

(1998) 04 AHC CK 0113
In the Allahabad High Court
Case No : C.M.W.P. No. 13515 of 1998

Ajay Kumar Jaiswal

APPELLANT

Vs

Smt. Shanti Singh and others

RESPONDENT

Date of Decision : 17-04-1998

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(1), 2(1), 3

Citation : (1998) 3 AWC 1792

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Dharam Pal Singh and Avinash, for the Appellant;

Final Decision : Dismissed

Judgement

J.C. Gupta, J.—Heard petitioner's counsel.

2. This is tenant's petition challenging the order dated 20.3.1998 passed by respondent No. 2 and the orders dated 15.1.94 and 15.9.94 passed by the respondent No. 3.

3. According to the petitioner, the disputed portion of House No. C-26/35-A-ID, Mohalla Bagh Kanhaiya Lal, Lahura Veer (Ram Katora), Varanasi was let out to the petitioner by Smt. Shanti Devi, respondent No. 1 on a monthly rent of Rs. 1,000 on 1.1.1991 and since then he is in occupation thereof with the consent of the landlady, respondent No. 1. On 4.11.1993, an application was moved by Shri Ram Singh for allotment of the said accommodation and on the basis of which the Rent Control and Eviction Officer proceeded to make an enquiry and by his order dated 15.1.94 declared the accommodation in question vacant. Thereafter the respondent No. 1 landlady moved an application for release u/s 16 of the Act. The said application was, however, rejected by the respondent No. 2 by the order dated 15.9.94. The respondent No. 1 challenged the said order by filing Revision No. 180/1994 before the District Judge, Varanasi. In that revision, the petitioner

applied for impleadment. The application for impleadment was, however, rejected by the Additional District Judge by the order dated 7.2.1995. The petitioner challenged the said order before this Court in Writ Petition No. 4625 of 1995. The writ petition was also dismissed by this Court by the order dated 27.5.1997. The respondent No. 2 by the order dated 20.3.98 allowed the revision filed by the landlady and has remanded the matter to the respondent No. 2 for a fresh decision on the release application moved by the landlady.

4. It is noteworthy that while declaring vacancy, the Rent Control and Eviction Officer had specifically held in the order dated 15.1.94 that the premises in question was governed by the provisions of U. P. Act No. XIII of 1972 and since the letting has been made in contravention of the provisions of the Act, the petitioner would be deemed to be in unauthorised occupation and a vacancy was in existence in law. The petitioner did not challenge the said order, on the other hand, himself applied for allotment. Since the landlady had also moved an application for the release of the disputed premises, her application was considered first and was rejected by the respondent No. 2 by the order dated 15.9.94. The landlady challenged the said order in the revision. During the pendency of the said revision, the petitioner moved an application for impleading him as a party but that application was rejected and the order rejecting the said application was upheld by this Court by the order dated 27.5.97 passed in Writ Petition No. 4625 of 1995. It was contended before this Court that since the landlord's application was rejected on the objection and the evidence led by the petitioner, he was entitled to be heard in the revision. This contention was turned down by this Court, and it was observed :

"The petitioner has not challenged the order declaring the vacancy. Once an order is passed by the Rent Control and Eviction Officer declaring vacancy, no person can claim any right to remain in occupation as a tenant or otherwise."

It was further observed :

"The contention of the petitioner, that he was earlier a tenant and, therefore, was entitled to be heard in revision, cannot be accepted. As a prospective allottee, he has no right to contest the release application. The Full Bench in Talib Hasan and another v. Ist Additional District Judge, Nainital and others, 1986 (1) ARC 1, has held that the prospective allottee " has no right to contest the release application. The view of the Full Bench has been upheld by the Hon"ble Supreme Court in Vijai Kumar Sonkar v. Incharge District Judge and others. 1995 (2) ARC 1."

5. In view of these decisions, the view taken by respondent No. 2 does not suffer from any manifest error of law. It further appears that the revisional court while disposing of the revision was of the view that the application for release has not been considered by the Rent Control and Eviction Officer in right perspective and, therefore, the case has been remanded back to the respondent No. 2 for a fresh decision on the release application according to law.

6. The petitioner by means of this writ petition has challenged the jurisdiction of the R. C. and E. O. to proceed further in the matter as per the order of the revisional court on the ground that the provisions of the Act have become applicable by virtue of the provisions contained in clause (g) of Section 2 (1) of the Act.

Section 2 (1) of the Act reads as under :

"2. Exemptions from operation of Act.--(1) Nothing in this Act shall apply to the following, namely :

(a) to (f) not relevant for the present case.

(g) any building, whose monthly rent exceeds two thousand rupees ;

(h) not relevant for the present case.

7. The rent of the accommodation in question in occupation of the petitioner is admittedly Rs. 1,000 per month. According to the petitioner, another portion comprising of terrace and a room in the same building wherein the disputed portion is comprised, has been let out to "Usha Fones" since the year 1996 on a monthly rent of Rs. 4,500. The contention of the learned counsel for the petitioner is that the total aggregate of rent of the building thus comes to Rs. 5,500 per month which is much more than the ceiling limit of Rs. 2,000 per month provided in clause (g). Therefore, the Act has ceased to apply and for this reason, the R. C. and E. O. will have no jurisdiction to make any order of release u/s 16 (1) (b) of the Act. It is argued by the learned counsel that the word "building" used in clause (g) denotes the entire building and is not confined only to the accommodation in occupation of the petitioner. This submission of the learned counsel must be rejected.

8. The word "building" has been defined in clause (i) of Section 3 of the Act as follows :

(i) "building", means a residential or non-residential roofed structure and Includes :

(i) any land (including any garden), garages and outhouses appurtenant to such building ;

(ii) any furniture supplied by the landlord for use in such building ;

(iii) any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof.

9. If the interpretation as suggested by the petitioner's counsel is given to clause (g), then it would result in absurdity which could never be Intended by the Legislature. In that event, the Act would not be applicable to all the tenants of a big building complex where total aggregate of rent payable by all the tenants exceeds Rs. 2,000 p.m. giving unfair advantage to the landlord and the tenants would be deprived of the protection of the Act, though the building may be an old

one. This Interpretation would be wholly illogical and against the object of the Act and the legislative intent behind the enactment. Clause (g) was inserted by U. P. Act No. 5 of 1995 with effect from 26.9.94. Prior to this amendment, Act was applicable to all the buildings irrespective of rate of rent. The Act not only regulates letting but also eviction of tenants. Chapter IV of the Act deals with the regulation of eviction. Section 20 (1) of the Act imposes a bar to the institution of suit 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, excepting in cases which are covered by any of the clauses enumerated in sub-section (2). It seems that in its wisdom, the Legislature thought it better to withdraw this restriction in respect of rich tenants having affluent means and inserted clause (g) to the effect that the Act will not apply to those cases where the rent exceeds Rs. 2,000 per month. The word "building" used in clause (g) cannot be stretched to such a wide meaning as being put by the learned counsel. It is well-established law of interpretation of Statute that no word used in an enactment can be read *de hors* the context in which it is used. In deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the Statute in which the provision is Included and the policy underlying the Statute assume relevance and become material. According to Halsbury, the words should be construed in the light of their context rather than what may be either their strict etymological sense or their popular meaning apart from the context.

10. The Supreme Court in the case of *Bhogilal Chunni Lal Pandya v. State of Bombay*, opined that when the Legislature uses same word in different parts of the same section or statute, there is a presumption that the word is used in the same sense throughout, unless there is something repugnant in the context. In *Farrell v. Alexander* (1976) 2 All ER 721 (HL), 11 has been said that the more correct statement of the rule is that where the draftsman uses the same word or phrase in similar contexts, he must be presumed to Intend it in each place to bear the same meaning.

11. If a statutory provision is open to more than one interpretation, the Court has to choose that interpretation which represents the true Intention of the Legislature. In order to arrive at a reasonable interpretation of a word used in a provision, the Court must examine the Scheme of the Act and the context in which it has been used. It is true that the Courts are not concerned with the policy of the Legislature or with the result whether Injuries or otherwise will be caused by giving effect to the language used nor it is the function of the Court, where the meaning is clear, not to give effect to it merely because it would lead to hardship. It cannot, however, be gainsaid that one of the duties imposed on the Court in Interpreting the particular provision of law is to ascertain the meaning and the intention of the Legislature, which in exercise of powers conferred on it, had made the enactment. In doing so, the Court must always presume that an enacted provision was designed to effectuate a particular object or to meet a particular requirement and not that it was intended to negative that

which it sought to achieve.

12. In the case of *R.G.S. Naidu and Co. Vs. Commissioner of Income Tax And Excess Profits Tax, Madras*, , it was held that the Courts will reject that construction which will defeat the plain Intention of the Legislature even though there may be some inexactitude in the language used.

13. "If the choice is between two interpretations", stated Viscount Simon, L.C. "the narrower of which would fall to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the holder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

14. In the case of *C.W.S. (India) Limited Vs. Commissioner of Income Tax*, It has been laid down that where a literal interpretation of the language used in an enactment leads to an absurd or unintended result, the language of the statute can be modified to accord with the intention of Parliament and to avoid absurdity.

15. In this connection, the following passage from *Maxwell's Interpretation of Statutes*" (12th Edn.) may also be quoted :

"1. Modification of the language to meet the intention.--Where the language of the statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the Legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear. It must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Lord Reid has said that he prefers to see a mistake on the part of the draftsman in doing his revision rather than a deliberate attempt to introduce an irrational rule ; "the canons of construction are not so rigid as to prevent a realistic solution."

16. The context and the subject-matter in connection with which the word "building" has been used in clause (g) are Important factors having a bearing on the question. The propriety or necessity of construing the word "building" is obvious because all parts of the Act have to be in harmony with the statutory intent. Keeping this in mind, if we turn to the purpose and object of the Act including the amending Act and examine the Scheme of the Act, the only possible and reasonable construction on the language used in clause (g) would be that this clause applies to a building in occupation of the concerned tenant or in other words to that tenement which is the subject-matter of dispute and not to

the whole building complex which may be having several separate and independent tenements. A "building" under the Act means an Independent allot table accommodation, whether singly situated or is part of a building complex. In the same sense, the word "building" has been used in all other provisions of the Act. Under the scheme of the Act, every single, separate and independent tenement in occupation of a tenant or unauthorised occupant is a "building" and if any other Interpretation is given to clause (g). It would lead to absurdity which had never been intended by the Legislature. Thus, the accommodation in question which is the subject-matter of the present dispute is a "building" in the context of clause (g) and the mere fact that another portion in the building complex has been let out to "Usha Fones" at a monthly rent of Rs. 4,500 will not make the Act inapplicable as the rent paid by "Usha Fones" is in respect of a separate building (tenement) and its rental cannot be added with that of the accommodation in question for the purposes of determining the selling limit of rent as contained in clause (g). For these reasons, the contention raised on behalf of the petitioner is rejected.

17. No other point has either been raised or urged. The petition is accordingly dismissed in limine.