
(1987) 02 AHC CK 0023
In the Allahabad High Court
Case No : Civil Misc. Writ No. 15588 of 1984

Bir Singh Thakur Advocate

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 12-02-1987

Acts Referred:

Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 2, 9

Citation : (1987) 1 AWC 665

Hon'ble Judges : V.K. Khanna, J

Bench : Single Bench

Advocate : Prakash Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Khanna, J.—Premises No. 173-A, Bharat Insurance Building New Connaught Place, Dehradun admittedly are owned by Respondent No. 3, Life Insurance Corporation of India. The aforesaid premises were let out admittedly to the Petitioner on a monthly rent of Rs. 50.88 and the terms of the lease were also reduced to writing which is contained in Annexure C.A.-I to the counter affidavit.

2. An application dated 22-1-1979 was given by the Life Insurance Corporation before the Estate Officer exercising the powers under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1971 on the ground that the Petitioner illegally demolished portion of a wall between the two rooms in the disputed premises and inspite of telegraphic notice continued the work and opened a door in the wall thus substantially changed the shape of the premises and damaged it. It was also urged that despite service of the notice dated 21-8-1978 determining the tenancy of the Petitioner, the premises have not been vacated and thus the Petitioner has become unauthorised occupant of the premises in dispute. A show cause notice was issued to the Petitioner and in pursuance of which objections were filed on 25th February 1980 denying the allegations made in the application.

3. From the record it is apparent that several dates were fixed in the case but the case could not proceed because of the adjournment sought by the Petitioner and ultimately the case was decided on 26th June 1984 after taking evidence of the applicant Life Insurance Corporation. An application for recalling the exparte order was made on behalf of the Petitioner which too was dismissed on 27-6-1984 by a reasoned order which is contained in Annexure C.A. "3" to the counter affidavit. Feeling aggrieved the Petitioner filed an appeal u/s 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which too has been dismissed. It is these orders of the Estate Officer and the Appellate Authority which have been challenged in this writ petition.

4. Learned Counsel for the Petitioner in this writ petition has urged that the Petitioner by no stretch of imagination could be called, an unauthorized occupant under the Act as the tenancy could not be terminated except under the terms of the agreement. Reliance has been placed on para 11 of the written lease contained in Annexure C.A.-I to the counter affidavit. It has been argued that the aforesaid written lease contained a contract that the tenancy could only be terminated in accordance with the terms of the lease and could not even be terminated u/s 106 of the Transfer of Property Act. Reliance has been placed on a decision of this Court reported in Reserve Bank of India v. S.B. Srivastava 1983 (2) ARC 111.

5. It has also been argued that in any view of the matter the lease granted in favour of the Petitioner could have been determined for some reason and there being no reason for determination of the lease, the Petitioner could not have become an unauthorised occupant within the meaning of the Act. Reliance has been placed on a decision of this Court reported in Shrimati Sushila Devi v. Rajya Sampatti Adhikari 1984 (1) ARC 72.

6. It has been lastly urged that in case the lease was determined u/s 106 of the Transfer of Property Act, the Petitioner would not become unauthorised occupant. Reliance has been placed on a decision of this Court reported in Ballabh Das Daga v. IIrd Additional District Judge 1978 (U.P.) RCC 565.

7. A bare perusal of the impugned order shows that the application moved by the Life Insurance Corporation was decided by the Estate Officer on 26th June 1984 exparte as despite affording adequate opportunity the Petitioner had not appeared. In the writ petition the Petitioner has challenged the landing of the Estate Officer and of the Appellate Authority on the ground that sufficient cause had been shown for the non-appearance of the Petitioner and the exparte order should have been set aside by the authorities and the case should have been heard on merits. In this connection I have carefully perused the record and the impugned orders. The application by the Life Insurance Corporation was filed on 22-1-79. The Petitioner had filed his objection on 26th February 1980. A perusal of the order of the Estate Officer would show that time and again adjournments were sought by the Petitioner. Exparte orders were also passed which were subsequently set aside. 26th June 1984 was fixed as per the convenience of the

Advocates of both the parties and it was agreed that the case would definitely be taken up on 25-6-84. The Estate Officer had also indicated the time which was fixed after taking into account the convenience of the Advocates i.e. 2.30 P.M. as the Authority intended to devote the entire afternoon for the case. This fact would be clear from the order of the Estate Officer disposing of the restoration application contained in Annexure C.A. "3" to the counter affidavit. On these facts when the case was dragging on for over five years because of the dilatory tactics of the Petitioner it can not be said that the Estate Officer was wrong in proceeding *ex parte* on the date fixed. The appellate court has also recorded a finding against the Petitioner and in my opinion, the finding has been recorded on correct appraisal of evidence.

8. Even otherwise, in my opinion, the Petitioner has no case on merits. As far as the first argument raised by the learned Counsel for the Petitioner is concerned, I am of the opinion that the same is without substance for two reasons. A bare perusal of the written lease would show that Clause (4) clearly contained a stipulation that the Petitioner will make no addition or (alteration of any kind in the premises. Life Insurance Corporation has come with the plea that the Petitioner had made alterations and damaged the property in support of which evidence has been led and the Estate Officer on the basis of that evidence has, recorded a finding against the Petitioner. Under Clause 11 the Petitioner was liable to vacate the property even without notice and the liability to ejection was also there under Clause 20 for non-compliance or breach of any of the conditions of the lease. Even otherwise on the reading of the entire lease I am of the opinion that the terms of the lease do not exclude termination of the tenancy by giving a notice u/s 106 of the Transfer of Property Act. There was no clause in the lease that the tenancy could not be terminated by any other means and the entire reading of the document of lease only shows that besides terminating the lease by normal mode i.e. by giving notice u/s 106 of the Transfer of Property Act, the lease could also be terminated by giving notice, if there was any breach of the provisions of the lease.

9. The argument that the lease could be determined only for some reason is also not tenable inasmuch as on the finding recorded by the Estate Officer there was reason for termination of the lease i.e. alterations and damaging the property in dispute. The decision in the case of *Shrimati Sushila Devi (supra)* is thus of no help to the Petitioner.

10. As far as the last argument raised by the learned Counsel for the Petitioner that after terminating the tenancy of the Petitioner by giving a notice the Petitioner does not become an unauthorised occupant, the same, in my opinion, also is of no substance. As has been held above, the lease of the Petitioner has been duly terminated and thus in view of the definition given in Section 2(g) of the Act, the Petitioner had become unauthorised occupant. As far as the reliance placed by the Petitioner on the decision of this Court in the case of *Reserve Bank of India (supra)*, in my opinion, the question did not arise directly for

consideration before the court as admittedly in that case the Plaintiff had no right to file an application under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 as has been clearly held in the case. Moreover, what had been observed was that the mere fact that the Defendant's lease has been terminated prior to the institution of the suit does not per se bring the Defendant within the mischief of definition of unauthorised occupant u/s 2(g) of the Act. It is clear from the observations made in the case that at the hearing of the application an applicant could prove that after the due termination of the tenancy the occupation of the tenant had become unauthorised. The other case i.e. the case of Ballabhdas Daga (supra), had no application inasmuch as in the present case the Petitioner cannot claim the benefit of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. What has been held in the case is that a tenant who has got statutory protection the mere terminating the contractual tenancy would not make him an unauthorised occupant. Here in the present case the Petitioner could not claim himself to be statutory tenant and thus after his tenancy had been duly terminated, he will be deemed to have become unauthorised occupant in view of the provisions of Section 2(g) of the Act.

11. No other point has been urged before me.

12. For the reasons stated above, the present writ petition is dismissed with costs.