
(2011) 04 AHC CK 0288
In the Allahabad High Court
Case No : Rent Control No. 33 of 2011

Amanattullah and Others

APPELLANT

Vs

Additional District Judge, Court No. 2 and Others

RESPONDENT

Date of Decision : 16-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152, 4A
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20, 21, 21(1), 22, 34
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 22

Citation : (2011) 4 ADJ 824 : (2012) 3 AWC 2556

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri Rajeeu Kumar Tripathi, learned Counsel for the Petitioners.

2. By means of present writ petition, Petitioners challenged order dated 27.11.2010 passed by Additional District Judge, Court No. 2, Bahraich in Rent Appeal No. 3 of 2007 u/s 22 of the U.P. Act No. XIII of 1972.

3. Facts in brief are that the controversy in the present case relates to six shops which are situated in Mohalla Brahmanipura, Chowk Bazar, Bahraich, purchased by Respondent No. 2 to 5 on 28.02.1990 from erstwhile owner Sardar Raj Jodhveer Singh, in which the Petitioners are tenants.

4. On 04/06.11.2000, landlord/Respondents moved an application for release of six shops under the provisions of Section 21(1)(a) & 21(1)(b) of the U.P. Act No. XIII of 1972. Accordingly, the following cases registered before the Prescribed Authority/5th Upper Civil Judge, Bahraich.

1. Rent Control Case No. 5/2000 Jyoti Kumar v. Abdul Basit.

2. Rent Control Case No. 6/2000 Jyoti Kumar v. Shurur Ahmad.
3. Rent Control Case No. 7/2000 Jyoti Kumar Rastogi v. Abdul Quadir.
4. Rent Control Case No. 8/2000 Jyoti Kumar Rastogi v. Amanatullah.
5. Rent Control Case No. 9/2000 Jyoti Kumar Rastogi v. Aziz Ahmad.
6. Rent Control Case No. 10/2000 Jyoti Kumar Rastogi v. Kudubuddin.

5. On 04.10.2002 a compromise entered between the parties in Rent Control Case No. 10/2000 in respect to shop No. 6, accordingly released in favour of the landlords, so, the controversy before the Prescribed Authority remains in respect to 5 shops under the tenancy of the Petitioners.

6. Before the Prescribed Authority, landlord moved an application u/s 34(1)(g) of Act read with Rule 22 of the Rules framed under U.P. Act No. XIII of 1972, to consolidate the five cases i.e. Rent Control Case No. 5/2000 Jyoti Kumar Rastogi v. Abdul Basti, Rent Control Case No. 6/2000 Jyoti Kumar v. Shurur Ahmad Rent Control Case No. 7/2000 Jyoti Kumar Rastogi v. Abdul Quadir Rent Control Case No. 8/2000 Jyoti Kumar Rastogi v. Amanatullah Rent Control Case No. 9/2000 Jyoti Kumar Rastogi v. Aziz Ahmad.

7. Accordingly, the said application registered as Paper No. Ka-17. On behalf of tenants, objection filed inter alia stating therein, that application moved by landlord to consolidate five cases is misconceived, rather the same is in contravention to the provisions as provided u/s 4(A) Code of Civil Procedure.

8. By order dated 20.02.2002, the Prescribed Authority allowed application (paper No. Ka-17) moved by the landlord to consolidate five cases.

9. Needless to mention herein that order passed by Prescribed Authority for consolidate the cases not challenged by the Petitioners and by means of judgment and order dated 29.10.2010, Prescribed Authority/5th Upper Civil Judge, Bahraich allowed all the five release applications of landlord moved u/s 21(1)(a) and 21(1)(b) of the U.P. Act No. XIII of 1972.

10. Aggrieved by the same, Petitioners filed Rent Appeal(registered as Rent Appeals Nos. 3 of 2007 to 7 of 2007) u/s 22 of the U.P. Act No. XIII of 1972.

11. During the pendency of the Rent Appeals before Appellate Authority, on behalf of Petitioners an application moved on 11.03.2010(Annexure No. 7) praying therein that all appeals shall be delinked and heard separately to which objection filed on behalf of landlord-Respondents on 16.09.2010 (Annexure No. 8).

12. Appellate Authority after hearing on the point of issue by order dated 27.11.2010 rejected application moved on behalf of the Petitioners to hear the appeals separately and further ordered that all the five appeals will be consolidated and heard together and appeal No. 04 of 2007 will be leading appeal.

13. Aggrieved by order dated 27.11.2010 passed by Appellate Authority/ Additional District Judge, Court No. 2, Bahraich, present writ petition has been filed by the Petitioners.

14. Sri Rajeiu Kumar Tripathi, learned Counsel for the Petitioners while assailing impugned order submits that six separate proceedings have been initiated by the Respondent No. 2-landlord for release of the six different shops against the Petitioners in which the defence of each tenants are different, so if the matter in questions are consolidated and heard together, the Petitioners will deprive the right to put their defence in respect to comparative hardship and personal need.

15. Sri Tripathi, learned Counsel for Petitioners further submits that the term "eviction" has been used u/s 20 of the U.P. Urban Buildings(Regulation of Letting, Rent and Eviction) Act, 1972, while the term "release" has been used u/s 21 of the U.P. Urban buildings (Regulation of Letting, Rent and Eviction) Act, 1972, and as such both the terms are of different meanings, the same cannot be clubbed together for the purpose of assuming of powers under Rule-22(e) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972. So, Respondent No. 1 while passing impugned order, committed manifest error of law and jurisdiction in wrongly assuming of powers of Rule-22(e) of the U.P. Urban Buildings(Regulation of Letting, Rent and Eviction) Rules, 1972 which is not meant for proceedings of "release".

16. On behalf of the Petitioners it is also argued that impugned order passed by Respondent No. 1 thereby consolidating all appeals to be heard together is an action without jurisdiction and the same has been passed wrongly assuming the power under Sub-section (8) of Section 34 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, read with Rule-22(e) of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Rules, 1972, hence impugned order dated 27.10.2010, is void-ab-initio, liable to be set aside.

17. He further submits that CPC are not applicable to the proceedings of "release" under U.P. Act No. XIII of 1972 in general, but the same is specifically applicable for the purposes prescribed u/s 34 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, but this aspect of the matter has completely been overlooked by Respondent No. 1 while passing the impugned order, so the same is liable to be set aside.

18. I have heard learned Counsel for Petitioners and gone through the record.

19. So far as factual matrix of the present case are concerned, it is not in dispute that Respondent No. 2 is landlord-owner of the shops in question, under the tenancy of the Petitioners situated in Mohalla Brahmanipura, Chowk Bazar, Bahraich in respect to which release applications moved by the landlords-Respondent Nos. 2 to 5 u/s 21(1)(a) read with 21(1)(b) of the Act separately and in addition to the said release applications one application moved in respect to the shop under the tenancy of one Sri Kutubuddin in respect to which a compromise entered between the parties on 04.10.2002 and released in favour

of the landlord.

20. Before Prescribed Authority landlord moved an application to consolidate the Rent case Nos. 5 of 2000 to 9 of 2000, u/s 34(1)(g) of the Rent Act read with Rule 22 of the Rules framed under U.P. Act No. XIII of 1972, to which objections filed by the tenants-Petitioners, allowed vide order dated 02.02.2002 (Annexure No. 4) by the Prescribed Authority, not challenged before any higher Forum.

21. Subsequently, thereafter all the rent cases consolidated, heard together and decided by common judgment dated 29.10.2010 by which all the release applications moved by the Respondents-landlords are allowed. Aggrieved by the same, five Rent Appeals filed namely Rent Control Appeal No. 3 of 2007 to 7 of 2007 by the Petitioners before the Respondent No. 1.

22. On 11.03.2010 (Annexure No. 7) an application moved in Rent Control Appeal No. 3 of 2007 to delink all appeals and heard separately to which objection filed by the landlord. After hearing the parties, rejected by means of order dated 27.10.2010 passed by Appellate Authority/Additional Civil Judge, Court No. 2, Baharich holding that all the five appeals will be heard together and Rent Control Appeal No. 3 of 2007 will be leading one.

23. Now, in order to decide the controversy involved in the present case, I feel it is appropriate to have a glance to the relevant provisions as provided under the Rent Control Act and Rules framed therein which governs the field in question, quoted herein under:

21: Proceedings for release of building under occupation of tenant-

(1) The Prescribed Authority may on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely-

(a) that the building is bonafide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, or calling or where the landlord is the trustee of a public charitable trust, for the objects of the trust:

Section 34(1)(g) of the Act provides as under:

Powers of various authorities and procedure to be followed by them.-(1) The District Magistrate, the prescribed authority or any Appellate or revising authority] shall for the purpose of holding any inquiry or hearing any appeal or revision under this Act have the same powers as are vested in the Civil Court under the code of Civil Procedure, 1908 (Act No. V of 1908), when trying a suit, in respect of the following matters, namely-

(g) any other matter which may be prescribed.

Rule 22(e) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction)

Rules 1972 (hereinafter referred as an "rules"), the relevant portion quoted herein under:

22. Power under the Code of Civil Procedure, 1908 [Section 34(1)(g).- The District Magistrate, the Prescribed Authority or the Appellate Authority shall, for the purposes of holding any inquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters, namely-

* * * * (e) the power of consolidate two or more case of eviction by the same landlord against different tenants;

Section 38 of the Act provides as under:

38. Act to override T.P. Act and Code of Civil Procedure.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Transfer of Property Act, 1882 (Act No. IV of 1882) or in the CPC 1908.

24. In view of the above provisions under U.P. Act No. XIII of 1972, the provisions which have to be considered is Order IVA of the Code of Civil Procedure, 1908 (inserted by U.P. Act No. 57 of 1976 with effect from 1.1.1977) while deciding the present case quoted as under:

order IVA Consolidation of suits and proceedings When two or more suits or proceedings are pending in the same court, and the court is of opinion that if it expedient in the interest of justice, it may be order direct their joint trial, where upon all such suits and proceedings may be decided upon the evidence in all or any of such suits or proceedings.

25. Now, reverting to the facts of the present case submission made by the learned Counsel for the Petitioners that the term "eviction" has been used u/s 20 of the U.P. Urban Buildings(Regulation of Letting, Rent and Eviction) Act, 1972, while the term "release" has been used u/s 21 of the U.P. Urban buildings (Regulation of Letting, Rent and Eviction) Act, 1972, and as such both the terms are of different meanings, the same cannot be clubbed together for the purpose of assuming of powers under Rule-22(e) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 so, Respondent No. 1 while passing impugned order, committed manifest error of law and jurisdiction in wrongly assuming of powers of Rule-22(e) of the U.P. Urban Buildings(Regulation of Letting, Rent and Eviction) Rules, 1972 which is not meant for proceedings of "release", is wholly misconceived and incorrect argument because intention and object of the legislature while framing Section 34 of the U.P. Act No. XIII is to lay down the powers of various authorities in respect of certain specified matters and to prescribe procedure for conducting the proceedings contemplated by this Act, which lays down a special procedure to be followed in the proceedings before the District Magistrate, the prescribed authority, or the appellate authority while holding an enquiry, or hearing the appeal under this Act as the case may be. This

Section is a complete code so far as the powers of, and procedure to be followed by, the authorities under this Act are concerned. Section 34 of the Act and Rule 22 of the rules framed under the Act are both procedural and they do not enlarge the powers conferred on the Prescribed Authority u/s 21(1)(a) or (b) of the Act.

26. Further, the provisions of Sub-section (1) of 34 of the Act to be interpreted in such a manner so that the object of U.P. Act No. XIII of 1972 may not be defeated and correct interpretation of the same is to the effect that Section 34 confers on the District Magistrate, the prescribed authority and an appellate authority, for hearing matter under the Act, same powers as are vested in the civil Court under the Code of Civil Procedure, when trying the suit, in respect of specified matters.

27. From reading of the Act and rules, it is clear that legislature wanted to give specific power to authorities under the Act and rules, one of the power is given under Rule 22(e) of Rules confers a power of consolidating two or more cases of eviction by the same landlord against different tenants. Whenever cases are consolidated, the evidence on record is to be read in all the consolidated cases. The provisions of Rule 22(e) of the Rules have been made in order to avoid duplication and multiplicity of the proceedings. The provisions in question specifically permit the consolidation of cases. Hence, there would be no illegality if two cases are consolidated keeping in view the said facts and provisions as provided u/s 4(A) of the CPC which gives sole discretion to the court before whom two trials are pending to consolidate the same. In the interest of justice, however, it is settled proposition of law that if a discretion is vested in a court/authority, the same could not be exercised in an arbitrary manner but should be exercised judicially after proper application of mind, taking into consideration the fact and circumstances of the case so that no parties can suffer from the discretion so exercised by the court.

28. The provisions as provided u/s 22(e) of the rules has been considered in the case of *Kallu v. IX Addl. District Judge, Kanpur and Ors.* (supra) where the landlord moved applications for release against two tenants for consolidating and this Court has held as under:

Whenever cases are consolidated, the evidence on record is to be read in all the cases which are consolidated. The provisions of Rule 22(e) have been made in order to avoid duplication of evidence and multiplicity of the proceeding. These provisions specifically permit the consolidation of the case as it has been done in the court below, consolidating the two cases into one. It may be mentioned that the Petitioner did not even the objections the application for consolidation of the cases. In the circumstances, the second objection of the learned Counsel is also over-ruled.

29. In the case of *Abdul Rahman v. Ist Addl. District Judge (Senior Division) Moradabad* and Anr. 1999(1) ARC 557 in para -3 it is held as under:

It is true that under Rule 22(e):

22. Power under the Code of Civil Procedure, 1908, Section 34(1)(g): The District Magistrate, the Prescribed Authority or the Appellate or Revising Authority shall, for the purpose of holding any inquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely-

(e) the power of consolidate two or more cases of eviction by the same landlord against different tenants.

(f) The power referred to in Section 151 and 152 of the Code of Civil Procedure, 1908 to make any order for the ends of justice or to prevent the abuse of process of the authority concerned, gives power to consolidate cases filed by one landlord against different tenants. This may be held in assessing the bona fide need and comparative hardship. The actual accommodation with the landlord may be known. The Rules 22(e) does not empower the Prescribed Authority to consolidate the cases filed by different landlords against the same tenant. But this does not mean that Prescribed Authority in no other case can consolidate the case. All Courts and Tribunals have inherent power to prevent the abuse of process of law *Nemi Chand Jain Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, devise its own procedure subject to statutory prohibition *B. Prabhakara Rao Vs. Desari Panakala Rao and Others*, So has the authorities and the Courts under the Act. The Authorities and the Court have inherent power not because of any legislature but because of their nature and constitution *Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others*, . They have power to pass order in the interest of justice *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, or follow procedure unless prohibited *Devendra Nath v. ADJ Agra 1977 ARC 475* by law. Rule 22(f) [Kindly see foot No. 2] specifically confers inherent power to make any order for ends of justice or to prevent the abuse of the authority concern. The Act does not prohibit consolidation of two cases against same tenant in respect of same premises by different landlords. The only limitation is it should be in interest of justice or to prevent the abuse of the process of law.

Further in para-4 in the case of *Abdul Rahman (Supra)* it is also held as under:

It is for Prescribed Authority to consider whether it is in interest of justice to consolidate the case or not under inherent powers.

30. In the light of the fact, the position which emerges out, in nut shell, that if two cases are pending before the same court for trial then the court concerned in the interest of justice have a discretion to consolidate the same, the said discretion is to be exercised judicially after proper application of mind not in a mechanical manner and no party can claim order thereof as matter of right to get both the case consolidated on his request.

31. In the light of above said facts, submission made by learned Counsel for Petitioners that Rule 22(e) is applicable to eviction proceeding and not to release

started on the basis of an application for release moved by landlord u/s 21(1)(a) of the U.P. Act No. XIII of 1972, so the provisions of Section 22(e) will not be available because the term eviction has been used u/s 20 of the Act, is wholly misconceived argument and rejected in view of the facts stated above, coupled with the fact that once an application for release moved u/s 21(1)(a) of the U.P. Act No. XIII of 1972, then the natural outcome of the same will be eviction of tenant from the premises in respect to which release application has been moved, as such if two or more release applications have been moved by landlord for eviction of tenant then the Prescribed Authority/Appellate authority has got power to consolidate the same as per provisions as provided u/s 34(1)(g) read with Section 22(e) of the rules framed under the U.P. Act No. XIII of 1972.

32. For the foregoing reasons, writ petition filed by the Petitioners lacks merit and is dismissed.

33. No order as to costs.