
(1996) 02 AHC CK 0061

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 37104 of 1995

Abdul Gafoor

APPELLANT

Vs

IInd Addl. D.J., Nainital & Ors.

RESPONDENT

Date of Decision : 12-02-1996

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 26(4), 3(1), 3(1)(a)

Citation : (1996) 02 AHC CK 0061

Hon'ble Judges : S.N. Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the judgment and decree passed by the Judge Small Causes Court dated 621991 and the order passed by respondent No. 1 affirming the decision of the trial court vide order dated 5121995.

2. The property in dispute is known as "cow shed," The plaintiff respondent No. 3 filed suit for recovery of arrears of rent, ejectment and damages against the petitioner on the allegation that his father was a tenant of the disputed accommodation at a monthly rent of Rs. 37.50 and after the death of petitioner's father, the petitioner stopped payment of monthly rent from January 1987. The plaintiff sent a composite notice dated 4th July 1988 demanding arrears of rent with effect from 1st January 1987 and terminating his tenancy. This notice was received by the petitioner on 8th July 1988. He did not comply with the notice, Respondent No. 3 thereafter filed Suit ;4o. 11 of 1988 in the court of Judge Small Causes, District Nainital.

3. The petitioner filed written statement and denied that there was any relationship of landlord and tenant between the petitioner and plaintiff or his father. It was alleged that the land was leased out by the Cantonment Board in the name of his grandfather on 1121926. After his death his father succeeded to him. He is one of the colessees of the land in question. The accommodation in

question cannot be treated as an accommodation existing on this land and the suit is not cognizable by the Judge Small Causes Court. The trial court recorded finding that the grandfather of the petitioner had executed a deed of transfer in favour of respondent No. 3 on 7121953 and thereafter Cantonment Board executed a lease in his favour on 2831957 and again on 1121986. The property has been sold by the grandfather of the petitioner in the name of plaintiff/respondent. He became the owner of the property in question. It was further found that the father of the petitioner was occupying it in the capacity of tenant and the petitioner had inherited the tenancy rights. He failed to pay the arrears of rent after the receipt of the notice and, therefore, he was liable for ejectment as he had committed default in payment of arrears of rent and was also liable to pay the rent as alleged by respondent No. 3.

4. The petitioner filed revision against the said judgment and it has been affirmed by respondent No. 1. These orders have been challenged in the present writ petition.

5. Learned counsel for the petitioner urged that the lease was admittedly granted in the name of Allah Bakhsh, grandfather of the petitioner, on 1121926 for a period of 30 years. The lease was executed by the Secretary of State for India in Council by virtue of Rules made under Section 280 of the Cantonments Act, 1924 as the Cantonment Authority of the Nainital Cantonment. This lease deed was for a term of 30 years from 1st December, 1926. The lease could be renewed after expiry of 30 years.

6. Clause (8) of the lease puts a condition that the lessee shall not assign transfer or underlet the premises hereby demised. It reads as follows:

"(8) (Not to assign transfer or underlet the premises hereby demised or any part thereof without the consent in writing of the Cantonment Authority/Military Estates Officer and) upon every assignment transfer or sublease of the premises hereby demised or any part thereof or within one calendar month thereafter to deliver a notice of such assignment transfer or sublease to the Military Estates Officer setting forth the names and descriptions of the parties to every such assignment transfer or sublease and the particulars and effect thereof."

It is admitted that Allah Bakhsh executed a registered sale deed in favour of respondent No. 3 on 7121953. The deed of transfer recites that the transfer is being made with the permission of the Cantonment Board. The permission of transfer has been sanctioned by the Cantonment Board, Nainital vide resolution No. 11 dated 14th April, 1953. Subsequent to this execution of sale deed the Cantonment Board, Nainital executed a lease deed in favour of respondent No. 3 on 2831957. The lease was again renewed in favour of respondent No. 3 on 1.12.1986 for a term of 30 years.

7. The contention of the learned counsel for the petitioner is that the Cantonment Board having not granted any written permission, the sale deed executed by Allah Bakhsh was invalid. A recital of the sale deed itself indicates

that Cantonment Board had passed resolution on 14th April, 1953 sanctioning the transfer of the deed under Condition No. 1 (8) of the leased deed. There is no allegation that no such resolution was ever passed by the Cantonment Board, On the other hand the Cantonment Board executed a leased deed in favour of respondent No. 3 on 28/3/1957 which clearly indicates that the Board had sanctioned the transfer of the lease under Clause 8 of the leased deed dated 11/2/1926.

8. The Cantonment Board having passed resolution to transfer the leased deed, it will be taken that it is a written consent to transfer the rights by the lessees as provided under Clause 8 of the leased deed. The transfer deed executed by Allah Bakhsh was thus not invalid and cannot be treated as breach of condition No. 8 of the leased deed.

9. The second submission of the learned counsel for the petitioner is that the accommodation in question cannot be treated as a building as defined under Section 3 (i) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short "the Act"). The petitioner has filed copy of the sale deed as Annexure 6 to the writ petition. A perusal of the sale deed dated 7/12/1953 indicates that Allah Bakhsh has not only transferred his rights in the land in question but also transferred the dwelling house and cow shed existing on the said land. A plan was also attached with the sale deed which indicated the nature of the property. The accommodation in question is known as cow shed but it is a residential building which is being occupied by the petitioner.

10. The third submission of the learned counsel for the petitioner is that the land belongs to the Cantonment Board, Nainital and it is exempt from the operation of the Act under Section 2(1) (a) of the Act. It is admitted that the land has not been let out by the Cantonment Board to the petitioner. Clause (a) of subsection (1) of Section 2 of the Act provides that the Act shall not apply in case any building of which the Government or a local authority or a public sector corporation is the landlord. The leased deed with regard to the land has been granted in favour of respondent No. 3. The accommodation in question existing on the said land has been let out by respondent No. 3 to the petitioner. Section 2(1) (a) is, therefore, not applicable in this case.

11. The next submission of the learned counsel for the petitioner is that the Cantonment Board has not been made a party in the suit and in absence of Cantonment Board as a party, the question regarding the right in relation to the land in question could not be decided. Respondent No. 3 has not made any claim against the Cantonment Board. It is not a necessary party. Secondly the Cantonment Board has executed the lease in favour of respondent No. 3 on 28/3/1957. As the Cantonment Board has already executed a lease in favour of respondent No. 3 and again renewed it on 11/2/1986 there is no cause of action against the Cantonment Board. Respondent No. 3 rightly did not implead, under these circumstances, the Cantonment Board Nainital as a party.

12. The last submission of the learned counsel for the petitioner is that the finding recorded by respondents Nos. 1 and 2 that there was a relationship of landlord and tenant between the petitioner and his father is erroneous in law. It is contended that respondent No. 3 never issued any rent receipt and after enforcement of U.P. Act No. XIII of 1972 the landlord cannot allege that there was a relationship of landlord and tenant and the rent was being realised from him unless he shows a rent receipt as contemplated under Section 26 (4) of the Act. Section 26(4) of the Act does not contemplate that unless rent receipt is issued the landlord cannot establish himself as landlord. Section 26(4) of the Act only provides that the landlord shall give to the tenant a receipt for rent payable to and received by him. A tenant can claim a receipt for rent paid by him to the landlord. The tenant, however, can pay rent even without obtaining the receipt. The mere fact that the rent receipt is not issued, does not indicate that there is no relationship of landlord and tenant. The burden of proof that the rent has been paid is upon the tenant and that burden still continues on the tenant in case he takes up a case that the rent was paid by him even without any receipt issued to him by the landlord. In *Satya Prakash v. District Judge, Ghaziabad and others*, 1982 (1) ARC 225, it has been held that if there had been breach on the part of the landlord to comply with subsection (4) of Section 26 of the Act, he has to be dealt with under the provisions of the said Act. However, the question of burden is a different question under the Evidence Act and it is not for the plaintiff to prove the negative.

13. The trial court accordingly recorded a finding that after the saledeed was executed by Allah Bakhsh on 7121953 he occupied the accommodation in the capacity of tenant on payment of monthly rent as alleged by the plaintiff. He placed reliance upon the evidence adduced by the plaintiff. This finding is based on the evidence and does not suffer from any manifest error of law.

14. In view of the above there is no merit in the writ petition and it is accordingly dismissed. The petitioner is, however, granted three months time to vacate the disputed accommodation provided he gives written undertaking on affidavit before respondent No. 2 that he would vacate the disputed accommodation within the time granted by this Court and will hand over its peaceful possession to the landlordrespondent No. 3.