

STATE OF UTTAR PRADESH
v.
RUP LAL SHARMA AND OTHERS

A

DECEMBER 17, 1996

[MADAN MOHAN PUNCHHI AND K. T. THOMAS, JJ.]

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Rent Control Law :

U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972—Sections 5, 2(e) and 7(g) ‘Public Premises’—So wide as to include all such buildings—Whether it actually belongs to Government as such or only to a government department or even a building belonging to a private individual if government requisitioned it or some person on behalf of the government has requisitioned it ‘unauthorised occupation’ the definition comprises within its contours occupation of the public premises by any person without authority for such occupation—Also the continuance in occupation of such premises by any person after the authority under which or the capacity in which he was allowed to hold or occupy the premises has expired or has been determined for any reason whatsoever—Continuance in occupation after the determination of such authority would also make the occupation unauthorised for the purpose of the said Act.

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The respondent was a government servant and he was allotted a quarter on payment of rent by the officer in charge of government estate.

After the retirement of the respondent the appellant State moved the prescribed authority under the Act for an order of eviction against the respondent. On 22.3.1978 the prescribed authority passed an order dismissing the application holding that it was not possible to hold that the house in question was a public premises nor the respondent was an authorised occupant.

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Appellant issued a notice determining the tenancy of the respondent and again approached the prescribed authority by an application for an order of eviction against the respondent. The prescribed authority dismissed the application holding that the order dated 22.3.1978 would operate as *res judicata*. An appeal to the District Judge was also dismissed. A writ petition before the High Court also failed. The appellant filed this

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A appeal against the order of the High Court.

Allowing the appeal, this Court

B HELD : 1. the previous application for eviction was dismissed on the ground that the tenancy was not determined. An application for eviction after determining the tenancy will not therefore be hit by *res judicata*. [207-B-C]

2.1. The house belonging to the Government Estate is a public premises. [207-H; 208-A]

C 2.2 Respondent's continuance in occupation of the premises for the past 10 years after retirement is unauthorised occupation. [208-E-F]

D 2.3. It is unfortunate that first respondent was allowed to continue as an "unauthorised occupant" in government quarters for nearly a decade now after he ceased to be a government servant, when other government servants in service are waiting in the queue for accommodation. [208-E]

2.4. The application of the appellant for grant of an order of eviction is allowed. First respondent is directed to vacate the building in question on or before the expiry of three months. [208-F]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 16762 of 1996.

From the Judgment and Order dated 28.9.84 of the Allahabad High Court in C.M.W.P. No. 5404 of 1980.

F Ms. Rachna Gupta for Ashok K. Srivastava for the Appellant.

Jitendra Sharma Ms. Gunwant Dara and P. Gaur for the Respondents.

The Judgment of the Court was delivered by

G THOMAS, J. Leave granted.

H This appeal is by the State of U.P. as they failed to get an order of eviction against first respondent Rup Lal Shrama - a retired Government servants from a Government quarter as per the provisions of U.P. Public Premises (Eviction of Unauthorised Occupants Act. 1972 (for short the Act.).

Admitted facts are; Rup Lal Sharma was a Government servant. Quarter No. 34 situated at Mohalla Fadirganj, Old Katra, Allahabad was allotted to the first respondent on payment of rent by the officer incharge of Government Estates, Allahabad. When first respondent retired from Government service the State moved the prescribed authority under the Act for an order of eviction under Section 5 of the Act. On 22.3.1978, the prescribed authority passed an order of eviction dismissing the application by observing that "it is not possible to hold that the house in question is public premises or that the opposite party is an unauthorised occupant of it." After the said order, the appellant sent notice to the first respondent determining the lease, and on the expiry of the period specified in that notice appellant moved a fresh application under Section 4 of the Act before the prescribed authority. Even on this time the application was dismissed on the principles of res judicata in that the earlier order dated 22.3.1978 would operate as a bar against the appellant from seeking eviction of the first respondent under the provisions of the Act. Appellant thereupon went in appeal before the District Judge who was the appellate authority under the Act, but the appeal was dismissed. A writ petition was filed before the High Court of Allahabad challenging the said orders, but the said writ petition was also dismissed by the impugned judgment.

Even assuming that the findings made in the earlier order dated 22.3.1978 would preclude the appellant in subsequent proceedings from reconvening against such findings on the principles of res judicata we may observe that the question raised in the present proceedings has no bearing on such findings. As per the order of 22.3.1978 the prescribed authority found that the building belongs to the Government Estate, and there is no evidence that the tenancy was terminated before filing the application. On the above two premises the prescribed authority concluded thus: "Hence the opposite party cannot be deemed to be an unauthorised occupant of this premises as defined under the Act."

In the present proceedings there is no dispute that notice was subsequently served on the first respondent determining the lease. If so, can the respondent be treated as an unauthorised occupant even if it is true that the building belongs to a Government Estate?

"Public premises" is defined in Section 2(e) of the Act as meaning any premises "belonging to or taken or lease or requisitioned by or on

A behalf of the State Government; The first respondent never disputed that the building belongs to the Government and all he has said was that it belongs to the Government estate. It does not matter. The definition of public premises is so wide as to hedge in all such buildings whether it actually belongs to government as such or only to a Government department or even a building belonging to a private individual if Government

B have requisitioned it or some person on behalf of the Government has requisitioned it. Hence there is no escape from concluding that the building in question is public premises.

C "Unauthorised occupation" is defined in section 2(e). The definition comprises within its contours occupation of the public premises by any person without authority for such occupation, and also the continuance in occupation of such premises by any person after the authority under which or the capacity in which he was allowed to hold or occupy the premises has expired or has been determined for any reason. However, Thus continuance in occupation after the determination of such authority would also

D make the occupation unauthorised for the purpose of the said Act.

E In the above view, there is no question of any bar of *res judicata* on the strength of the earlier order dated 22.3.1978 particularly because there is a finding in that order that the building belongs to Government Estate. From any view of the matter the building in question is public premises. It is unfortunate that first respondent was allowed to continue as an "unauthorised occupant" in Government partners for nearly a decade now after he ceased to be a Government servant, when lot of other Government servants in service are waiting in the queue for accommodation.

F We, therefore, allow this appeal and upset the impugned Judgment of the High Court. We allow the application of the appellant for grant an order of eviction. First respondent is directed to vacate the building in question on or before the expiry of three months from today. However, we direct the parties to bear their respective costs.

G K.S.G.

Appeal allowed.