposes of conducting an inspection of the premises in question, for the purposes of considering the allotment application on which the Rent Control and Eviction Officer, had initially submitted a report dated 06.05.1998, in response to the application for allotment which was filed by respondent No. 2, seeking a declaration of vacancy and the consequential allotment.

5. In continuance thereto, the Naib Tehsildar/Rent Control Inspector, is said to have inspected the premises in question, which was sought to be allotted by respondent No. 2, and the same was inspected on 02.07.1998; consequent to it after recording of the statement of co-residents and other evidence, the Rent Control Inspector had submitted a report on 03.07.1998, where the Rent Control & Eviction Officer has observed as under:-

“उपरोक्त गवाहानों के बयानों के आधार व भवन की स्थिति के आधार पर उक्त इस्टेट में वर्तमान समय में कोई निवास नहीं कर रहा है। जिससे उक्त इस्टेट रिक्त प्रतीत होता है। उक्त इस्टेट में अन्दर कोई सामान आदि है या नहीं झांकने से नहीं दिखता है।”

6. On its simple analogy, the first inspection report dated 03.07.1998, in fact, the analogical inference would be that the principal allottee of the tenement Mr. V.S. Bhagat, is said to have permanently removed his effects from the property in question, which has been described hereinabove, and accordingly, the report was submitted that there was no one residing in the premises in question. Thus, the vacancy stood declared under Section 12 of Act No. 13 of 1972, to be read with Rule 8 of the Rules framed under Section 41 of the Act No. 13 of 1972.

7. Upon receipt of the aforesaid report dated 03.07.1998, the Rent Control and Eviction Officer, had issued notices on 22.07.1998 to all as per Rule 8, and in response to it, the sitting tenant i.e. the father of the respondent No. 1, herein, had filed his objection to the report dated 03.07.1998, on the basis that, since the predecessor of respondent No. 1, since being an allottee under Section 16 of the Act No. 13 of 1972, the report thus submitted, was without any basis because they contended that they still occupy the premises, apart from the fact that they are regularly paying the rent with effect from the date, when the allotment was made and hence they contended that in the absence of there being any vacancy, the report dated 03.07.1998, which was submitted by the Rent Control and Eviction Officer, cannot be relied with for the purposes of Section 12 of the Act.

8. If a further dichotomy is made to the report submitted by the Rent Control and Eviction Officer dated 03.07.1998, in fact, the foundation of observing that the premises in

question was not occupied by anyone and it was vacant, it was based upon the statement which was recorded by one Mr. Vijay Masehi, and considered by Rent Control Inspector, who had submitted that for the last three years, no one was occupying the premises, though which was a fact, which was attempted to be denied by respondent No. 1, in the objection filed by him before the Rent Control and Eviction Officer, to the report dated 03.07.1998.

9. They further contended that since the allotment has been made in their favour in Case No. 57 of 1998, by an order dated 12.02.1999, by the Rent Control and Eviction Officer, their occupancy over the premises in question would be deemed to have continued and thus respondent alleged that the report of vacancy given by Rent Control Inspector cannot be relied with.

10. What is surprising is that the report, as it was submitted on 03.07.1998, which has reported the vacancy, and which was objected by the respondent No. 1, by filing an objection on 02.06.1999, in fact, none on behalf of the respondents, has pressed upon to get a conclusive decision on the objection which was submitted by the respondent as against the report of vacancy dated 03.07.1998. However, respondent No. 2, is said to have only submitted an affidavit on 16.09.1999, supporting their contentions, fortifying the contents of the objection, taken by them to the report dated 03.07.1998.

11. In fact, if the affidavit which has been filed by Mr. V.S. Bhagat on 15.09.1999, is taken into consideration, it was nothing but almost a reiteration of the pleading raised by

him in his objection to the report of the Rent Control and Eviction Officer dated 03.07.1998 and more particularly, he has more harped upon the claim raised of his possession based upon the allotment made by the Rent Control and Eviction Officer on 10.02.1989, besides this, he pleaded that he was holding a telephone connection bearing No. 63742, and it's inconsistent use would be a proof of his occupancy. He further submitted that he has not removed his effects; they are still lying in the premises and as such, there cannot be any vacancy as such.

12. What is important is that, at the first available opportunity to the respondent or to his predecessor, there was no genuine sustainable proof filed by them in support of the respective affidavits, to substantiate their contentions, that on the basis of the allotment made in their favour on 10.02.1989, there had been no proof of theirs of depositing the rent before the landlord or any proof on record to show from the municipal assessment normally legally acceptable documents, that being assessed to be as a tenant of the premises in question.

13. Exclusively because of the fact that, he has mentioned that he is having telephone number and paying the electricity bills, that in itself may not be taken as solely to be a conclusive proof of possession of the property in question and in the absence of there being any reckoned proof of occupancy, as recognized under law, more particularly under tenancy laws, a vague assertion made in the affidavit by late Mr. V.S. Bhagat, cannot be taken as to be a proof of occupancy of the premises in question and thus the conclusion drawn to the contrary based upon the

report dated 03.07.1998 submitted in furtherance of Rule 8 of the Rules, it ought to have *prima facie* accepted that the contention raised by the respondent about the possession being contrary to the report dated 03.07.1998, could at all substantiate their stand that they are occupying the premises in question.

14. In reply to the affidavit, as filed by late Mr. V.S. Bhagat on 16.09.1999 and thereafter, the affidavit filed by respondent No. 2 on 16.11.1999, the petitioner has controverted the same by specifically contending:-

One, that the tenancy of late Mr. V.S. Bhagat stood terminated because of the default committed by him;

Second, late Mr. V.S. Bhagat had shifted to Bombay and as such, he has removed his whereabouts from the premises which was allotted to him in 1989.

15. As far as late Mr. Qumaresh Santra is concerned, he had claimed his rights of landlord-ship over the disputed tenement, on the basis of succession. It is necessary to reiterate at this juncture, that the Rent Control and Eviction Officer, **has not taken any final call on the application of allotment filed by respondent No. 2, on the basis of report of the Rent Control Inspector submitted on 03.07.1998**, on the affidavit filed by the father of the petitioner on 18.11.1999, reply filed by the predecessor of respondent No. 2 in 1999 and rather, leaving the proceedings at that stage and without dealing with the objection taken by the petitioner in the affidavit filed by him before the Rent Control and Eviction Officer, had proceeded to deal with the issue about the vacancy when a fresh proceeding was initiated by filing of an allotment application

by respondent No. 5. The application of allotment of respondent No. 2, was brought to its judicial death, as it was not pressed further.

16. Before venturing to deal with, as to what impact or bearing the application for allotment filed by respondent No. 5, would have over the entire proceedings, which stood instituted by way of an application for allotment, filed by respondent No. 2, a legal presumption would be, that the report dated 03.07.1998, about the declaration of the fact of vacancy that the predecessor of the respondent had removed his effects from the tenement in question, which was allotted to him in 1989 remains undisturbed till the fresh application for allotment was filed by respondent No. 5, on 17.11.1999.

17. The allotment application, thus filed by respondent No. 5, was opposed by the sitting tenant Mr. V.S. Bhagat, by filing an objection, as well as, by virtue of an affidavit filed by the landlord, opposing the allotment application which was filed by respondent No. 5.

18. While opposing the allotment application of respondent No. 5, the petitioner has specifically come up with the case once again, by way a reiteration to the stand taken in the affidavit filed on 1999 that Mr. V.S. Bhagat has permanently shifted to Bombay and thus in order to fortify the aforesaid fact, the petitioner has requested an inspection of the premises in question by filing an application to the said effect on 01.12.1999.

19. It cannot be ruled out that when the Court avoids to lead to a conclusive decision on an earlier application of allotment filed by the prospective allottee, and particularly when the report has been opposed by the sitting tenant on the basis of the allotment made in 1989, if that is not been given to its logical end, consequently getting an application for allotment filed by respondent No. 5, on 17.11.1999, it cannot be ruled out that it was a manipulative allotment application which was got filed by the respondent, to override the effect of report of vacancy as submitted on 03.07.1998. This fact stands strengthened as none of the allottees have contested the proceedings at any stage thereafter, even before this Court.

20. The sequence of complicating the issue of release of the tenement in question, it was principally based upon the allotment application of respondent No. 2, was further intricated by filing of the allotment application by respondent Nos. 3 and 4, on which, yet again, reports were called for by the Rent Control Inspector, who is said to have inspected the premises on 24.06.2000, and a report was submitted by him on 24.06.2000 itself. In fact, the same authority, when he had submitted his later report on 24.06.2000, it has given a contradictory report to that of 03.07.1998, which was otherwise not disturbed at any stage of the proceedings, by any Court, observing thereof, that the tenement in question stand occupied by Mr. V.S. Bhagat, the principal allottee by an order of 1989.

21. The respondent No. 3, too had filed an affidavit on 08.08.2000, wherein he has supported the stand taken by the petitioner that late Mr. V.S. Bhagat has already earlier

shifted to Bombay and he is no more occupying the premises and as such the vacancy ought to be declared in accordance with the provisions contained under Section 12 of the Act No. 13 of 1972.

22. But, this was not an end to the controversy. The Rent Control and Eviction Officer, for all wisdom which prevailed with him, had inspected the premises once again on 07.03.2001, for the third time, which was once again got conducted on an application filed by the prospective allottee respondent No. 3, who conducted an inspection through the Rent Control Inspector on 10.05.2001 and as per the report submitted, it was observed that:

- (i) The premises in question, was found to be locked.
- (ii) The Rent Control and Eviction Officer was informed that Mr. V.S. Bhagat, who had shifted its effects to Bombay, seldom visits the place after about a gap of 4-5 months.
- (iii) Thus the vacancy stood created owing to the above.

23. In all those proceedings which stood instituted and on the basis of allotment application which was filed by respondent No. 3, on which the inspection was conducted on 10.05.2001, the respondent No. 1, is shown to have filed an affidavit on 07.11.2002, claiming to be the son of late Mr. V.S. Bhagat, contending thereof that since as of now, he has met with the sad demise on 20.09.2001, the tenancy which was created in favour of Mr. V.S. Bhagat, in 1989, would automatically devolved upon him, claiming since being the successor in possession of the tenement in question, which was contended to have been allotted on 10.02.1989.

24. At this stage, when respondent No. 5, has filed an affidavit on 07.11.2002, he has, for the first time, disclosed the fact about the pendency of the SCC Suit, as preferred by the petitioner, which has been heavily harped upon by the learned counsel for the respondents, which being the proceedings under Section 20 of the U.P. Act No. 13 of 1972, which was numbered as SCC Suit No. 14 of 1999, Shri Qumaresh Santra (since deceased and others) Vs. V.S. Bhagat (since deceased and others).

25. This Court feels it apt to deal with the arguments as it has been extended by the learned counsel for the respondents at this stage, as to what bearing would this observations made in the judgment, which has been rendered in SCC Suit No. 14 of 1999, as delivered on 18.12.2009 would have, with regard to the proceedings of the release which is the principal question, involved herein, which has to be dealt with in the instant case. For the said purpose, to deal as to what impact Section 20 of Act No. 13 of 1972, which has been registered as an SCC Suit No. 14 of 1999, which would obviously be a proceedings initiated under Section 15 of the Provincial Small Cause Courts Act, it would be summary in nature and would be exclusively confined for the purposes of Section 20 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (Act No. 13 of 1972), which is extracted hereunder:-

“Section 20 - Bar of suit for eviction of tenant except on specified grounds

(1) Save as provided in sub-section (2),1[* * *] no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner:

Provided that nothing in this sub-section shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for a fixed term was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in Court or otherwise reduced to writing and signed by the tenant.

(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely:

(a) that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand:

Provided that in relation to a tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925), has issued a certificate that he is serving under special conditions within the meaning of Section 3 of that Act or where he has died by enemy action while so serving, then in relation to his heirs, the words "four months" in this clause shall be deemed to have been substituted by the words "one year";

(b) that the tenant has wilfully caused or permitted to be caused substantial damage to the building;

(c) that the tenant has without the permission in writing of the landlord made or permitted to be made any such construction or structural alteration in the building as is likely to diminish its value or utility or to disfigure it;

(d) that the tenant² [has without the consent in writing of the landlord used it for a purpose other than the purpose for which he was admitted to the tenancy of the building or otherwise done any act which is inconsistent with such use], or has been convicted under any law for the time being in force of an offence of using the building or allowing it to be used for illegal or immoral purpose;

(e) that the tenant has sub-let, in contravention of the provisions of Section 25, or as the case may be, of the old Act the whole or any part of the building;

(f) that the tenant has renounced his character as such or denied the title of the landlord, and the letter has not waived his right of reentry or condoned the conduct of the tenant;

(g) that the tenant was allowed to occupy the building as part of his contract of employment under the landlord, and his employment has ceased.

3[* * *]

(4) In any suit for eviction on the ground mentioned in clause (a) of sub-section (2), if at the first hearing of the suit the tenant unconditionally pays of⁴[tenders to the landlord or deposits in Court] the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the Court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground:

Provided that nothing in this sub-section shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

5[Explanation--For the purposes of this sub-section--

(a) the expression "first hearing" means the first date for any step or proceeding mentioned in the summons served on the defendant;

(b) the expression "cost of the suit" includes one-half of the amount of Counsel's fee taxable for a contested suit.]

(5) Nothing in this section shall affect the power of the Court to pass a decree on the basis of an agreement, compromise or satisfaction recorded under Rule 3 of Order XXIII of the First Schedule to the Code of Civil Procedure, 1908.

6[(6) Any amount deposited by the tenant under sub-section (4) or under Rule 5 of Order XV of the First Schedule to the Code of Civil Procedure, 1908 shall be paid to the landlord forthwith on his application without prejudice to the parties' pleadings and subject to the ultimate decision in the suits.]

UTTAR PRADESH URBAN BUILDINGS (REGULATION OF LETTING, RENT &. EVICTION) ACT, 1972 Section 20 - Bar of suit for eviction of tenant except on specified grounds.”

26. In fact, the title head of the provisions contained under Section 20 of the Act, as extracted above, it was instituted exclusively because of the factum of consistent default committed by the predecessor of the substituted heirs, of the principal tenant i.e. respondent No. 1 herein, for the purposes of overriding of a bar for instituting a Suit for eviction of a tenant, as specified under sub Section (2).

27. As far as the opinion of this Court is concerned, the provisions contained under Section 20, these provisions are only procedural in nature intended to create a legal embargo for initiation of proceeding for eviction and they are not the substitutive provision, which determines the gravamen of a relationship of landlord and tenant, its default. The effect of occupancy or the effect of its vacancy the consequence of release, and as such any finding, which has been recorded in the summary proceedings under Section 20 in SCC Suit No. 14 of 1999, would be exclusively confined to with regard to the subject for which it was instituted and which would be limited to the extent of

provisions contained under Section 20 and particularly when the Court was deciding the matter under Section 20, the Court was as a matter of fact not ceased with considering the impact of judicial scrutiny of the report submitted by the Rent Control and Eviction Officer on the various applications for allotment filed by the prospective allottees. Because the provisions of Section 12 of the Act No. 13 of 1972, is altogether an independent provision, it will not be diluted by any proceeding where dominant consideration is Section 20 of the Act No. 13 of 1972, which altogether aims to achieve different objective.

28. It needs no reference that each proceedings under the Act No. 13 of 1972 are independent in nature and particularly, the proceedings herein, if they are read in correlation to the proceedings under Section 12 and that of Section 20, they are independent because Section 12 is a substantive proceedings prescribed by law for declaration of vacancy, whereas the proceedings under Section 20 is only an enabling provision to override the embargo of institution of Suit depending upon the conditions contained in it. Thus, any finding which has been recorded in summary proceedings for drawing a conclusion of determining as to whether actual default has been committed or not in remittance of rent, cannot create any impediment as such, for coming to a conclusion that the parties to the proceedings or even the Court itself, ceased under Section 20, would be determining the fact of occupancy, which could be extracted to be read while deciding the proceedings under Section 12, because, in none of the proceedings under Section 20, deals with the aspect of vacancy as provided under Section 12. Default in

remittance, is an independent aspect than the creation of vacancy. If this logic is adopted it would make the provisions under Section 12 of Act No. 13 of 1972, as otis.

29. May it be, that the proceedings under Section 20 might have attained finality, but that finality therein would be qua the subject concern only i.e. default in rent, and not qua the subject of declaration of vacancy, which was not even or could be even the subject matter of consideration in the proceedings under Section 20 of SCC Suit No. 14 of 1999. Hence, the respondents cannot draw any distinction or acclaim any leverage out of the finding which has been recorded in para 23 of the judgment, which is heavily relied upon by the learned counsel for the respondents during the course of argument, for the purposes of establishing the fact, that the principal allottee continues to occupy the premises and the same is not vacant, because the finding which has been observed therein is not based upon any credible material, which could be legally acceptable by the Courts based upon any judiciary sustainable documentary evidence of establishment of occupancy when the Courts are dealing with the issue of default of rent, it cannot be construed to be an inference of occupancy of the tenement.

30. The very fact that the proceedings under Section 20 was drawn in 1999 by the petitioner about the issue of default committed by the respondents and dismissal of the same would only be confined to the issue, as to whether the Suit filed under Section 20 by the plaintiffs landlord, as against Mr. V.S. Bhagat for recovery of arrears and rent and mesne profits would be limited to that extent only and it would not be barging over the proceedings under Section

12 of Act No. 13 of 1972 which is exclusively confined to declaration of vacancy, as the two provisions pertain to different spheres.

31. Let us have reference to para 23 of the aforesaid judgment, which has been referred to by the learned counsel for the respondents. If the said para itself is read in its entirety, it was only confined to exclusively for the purposes of establishing the relationship of landlord and tenant between the plaintiff of the said Suit and the defendants i.e. respondents tenants herein and with regard to the cost of suit and the arrears which would be falling due to be paid within the purview of to bring out the case out of an exception provided under Section 20 (4) of the Act No. 13 of 1972. Thus, this contention that merely because of the fact that the deposition of rent has been permitted and the rent thus deposited by the respondents since has been directed to be kept intact, **it was with a rider that the said amount was directed to be kept intact because of the fact that the proceedings for issuance of letter of administration/probate was already pending consideration.** More particularly when there has been no dispute, rather could have been no dispute regards existence of relationship of landlord and tenant.

32. This Court is of the view, that the observations which were made pertaining to the deposition of rent and that too subject to the issuance of letter of administration/probate cannot be exclusively be taken as to be a proof of occupancy of tenement by the respondent for the purposes of Section 12 of Act No. 13 of 1972, and that too when the

effect of the judgment dated 18.12.2009, as rendered by the learned District Judge in a proceeding on the basis of Section 20 of Act No. 13 of 1972, will have no bearing for the reason being, that its life of entitlement to receive rent only subsisted till the letter of administration was issued, which in fact, in a proceeding of **probate by Suit No. 4 of 2014, Qumeresh Santra Vs. Avtar Krishan** has already culminated in favour of the petitioner by the judgment of the District Judge, as rendered on 18.05.2023, whereby the present petitioner has been by judicial dictum has been reckoned as to be the owner of the property in question based upon the letter of administration/probate issued by the Court, after the grant of probate by the judgment dated 18.05.2023 which has attained finality as of now.

33. Hence, as on date when this writ petition is being argued by the parties to the writ petition and particularly the respondents when they referred to the proceedings of Section 20 to be read with Section 15 of Provincial Small Causes Courts Act, that itself stands mitigated as soon as the letter of administration/probate, has been issued in favour of the petitioner by the judgment dated 18.05.2023 and as per the statements made by the learned counsel for the petitioner, the said judgment has attained finality and has not been disturbed by any Court till date.

34. The learned counsel for the petitioner has argued the matter from the perspective and the pleadings raised by him in para 32 of the writ petition, wherein he has particularly made reference to the implications of the definition of 'tenant' as provided under Section 3(a) of Act No. 13 of 1972, which is extracted hereunder:-

3- In this Act, unless the context otherwise requires –

(a) "tenant", in relation to a building, means a person by whom its rent is payable, and on the tenant's death or his heirs;

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) in the case of a non-residential building, his heirs;]

35. What is most important is that after going through the definition of tenant, as provided therein, it only means a person from whom the rent is payable and upon tenant's death, the same would be devolving upon its successors and heirs. Meaning thereby, the successor and the heirs herein would obviously not include the caretaker Tenzing, who was claiming to be occupying the premises in the representative capacity of the tenant allottee taking care of the property allegedly in the absence of the principal tenant, who was ultimately found to have shifted to Bombay. Thus, the caretaker will not be synonyms to 'tenant' as provided under Section 3 of the Act.

36. Till the decision was taken in the aforesaid SCC Suit as per law governing the field under the Act No. 13 of 1972, the continuance of relationship of a landlord and tenant would be only from the perspective, when either of the parties succeeds by evidence that he is consistently remitting the rent and consequently he stands accordingly recorded in the municipal assessments as a tenant. There is no such evidence brought on record by the respondents in order to substantiate, that their relationship of landlord and tenant have ever subsisted till the institution of the proceedings under Section 20 of the Act No. 13 of 1972 by

placing any credible evidence of having being continued to be recorded in the Nagar Nigam records as a tenant of petitioner, who had been consistently remitting rent.

37. In fact, rather if the response to the contents of para 32 of the writ petition, which has been pleaded by the petitioner, that has always referred to be a tenant, who normally resides in the building and upon his death by his successors, if that is taken into consideration in the context of the reply submitted by the tenants respondents in the counter affidavit, a very vague and evasive reply has been given in para 19 of the same where only a ground which was taken by the respondent was that the tenancy has devolved upon the deponent to the counter affidavit, who is the son who succeeds the tenancy, but no specific reply has been given as such with regard to what would be the effect of use of word “**normally resides**”, as given in the definition under Section 3(a) of the Act No. 13 of 1976. Fact of normal residence was never controverted or established otherwise by the respondents, i.e. proclaimed tenants, represented by caretaker, who himself is not a tenant under the Act.

38. So far as the aspect of ‘normal residence’ is concerned, if the entire documentation which has been placed on record are taken into consideration, all correspondences have been made through Mr. Tenzing, who was nothing, but was having a status of caretaker and caretaker of the property in question and quite obviously, a caretaker of the property would not be a tenant falling within the ambit of definition under Section 3(a) of the Act No. 13 of 1976, because it has never been the case of the respondents that

at any point of time, he was the person who had ever remitted the rent nor the payment of rent was established by any documentary evidence placed on record.

39. There is another aspect, which is required to be gone into is that the controversy as it stood and was intentionally made complicated because of successive filing of the allotment applications by different allottees, on which the independent reports were submitted by the Rent Control and Eviction Officer, giving contradictory reports with regard to the vacancy of the tenement in question. Though facts of tenement being vacant was the consistent case of all the prospective allottees.

40. This Court is of the view, that the allotment applications filed by respondent Nos. 3, 4, 5 & 6, on which the respective reports were submitted, they had to be confined to be read in relation to the respective allotment applications which was never perused by the prospective allottees any further, which cannot be ruled out that subsequent allotment applications were generated to be filed in order to get a report pertaining to the existence of vacancy of the tenement in question, which in all the reports was admittedly found to have been vacated because the landlord started residing at Bombay, it was only the caretaker, who is not the tenant, allegedly Tenzing was shown to be present on the spot.

41. The respondent No. 2 himself, on 05.12.2002, had filed an affidavit and had supported the reply of the affidavit filed on 05.03.2003, contending thereof, that Suresh Bhagat

son of late of Shri V.S. Bhagat, most of the time, resides outside India and never came back to Mussoorie.

42. The affidavit of the landlord as filed, Annexure 15 to the writ petition, the petitioner has requested for conducting a spot inspection and when the inspection was carried on 11.07.2003 by the Rent Control Inspector, the premises was shown to have been occupied by Mr. Ashok Kumar and Indra Prakash. The other persons, who despite the notice which were sent, have not presented themselves on the spot and consequently a report to the said effect was submitted by Rent Control Inspector on 17.07.2003.

43. What is more important is that, all these prospective allottees who were aspirants of allotment are not contesting the proceedings of the present writ petition (though they had been made as a party), nor they had filed any counter affidavit, as such, to the writ petition. That means, in fact, no sanctity could be attached to their applications for allotment, because if at all, it is perceived that the report was submitted in their favour holding that there existed a vacancy then they ought to have proceeded further for getting the accommodation allotted in their favour and having not done so, that itself creates a doubt as to what was the sanctity of generating the application for allotment under Section 12 of the Act, as filed by respondent Nos. 3, 4, 5 & 6.

44. The report as submitted on the respective applications of the prospective allottees and when that is not being proceeded with further by the respective prospective allottees for giving it a final shape by allotment of the

premises in question, in that eventuality, the dispute where it emerges from the first application for allotment filed by respondent No. 2 and the report as submitted on 03.07.1998. Since it was not superseded or diluted by any subsequent report, which was submitted on the applications filed by respondent Nos. 3 to 6, the same would prevail and even according to the report, which was lastly submitted on 23.05.2007, it was found that only Mr. Tenzing, who claimed himself to be the caretaker of the tenement in question was present on the spot and none of the respondents or anybody else legally claiming under them were present on the spot, that itself creates a doubt as to whether at all the occupancy of the premises at the behest of their caretaker could at all be treated as to be an occupancy on behalf of the tenant, to whom the accommodation was allegedly allotted in 1989, whether he continued to occupy the same after the report dated 03.07.1998?

45. Its' not even that, in the last report, which was submitted on 07.09.2002, the Rent Control Inspector, has observed that the gate of the premises in question was found locked, but the inference to the contrary was drawn because of the fact that the gate was found to be recently painted, which in itself cannot be a genuine reason to infer that the tenant was occupying the premises because none of the effects were found to be there as per the report, which was submitted because the reports which were filed by the Rent Control Inspector, about the vacancy of the tenement in question, are not conclusive in nature.

46. For the reasons aforesaid, this Court is of the view that:

(i) Since the present petitioner is already a holder of probate, it is not in controversy that he is the owner and landlord of the property nor it had ever been in debate.

(ii) That the “caretaker” will not fall within the definition of “tenant” under Section 3(a) of the Act No. 13 of 1976.

(iii) Since there was no evidence on record brought by the respondents to show the remittance of rent, which is acceptable under law, showing themselves to be assessed as a tenant by the Nagar Nigam.

(iv) That the proceedings under Section 20 drawn by the petitioner for the purposes of institution of the proceedings for eviction due to default in remittance of rent, since being summary in nature, will not be a proceeding, the finding of which could be borrowed to be read for the purposes of the present proceedings under Section 12 of the Act which are subject matter of the writ petition, which are altogether an independent proceeding, for independent legislative object to be attained.

(v) Since there had been no conclusive evidence on record to the contrary, at any stage of the proceedings led by the respondents, to show that they continued to occupy the premises, the logical inference would be that the vacancy did existed over the premises in question and the tenement deserved to be released to the landlord respondent, who had been held so is the probate proceedings.

(vi) The inference would be drawn otherwise because the Rent Control and Eviction Officer, since had not recorded any reasons to the contrary in their subsequent reports pertaining to the initial report of vacancy dated 03.07.1998 submitted an application for allotment filed by respondent No. 2, who had submitted the report of vacancy informing thereof that the tenant who had been allotted the accommodation in 1989, had removed his effects and has migrated to Bombay, the inference would be that the vacancy existed.

47. Thus the impugned order, as passed by the Rent Control and Eviction Officer cannot be sustained, the same is hereby quashed. The writ petition is, accordingly, allowed. The tenement in question is declared to be vacant, and deserves to be released in favour of the landlord/petitioner.

(Sharad Kumar Sharma, J.)

22.08.2023

Mahinder/