

(2007) 10 AHC CK 0061
In the Allahabad High Court

Bhola Nath Gupta

APPELLANT

Vs

Special Judge (Additional District Judge), J.S.C.C./Civil Judge
and Nazakat Ali

RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7C
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 5

Citation : (2008) 1 AWC 15

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

Bench : Single Bench

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. This is landlord's writ petition arising out of S.C.C. Suit No, 2 01 1990 filed by him against tenant-respondent No. 3 Nazakat Ali, before J.S.C.C. /Civil Judge, Rampur. Property in dispute was purchased by the petitioner in or about 1970. Respondent No. 3 was tenant since before that date. In 1970 some litigation took place in between the petitioner and respondent No. 3, hence petitioner stopped accepting rent from respondent No. 3. This fact was admitted by the petitioner-landlord in the suit giving rise to the instant writ petition as is mentioned in the judgments of the courts below. Thereafter tenant started depositing the rent @ Rs. 40/- per month u/s 7-C of U.P. Temporary Control of Rent and Eviction Act, 1947 (hereinafter referred to as the " Old Act"). Thereafter landlord on 18.9.1972 gave a notice to the tenant u/s 5 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act"7), u/s 5 of the Act rent could be enhanced by 25 per cent by giving notice within three months from the enforcement of the Act i.e. till 15.10.1972. In the notice it was stated that the rent was being enhanced from Rs. 40/- per month to Rs. 50/- per month w.e.f. 7.1972.

3. In para 4 of the notice it was stated that w.e.f. 15.7.1972 tenant was liable to

pay rent @ Rs. 50/- per month to the landlord and 10 per cent water tax thereupon. In the last paragraph it was mentioned that w.e.f. 15.7.1972 rent @ Rs. 50/- per month should be paid to the landlord. The exact words used in the notice given by the petitioner's advocate were that with effect from 15.7.1972 you the notices should pay rent @ Rs. 50/- per month to my client.

4. Landlord admitted that the rent deposited by the tenant only up to 15.7.1972 had been withdrawn by him. This clearly means that the landlord on 18.7.1972 when he gave first notice was aware that rent was being deposited u/s 30 of the Act or u/s 7-C of the Old Act. In view of this it was essential for the landlord to indicate in the said notice that the rent should not be continued to be deposited before the court u/s 7-C of the old Act (or Section 30 of the Act) and he was ready to accept the rent directly. In fact, the said notice is only and only a notice for enhancement of rent and it can not be said to be a notice signifying that landlord / opposite party will accept the rent directly as required by Section 30(1) of the Act. Even after the receipt of the notice dated 18.9.1972, it is admitted, that the tenant continued to deposit the rent u/s 30 of the Act up till 1989. Notice dated 18.9.1972 was replied on 5.10.1972. Reply notice is Annexure "2" to the writ petition. In the reply notice right of landlord to enhance the rent was disputed.

5. Thereafter notice of termination of tenancy and demand of rent was given on 25.08.1989. True copy of the said notice is Annexure "3" to the writ petition. Reply of the said notice was given, copy of which is Annexure "4". In para 8 of the reply notice it was categorically stated that u/s 30 of the Act tenant had already deposited Rs. 8060/-, however, he was remitting through money order the entire amount claimed by the landlord (@ Rs.50/- per month plus Rs. 5/- per month water tax) after deducting the aforesaid amount of Rs. 8060/-. The balance came to Rs. 3242.50. The said amount was admittedly sent by the tenant to the landlord through money order which was refused by the landlord.

6. The trial court held that notice dated 18.9.1972 was not valid as it sought to enhance the water tax also, hence rent did not stand legally enhanced by the said notice. Trial court further held that until 1972 rent deposited by the tenant @Rs.40/-per month was admittedly withdrawn by the landlord, hence he was estopped from asserting that the rate of rent was Rs. 50/- per month. The trial court held that the rate of rent was Rs. 40/- per month and no water tax was payable thereupon. Trial court further held that as notice dated 18.9.1972 was illegal, hence the tenant was not obliged to pay the rent directly to the landlord. Ultimately the suit was dismissed through judgment and decree dated 3.8.1990. Against the said judgment and decree landlord petitioner filed S.C.C. Revision No. 76 of 1990. Revision was dismissed by A.D.J. (Special Judge) Rampur on 30.9.1993 even though on different grounds, hence this writ petition.

7. Revisional court disagreed with the trial court in respect of rate of rent and held that the rate was validly enhanced by notice dated 18.9.1972 from Rs. 40/- per month to Rs. 50/- per month, Revisional Court further held that after notice

dated 18.9.1972 tenant was not authorized to deposit the rent u/s 30 of the Act, hence all subsequent deposits were illegal. However, the revisional court dismissed the suit only on the ground that notice terminating tenancy dated 25.8.1989 was illegal as through the said notice water tax was also demanded, which was not payable. I do not agree with the finding of revisional court in respect of invalidity of notice. In Full Bench Authority of this court reported in Gokaran Singh v. 1st Additional District and Sessions Judge, Hardoi and Ors. 2000 (1) A.R.C. 653 it has been held that even if some such amount which is not due is demanded through the notice still notice does not become invalid.

8. However, the main question to be decided in this writ petition is as to whether notice dated 18.9.1972 can be said to be a notice signifying the assent of the landlord to accept the rent directly as mentioned u/s 30 (I) of the Act, which is quoted below:

30. Deposit of Rent In Court" In Certain Circumstances:

1. If any person claiming to be a tenant of a building tenders any amount as rent in respect of the building to its alleged landlord and the alleged landlord refuses to accept the same then the former may " deposit such amount in the prescribed manner and continue to deposit any rent which he alleges to be due for any subsequent period in respect of such building until the landlord in the meantime signifies by notice in writing to the tenant his willingness to accept it.

9. In my opinion, notice dated 18.9.1972 can not be said to be a notice signifying landlord's willingness to accept the rent directly. Litigation before the Rent Control and Eviction Officer had started between the parties prior to the said notice. Landlord admits that due to said litigation he refused to accept the rent. In view of this refusal rent was being deposited by the tenant u/s 7-C of the Old Act and thereafter u/s 30 of the New Act. In this scenario it was absolutely essential for the landlord to categorically mention in his notice dated 18.9. 1972 that the tenant should not continue to deposit rent before the Munsif u/s 7-C or Section 30 of the Acts and he (landlord) was ready to accept the rent directly. In my opinion the notice dated 18.9.1972 is only and only a notice for enhancement of rent u/s 5 of the Act. Accordingly the view of the revisional court that deposit of rent u/s 30 of the Act after receipt of the notice dated 18.9.1972 was illegal is not correct in law.

10. In view of the above judgment and order passed by the revisional court has to be affirmed even though on totally different ground,

11. Accordingly writ petition is dismissed.

12. I have held in Khursheeda v. A.D.J. 2004 (2) A.h.C. 64 and H.M. Kitchlu v. A.D.J. 2004 (2) A.R.C. 652 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 court below, writ court is empowered to enhance the rent to a reasonable extent. Rent of Rs. 40/- or 50/- per month is

virtually as well as actually no rent. Accordingly it is directed that w.e.f. September, 2007 onward tenant-respondent shall pay rent to the petitioner-landlord @ Rs. 500/- per month which would be inclusive of water tax etc. No further amount shall be payable over and above Rs. 500/- per month.