
(2008) 08 AHC CK 0211

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8259 of 2001

Balraj

APPELLANT

Vs

Rent Control And Eviction Officer, Meerut and others

RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 14

Citation : (2008) 08 AHC CK 0211

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—Shri Pramod Jain, learned Counsel for landladyrespondent No. 2 states that his client is not responding.

2. Heard learned Counsel for the petitioner. This writ petition is directed against vacancy declaration order dated 7.2.2001 passed by Rent Control and Eviction Officer/Additional District Magistrate (City), Meerut in Case No. 91/72/98, Manoj Kumar Dagar v. Gyanwati. Proceedings were initiated on the allotment application filed by Manoj Dagarrespondent No. 3. Property in dispute is a shop bearing No. 1138 situate on P.L. Sharma Road, Meerut. Rent of the shop in dispute is Rs. 200/ per month. Petitioner asserted before R.C. and E.O. that his father Babu Lal was tenant for about 35 to 40 years. Landlord asserted that petitioner was tenant for 10 to 12 years. In order to show old tenancy continuing from the time of his father, petitioner filed some receipts. The receipts were of the year 1974, 1979, 1980, 1986 and 1998. Except the receipts of 1974 and 1979 all other receipts were issued by respondent No. 2 Smt. Gyanwati. However, the receipts of 1974 and 1979 were issued by Smt. Kela Devi. The R.C. and E.O. concluded that from the said receipts it was clear that before 6.9.1979 petitioner's father was not tenant of Gyanwati but of Smt. Kela Devi. It was further held by R.C. and E.O. that petitioner's father was not tenant since before 1974. Accordingly vacancy was declared.

3. It appears that Kela Devi was previous landlady, hence she issued receipts in favour of the petitioner's father. It could not make his occupation unauthorised. Even if tenancy started with effect from 1974 it was quite valid as section 14 of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 was amended in 1976 (w.e.f. 5.7.1976) and it was provided therein that tenants with the consent of the landlord on the said date should be treated to be valid tenants.

4. It may also be mentioned that a supplementary affidavit has been filed by the petitioner today annexing therewith copy of release application which has been filed by landladyrespondent No. 2 against petitioner under section 21 of the Act on the file of Prescribed Authority/J.S.C.C., Meerut in the form of Case No. 68 of 2006.

5. Accordingly I find that the impugned order passed by the R.C. and E.O. declaring vacancy is patently erroneous in law and utterly without jurisdiction.

6. Writ petition is therefore allowed. Impugned order is set aside.

7. I have held in *Khursheeda v. A.D.J.* 2004 (55) ALR 586 and *H.M. Kitchlu v. AD.J.*, 2004 (57) ALR 485 that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act or while maintaining the said relief already granted by the Courts below, Writ Court is empowered to enhance the rent to a reasonable extent.

8. In the aforesaid authority of *Khursheeda* (supra), I placed reliance upon the Supreme Court authority of *M.V. Acharya v. State of Maharashtra*, AIR 1998 SC 602=1998 SCFBRC 75 where it was held that it was essential to provide for periodical enhancement of rent under the Rent Control Acts. The Supreme Court has further held that frozen rents are given rise to lawlessness and landlords out of frustration are approaching muscle man to get the premises vacated and Courts of law are becoming redundant in this sphere. This authority has recently been followed by the Supreme Court in *Satyawati Sharma (dead) by LRs. v. Union of India and another*, (2008) 5 SCC 287=2008 (71) ALR 499 (SC) part of Para29 and Para34 of which are quoted below :

"29. It is trite to say that legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become nonexistent.

34. In *Malpe Vishwanath Acharya and others v. State of Maharashtra and another* (supra) the Court found that the criteria for determination and fixation of rent by freezing or by pegging down of rent as on 1.9.1940 or as on first date of letting, had, with the passage of time become irrational and arbitrary but did not strike down the same on the ground that extended period of Bombay Rent Act was

coming to an end on 31.3.1998."

9. Under U.P. Rent Control Act, there is no provision of enhancement of rent after October, 1972 [Except where landlord is public charitable or public religious institution (section 9A) or Government is tenant (section 21 (8))]. In the aforesaid authority of Khursheeda, I have also placed reliance upon the authority of Supreme Court in Shangrila Food Products Ltd. v. Life Insurance Corporation of India, AIR 1996 SC 2410=1996 SCFBRC 472 paragraph11 of which is quoted below :

"It is wellsettled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief."

10. Thereafter in Para8 of the aforesaid authority of Khursheeda, I held as under:

"Rent Control Act confers a reasonable advantage upon the tenant of protection against arbitrary eviction. Tenant under the Rent Control Act cannot be evicted except on specific grounds like bona fide need of the landlord, arrears of rent, subletting and material alteration etc. This advantage is also coupled with the advantage of immunity from enhancement of rent. The latter advantage cannot be said to be either reasonable or equitable. The Supreme Court in the aforesaid authority of S.F.P. v. L.I.C, AIR 1996 SC 2410 has laid down that while granting relief to a party the Writ Court can very well ask the said party to shed the unfair advantage which it gained under the impugned order. By slightly extending the said doctrine it may safely be held that while granting the reasonable advantage to the tenant conferred upon him by the Rent Control Act the tenant may be asked to shed the unreasonable arbitrary advantage conferred upon him by the said Rent Control Act. The Writ Court therefore while granting or maintaining the relief against arbitrary ejection to the tenant can very well ask the tenant to shed the unreasonable benefit of the Rent Control Act granted to him in the form of immunity against enhancement of rent, however inadequate the rent might be. Tenant will have to shed the undue advantage of immunity from enhancement of rent under the Rent Control Act to barter his protection from arbitrary eviction provided for by the said Act."

11. Thereafter in H.M. Kitchlu v. AD.J., 2004 (57) ALR 485 I have held that the same principle of enhancement of rent to a reasonable extent may be made applicable while dismissing the writ petition of the landlord for the reason that by doing so Writ Court approves the protection of Rent Control Act granted to the tenant by the Courts below.

12. Property in dispute is a shop situate in Meerut which is about 60 Kms. from Delhi. Existing rent of Rs. 200/ per month can well be described as virtually no rent. Meerut is also included in National Capital Region (N.C.R.). Current rent of the shop in dispute may be several thousand rupees. Accordingly it is directed that with effect from August, 2008 onwards tenantpetitioner shall pay rent to the landlordrespondents at the rate of Rs. 1,800/ per month. No further amount over and above Rs. 1,800/ per month shall be payable as water tax etc.

Writ Petition Allowed.