
(1994) 04 AHC CK 0067

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 350 of 1991

Ajit Prasad Jain

APPELLANT

Vs

Prescribed Authority and III Addl. Civil Judge and Others

RESPONDENT

Date of Decision : 06-04-1994

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1)

Citation : (1994) 3 AWC 1234

Hon'ble Judges : A.B. Srivastava, J

Bench : Single Bench

Advocate : Pramod Kumar Jain, for the Appellant; Rajesh Tandon, for the Respondent

Final Decision : Allowed

Judgement

A.B. Srivastava, J.—The legal representative of one of the tenants opposite parties who had died pendente lite in a proceeding u/s 21 of Act 13 of 1972 "herein-after referred as the Act" has moved this writ petition challenging the order dated 7-12-1990 of the Prescribed Authority under the Act whereby he rejected the prayer of the Petitioner for abating the proceedings and allowing the application of the landlord (Respondent No. 2) for deleting the name of the Petitioner's predecessor in title.

2. Admittedly late Badri Prasad was an allottee tenant of the shop in question. He died on 14-8-1977. The application for release of the shop u/s 21(1)(a) of the Act was filed on 20-5-1987 by the landlord, Respondent No. 2 impleading six sons, widow and five daughters of Badri Prasad. During the pendency of the said proceeding Shital Prasad one of the sons, opposite party No. 3 before the Prescribed Authority, died and application dated 29-9-1988 was moved by the landlord before the Prescribed Authority to direct, opposite party No. 1 to the said proceeding Jamboo Prasad, to give the particulars of heirs of Shital Prasad. The particulars of eight heirs left by Shital Prasad was supplied on 7-10-1988.

However, no application for substitution was moved and on 5-11-1988 an application was moved by Jamboo Prasad to abate the proceedings on account of non-impleadment of heirs of Shital Prasad. This application was opposed by the landlord on the ground that Shital Prasad was not necessary party as after the death of Badri Prasad, only Jamboo Prasad was in possession over the shop in dispute. Shital Prasad was employed and residing in Delhi. The remaining heirs including Shital Prasad had surrendered the tenancy in favour of Jamboo Prasad and the question of abatement did not arise. The learned Prescribed Authority rejected the application for abatement and the same was challenged by means of a writ petition by Jamboo Prasad and by order dated 17-5-1990, the said petition was dismissed summarily with observation that the order refusing to declare the proceedings abated does not cause any manifest injustice to the Petitioner, in the absence of impleadment of heirs of the deceased Shital Prasad if there be any prejudice that will be to the heirs and legal representatives of the deceased, and not the Petitioner.

3. Thereafter an application dated 23-10-1990 was moved by the present petitioner who is one of the sons of Shital Prasad to abate the proceedings due to non-impleadment of the heirs of Shital Prasad. By the impugned order dated 7-12-1990, the Prescribed authority rejected the same and allowed the amendment moved by the landlord for deleting the name of Shital Prasad. Aggrieved this writ petition.

4. It has been contended on behalf of the Petitioner by his learned Counsel that the Prescribed Authority was not justified in rejecting the application for abatement on the sole ground that a similar application had been dismissed on 1-4-1989 and the said order has become final. The contention on behalf of the contesting Respondent landlord on the other hand is that the estate of the deceased being sufficiently represented by Jamboo Prasad and it being factually established that Shital Prasad had surrendered his tenancy rights in favour of Jamboo Prasad, the order rejecting the prayer for abatement is fully in accordance with law.

5. The application of the Petitioner, who admittedly is one of the heirs being a male lineal descendants of late Shital Prasad, could not be rejected on the principles laid down in Smt. Gema Coutinho Rodrigues Vs. Bricio Francisco Pereira and others, on the ground of the estate being sufficiently represented by one of the tenants Jamboo Prasad. Each co-tenant has a right to be represented and heard in the proceedings involving eviction from the premises in tenancy. Non-impleadment would result into a contradictory and incongruous situation in as much as in the event of the release being allowed, it would not bind the heirs of the deceased tenant whom the landlord has declined to implead as a party to the proceedings.

6. Factually of course the situation would be different if the deceased tenant Shital Prasad had forfeited his rights as a tenant on account of surrender express or implied. In that event the impleadment of his heirs will not be necessary. A

perusal of the impugned order of the Prescribed Authority would, however, go to show that the rejection of the abatement application by him is not based on any conclusion regarding surrender of his right as tenant by Shital Prasad, the predecessor-in-title of the Petitioner. He rejected the abatement application merely on the ground of a similar application of Jamboo Prasad having been dismissed by an earlier order dated 1-4 1989. The said order dated 1-4-1989, however, was not one to which present petition was a party or was heard before the same was passed. The dismissal of the writ petition No. 7607 of 1989 by order dated 17-5 1990 also does not alter the said position in-so-far as it has been clearly observed therein that the petition was liable to fail on the ground that the said order did not cause any manifest injustice to the said Petitioner who was already one of the opposite: parties to the proceedings.

7. In the result it would be found that the impugned order rejecting the application dated 23-10-1990 of the Petitioner has been passed without any enquiry or determination of the questions of fact and law relating to the surrender or otherwise of his tenancy rights by late Shital Prasad, the same, and the consequential order, allowing the detection of the name of Shital Prasad is thus unsustainable and deserve to be set aside and the matter remitted to the Prescribed Authority for decision afresh in accordance with law.

8. The petition is allowed The impugned orders dated 7-12-1990 are set aside and the Respondent No. 1 is directed to decide the two applications, afresh in accordance with law, after giving opportunity of evidence to the Petitioner Ajit Prasad, and the Respondent No. 2 Bhupendra Kumar. The matter having become old the prescribed authority shall dispose of the same expeditiously, refusing unnecessary adjournment. Costs easy.