

(2017) 03 AHC CK 0032

In the Allahabad High Court

Case No : Matters Under Article 227 No. 5889 of 2016

Abdul Shakeel Khan

APPELLANT

Vs

U.P. Sugar and Cane Development Corporation Limited

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 3, Section 5

Citation : (2017) 122 ALR 203 : (2017) 2 ARC 253

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : K. Ajit, Advocate, for the Petitioner; Yogendra Kumar, Advocate, for the Respondent; K. Ajit, Advocate, for the Petitioner; Yogendra Kumar, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Anjani Kumar Mishra, J.— Heard Shri K. Ajit, learned counsel for the petitioner and Shri C.B. Yadav, Senior Advocate assisted by Shri Yogendra Kumar Srivastava, for the respondents. By means of this writ petition, the petitioner has challenged the order dated 07.04.2016 passed by the City Magistrate, in Case No.16 of 2015, under U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 and the order dated 06.07.2016 passed by the District Judge, Rampur in Misc. Appeal No.18 of 2016, whereby the order of the City Magistrate, has been affirmed.

2. Thus, by the impugned orders, the petitioner has been ordered to be evicted from the Quarter in his possession, imposing damages of Rs.90,000/- as also damages to the tune of Rs.100/- per day from the date of the application till actual possession is delivered.

3. The contention of learned counsel for the petitioner is that he is not an unauthorized occupant. He was an employee of the Sugar Corporation, since

1982 and his services were confirmed in March" 1986, in the Rampur Unit of the Corporation, Quarter No.G-SPL-C-4, Govan Colony, Rampur was allotted to him on 28.08.1992. The allotment has not been cancelled and therefore, the petitioner is not an unauthorized occupant and the proceeding against him, under the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972, was not maintainable.

4. The second contention of learned counsel for the petitioner is that the impugned orders, in any case, are vitiated, as Rule 8 has not been complied with. There is no assessment of the damages liable to be imposed upon the petitioner. The impugned orders are silent on the question of assessment of the damages liable to be imposed and are therefore, vitiated.

5. It has also been submitted that the petitioner was wrongly retrenched from the year 1999. In 2009, a direction was issued for absorption of the retrenched employees in a writ petition No.17847 of 2002. The judgment of the writ Court was set aside in Special Appeal. However, the Apex Court by its judgment dated 09.09.2015 has held that the appellants be paid 40% of the back wages and persons, who have retired be given their retiral benefits inclusive of pension.

6. Learned counsel for the respondent on the other hand has submitted that the petitioner attained the age of superannuation in the year 2013. Thereafter, he cannot continue to occupy the accommodation in question, admittedly allotted to him as an employee of the Corporation after having attained the age of superannuation. The date of birth of the petitioner is 01.01.1953.

7. Referring to Annexure 7 of the writ petition, it has been submitted that the petitioner filed an application to remain in possession of the accommodation. This application was rejected by the Apex Court. It is therefore, not open for this Court to permit the petitioner to retain possession. Although, elaborate submissions have been made by learned counsel for the parties, as regards, the various orders passed by the writ Court and the Apex Court on the question of absorption of retrenched employees, those question in my considered opinion, are not relevant for deciding the controversy involved in this writ petition. Those arguments are therefore, not being referred to in this order.

8. In view of the admitted position that the petitioner's application before the Apex court to retain possession of the accommodation in question has been rejected and also in view of the admitted position that the petitioner attained the age of superannuation. On 13.01.2012, the petitioner is no doubt an unauthorized occupant of the accommodation. The proceedings were therefore, clearly maintainable and have rightly been decided against the petitioner.

9. The only question, which survives for consideration is whether, the damages imposed upon the petitioner have been properly assessed or not.

10. In this connection, the statement of counsel for the respondent, after seeking the instructions for his client, is that the respondent Corporation does not wish to

press its claim for compensation which has been awarded by the impugned order and is prepared to forgo the same. The Corporation is only interested in getting the accommodation vacated.

11. In view of the statement so made, the question as to whether or not the damages awarded have been properly assessed or not, loses significance.

12. Under the circumstances, the petitioner has to vacate the accommodation in his possession, forthwith.

13. It is, provided that the petitioner shall not be required to pay the damages awarded. He shall hand over vacant possession of the accommodation within a period of three weeks from the date of this order.

14. In case, possession is not handed over within the time specified, the petitioner shall not be entitled to the benefit of this order and it will be open for the respondents to recover the damages imposed by the impugned orders.

15. Subject to the above observations/directions, the writ petition is allowed in part and the impugned orders are modified to the extent observed above.

16. The controversy involved in Writ Petition No.6912 of 2016 is identical to that in the case of Abdul Shakeel Khan decided above.

17. This writ petition is therefore, also partly allowed in terms of the above order and shall be subject to the directions, contained therein.