

A RAJENDRA KUMAR VERMA (D) TH. LRS.

v.

ADDITIONAL DISTRICT MAGISTRATE (CIVIL SUPPLIES) &  
ORS.

B (Civil Appeal No. 10449 of 2011)

FEBRUARY 08, 2018

**[KURIAN JOSEPH AND  
MOHAN M. SHANTANAGOUDAR, JJ.]**

C *Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 – s.16(5)(a) – Allotment and release of vacant building – Whether a Review u/s.16(5)(a) of the Act in respect of an order regarding vacancy is maintainable – Held: The whole purpose of s.16(1) is for “allotment and release of vacant building” – Unless there is a finding regarding vacancy, there cannot be either*  
D *allotment or release – It is a pre-condition for an order u/s.16(1) (a) or (b) – The whole purpose of s.16(5)(a) is to see whether the District Magistrate has passed a lawful order in the matter of either allotment or release – The question of release or allotment arises only if there is a vacancy – Once the finding is that there is no*  
E *vacancy, the same is certainly open to be pursued by way of review u/s.16(5)(a) as otherwise, the order would seal the fate of a landlord or an applicant for allotment – That is not the purpose of the Act and the scheme of the provision.*

**Disposing of the appeal, the Court**

F **HELD: 1.** The whole purpose of Section 16(1) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, as the title indicates, is for “*allotment and release of vacant building*”. Unless there is a finding regarding vacancy, there cannot be either allotment or release. It is a pre-condition for an order under Section 16(1)(a) or (b). The appellant  
G submitted that the only order that is open to review is an order passed under Section 16(1) (a) or (b) either for release or for allotment, since those are the only two contingencies dealt with under Section 16(1). If the technical argument advanced by the appellant is adopted, the order attains finality and there is no  
H provision under the Act to challenge the same. That would defeat

**the whole purpose of the Act and the contention is also against the scheme of the Act. The whole purpose of Section 16(5)(a) is to see whether the District Magistrate has passed a lawful order in the matter of either allotment or release. The question of release or allotment arises only if there is a vacancy. Once the finding is that there is no vacancy, the same is certainly open to be pursued by way of review under Section 16(5)(a) as otherwise, the order would seal the fate of a landlord or an applicant for allotment. That is not the purpose of the Act and the scheme of the provision. Therefore, the District Magistrate was justified in invoking its review jurisdiction under Sub-Section 5(a) of Section 16 of the Act. [Paras 4, 5] [546-F-H; 547-A-B]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10449 of 2011.

From the Judgment and Order dated 06.11.2009 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.34930 of 2004.

S.R. Singh, Sr. Adv., Mangal Prasad, Ankur Yadav, Ms. Asha Gopalan Nair, Advs. for the Appellants.

Ranjit Kumar, P.N. Mishra. Sr. Advs., Binu Tamta, Rishi Raj Sharma, Ms. Saumya Jaykaran Singh, Ankur Prakash, Ashutosh Kumar Sharma, Vinay Garg, Advs. for the Respondents.

The Judgment of the Court was delivered by

**KURIAN, J.** 1. Whether a Review under Section 16(5)(a) of The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short, “the Act”) in respect of an order regarding vacancy is maintainable, is the only question of law arising for consideration in this case. Section 16(5)(a) reads as under :-

*“Where the landlord or any other person claiming to be a lawful occupant of the building or any part thereof comprised in the allotment or release order satisfies the District Magistrate that such order was not made in accordance with clause (a) or clause (b), as the case may be, of sub-section (1), the District Magistrate may review the order:*

*Provided that no application under this clause shall be entertained later than seven days after the eviction of such person.”*

A           2. Sh. S. R. Singh, learned senior counsel appearing for the appellants, submits that the only order that is open to review is an order passed under Section 16(1)(a) or (b) either for release or for allotment, since those are the only two contingencies dealt with under Section 16(1). Section 16 reads as follows :-

B           “*Allotment and release of vacant building – (1) Subject to the provisions of the Act, the District Magistrate may by order –*

C           *(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*

D           *(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):*

E           *[Provided that in the case of a vacancy referred to in subsection(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)]”*

F           3. Sh. Ranjit Kumar, learned senior counsel appearing for the party-respondents, points out that the District Magistrate, if passes a wrong order regarding a vacancy, the same is always open to review, being only statutory remedy.

G           4. The whole purpose of Section 16(1) of the Act, as the title indicates, is for “*allotment and release of vacant building*”. Unless there is a finding regarding vacancy, there cannot be either allotment or release. It is a pre-condition for an order under Section 16(1)(a) or (b). If we adopt the technical argument advanced by Sh.S.R.Singh, learned senior counsel, the order attains finality and there is no provision under the Act to challenge the same. In our view, that would defeat the whole purpose of the Act and the contention is also against the scheme of the Act. The whole purpose of Section 16(5)(a) is to see whether the District Magistrate has passed a lawful order in the matter of either allotment or release. The question of release or allotment arises only if there is a vacancy. Once the finding is that there is no vacancy, the same is certainly open to be pursued by way of review under Section 16(5)(a) as otherwise,

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the order would seal the fate of a landlord or an applicant for allotment. That is not the purpose of the Act and the scheme of the provision. A

5. Therefore, we are in agreement with the view taken by the High Court that the District Magistrate was justified in invoking its review jurisdiction under Sub-Section 5(a) of Section 16 of the Act.

6. Having said that, we find that there are certain other facts also which should be taken note of. There is a civil suit pending between the parties, being Suit No. 375 of 1981 before the II Additional Civil Judge, Varanasi. That pertains to the cancellation of a sale deed said to have been executed by the son of Respondent No. 2 in favour of the appellants. The premises now occupied by the appellants is the same premises which is the subject matter of the suit. B C

7. Though Sh. S.R.Singh, learned senior counsel, submits that this Court, having found that review jurisdiction is properly exercised, the matter should be left to the authority concerned to consider whether the release would be granted or not since several factors are taken note of while granting the order, having regard to the detailed discussion made by the High Court in the impugned order, having regard to the fact that the landlord has been pursuing the litigation for release since 1978, and the further fact that he is the beneficiary in the review, we are of the view that it is just, fair, reasonable and proper that the proceedings under the Act be given a quietus. Ordered accordingly. D E

8. However, we make it clear that the rights of the parties inter se will be decided in Suit No. 375 of 1981. Accordingly, this appeal is disposed of with a direction to the trial court concerned to dispose of Suit No. 375 of 1981 expeditiously and in any case, within a period of six months from today. We make it clear that the suit will be tried on its own merits. The submission that the parties will cooperate for the expeditious disposal of the case is recorded. F

9. We also make it clear that the status quo with regard to possession shall continue till the suit is finally disposed of by the trial court. G

No costs.