
(1999) 12 AHC CK 0119
In the Allahabad High Court
Case No : C.M.W.P. No. 38794 of 1999

Daya Ram Shiv Hare

APPELLANT

Vs

Vth Additional District Judge, Jalaun at Orai and others

RESPONDENT

Date of Decision : 03-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 106
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(1)(b), 12(2), 20, 25

Citation : (2000) 1 AWC 583

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : H.S. Nigam and S.S. Nigam, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Yog, J.—Suit No. 18 of 1999 was filed by one Smt. Sarla Gupta in the Court of Judge Small Causes, Orai, copy of which has been filed as Annexure-1 to the writ petition.

2. Plaintiff sought eviction of defendant tenant Daya Ram/petitioner, on the ground that tenant had not paid rent, he was a defaulter as he failed to pay rent, did not clear statutory liability to pay water tax and that the tenant had sub-let the shop in question to one Gauri Shanker, defendant No. 2 in the Suit (respondent No. 4).

3. A notice dated 21.9.1999 (Annexure-1A to the writ petition) purported to be u/s 106 Transfer of Property Act and u/s 20 of the U. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act. 1972 U. P. Act No. XIII of 1972 (for short called "the Act"), was issued determining tenancy and claiming eviction of the tenant, recovery of rent and other dues. There is no reference in the notice in question of Section 30 of the Act.

4. By means of said notice (Annexure-1A to the writ petition), landlord informed that he was liable for eviction on ground of sub-letting, without consent of the landlord, default for non-payment of rent and water tax due for more than four months and determined the tenancy asking the tenant to handover possession of the shop after expiry of 30 days.

5. In para 5 of the said notice, landlord specifically demanded rent for period of 1st July. 1984 to 16th September. 1990 as well as certain amount towards water tax. Initially suit was decreed by trial court vide judgment and order dated 11.11.1992. Tenant filed Revision (JSCCR No. 8 of 1992) it was allowed on the ground Judgment of the trial court was in accordance with law as far as question of liability to pay water tax by the tenant was concerned in the instant case the Revisional Court by means of Judgment and order dated 21.9.1994 remanded the case back for deciding the case afresh.

6. In paras 10 and 11 of the writ petition it is alleged that an amendment application was filed by the landlord-respondent No. 3 and another amendment application was filed by the petitioner-tenant for amending the written statement (Annexure-6 to the writ petition). It is alleged that no orders were passed on the said application. Learned counsel for the petitioner did not press the ground contained in paras 10 and 11 of the writ petition. I find that no legal ground has been taken in the writ petition with reference to the averments contained in paras 10 and 11 of the writ petition. Oral arguments at the hearing on the basis of averments contained in paras 10 and 11 of the writ petition shall be treated as not pressed.

7. The Court of Judge Small Causes after receipt of the case on remand dismissed the suit vide Judgment and order dated 13.12.1996 (Annexure-8 to the writ petition).

8. Smt. Sarla Gupta, plaintiff filed Judge Small Causes Court Revision No. 1 of 1997. Aforesaid revision has been allowed by respondent No. 1/Vth Additional District Judge. Jalaun (at Oral) vide judgment and order dated 5.8.1999 (Annexure-9 to the writ petition).

9. Tenant-petitioner has now come up before this Court by filing writ petition under Article 226, Constitution of India and seeks for issuance of a direction to quash order dated 5.8.1999.

10. I have heard learned counsel for the parties at length.

11. Learned counsel for the petitioner has made the following submissions.

12. The notice (Annexure-1A to the writ petition) u/s 106, I.P.C. and Section 20 of the Act could not be treated as notice contemplated u/s 30 (I) of the Act. According to him, plaintiff ought to have indicated that notice was u/s 30 (1) of the Act.

13. The argument of learned counsel for the petitioner is that by not mentioning

Section 30 (1) of the Act in the notice (Annexure-IA to the writ petition) and not expressing clearly and categorically that he was prepared to accept rent as contemplated u/s 30 (1) of the Act, it cannot be taken as willingness to accept rent, learned counsel for the petitioner states that reading of the notice in question (Annexure-IA to the writ petition) shows that it did not contain averments indicating willingness on the part of the landlord to accept rent, hence the notice is ineffective, invalid and liable to be ignored.

14. Learned counsel for the contesting respondent Nos. 3 and 4, on the other hand, stated that the contention of the petitioner is misconceived. According to him, perusal of para 5 of the notice (Annexure-IA to the writ petition) shows that the landlord had demanded rent for the period from 1.7.1984 to 16.9.1990 and, therefore, apart from being a demand notice. It also expressed willingness to accept rent. He submits that said averments fulfil the requirement of Section 30 (1) of the Act. It is argued that the tenant was under an obligation to pay the rent in compliance to the direction given by the landlord.

15. Learned counsel for the contesting respondent, advancing his argument further, stated that mere non-mentioning of provision at the top of the notice will not render the notice bad or ineffective. Section 30 (1) of the Act requires landlord to signify, by a notice in writing to the tenant, his willingness to accept rent. He submits that this requirement is fully met by the notice in the instant case.

16. On behalf of the respondents, it is urged that non-mentioning of provision or mentioning of a wrong provision cannot be the criterion for Judging the validity of a "Notice".

17. Learned counsel for the contesting respondents referred to the decision in Municipal Corporation of the City of Ahmedabad Vs. Ben Hiraben Manilal,

18. In para 5 of the Judgment. Supreme Court observed....."It is well settled that the exercise of a power, if there is indeed a power, will be referable to a Jurisdiction, when the validity of the exercise of that power is in issue, which confers validity upon it and not to a jurisdiction under which it would be nugatory, though the section was not referred, and a different or a wrong section of different provisions was mentioned....."

19. In another decision Umesh Chandra Bhilwar v. State of U. P. and others 1999 ACJ 405. Full Bench of this Court observed :

"We find no substance in the contention raised. It is well-settled principle that where an authority makes an order which is otherwise within its competence, it cannot fail merely because it purports to be made under a wrong provision of law, if it can be shown to be within its powers under any other provision : a wrong label cannot vitiate an order which is otherwise within the power of the authority to make."

20. It is now well-settled that neither the "title" nor non-mentioning or incorrect

mentioning of "provision" in notice is material.

21. I hold that notice in the instant case cannot be said to be invalid or inadequate for the purpose of Section 30 (1) of the Act.

22. The second argument of the learned counsel for the petitioner is that notice in the instant case required rent to be deposited for the period from 1.7.1984 to 16.9.1990 whereas the petitioner had already deposited rent u/s 30 of the Act up to June, 1986. The petitioner contends that since notice required him to deposit rent for the period for which he had already made deposit u/s 30 of the Act, the notice cannot be said to be a good notice because it required the tenant to pay certain amounts which were not due.

23. On behalf of the contesting respondents, it is submitted that notice cannot be ignored or held to be bad on this score and he placed reliance on the decision in Ram Pratap and another v. Sri Parma Lal 1956 ALJ 787.

24. The relevant observation in the Judgment reads :

"A notice of demand may not mention the amount at all. It may simply ask the tenant to pay the arrears which he has not paid for the past three months. If in the notice of demand an amount is mentioned which turns out to be in excess of the amount which is really due from the tenant, we do not consider that this circumstance will render the notice bad in law.....We think that as soon as a notice of demand is served upon a tenant. It is his duty to pay such amount as he thinks is due from him and if ultimately it is found that the amount paid by the tenant was the correct amount, the landlord's suit for ejectment will be dismissed and the tenant will not suffer in any respect. But, in our opinion, there is no Justification for the tenant to remain silent and not pay even the amount which, according to him, is due and then to claim that the notice was invalid and that he was not liable to ejectment....."

25. Learned counsel for the petitioner thereafter submitted that all the amounts deposited u/s 30 (1) of the Act, has to be treated as valid deposit as the same have been deposited under the orders of Court. In this context, reference may be made to the copy of the order dated 20.4.1985 in Misc. Case No. 61 of 1984, Daya Ram v. Smt. Sarla Devi, (Annexure-1 to the Supplementary Affidavit dated 13.9.1999 sworn by Babu Lal). Operative portion of the said order translated in English reads :

"Application allowed and applicant is granted permission to deposit rent with respect to the shop in his tenancy till opposite party does not agree to accept rent. Opposite party may withdraw the rent from the Court by giving application in accordance with law."

26. It will show that permission to make deposit u/s 30 (1) of the Act was valid and operative only till the time landlord had not agreed to accept rent.

27. The notice in the instant case clearly indicates that Landlord had notified his

willingness by demanding arrears of rent.

28. Admittedly notice dated 21.9.1990 was issued on 19.9.1990. It was admittedly received by tenant-petitioner on 21.9.1990. Notice period of 30 days expired on 21.10.1990. The petitioner-tenant admittedly deposited rent in Misc. Case No. 61 of 1984 under 30 (1) of the Act on 23rd October. 1990.

29. In my considered opinion, rent deposited u/s 30 (1) of the Act after expiry of 30 days notice cannot be treated as valid deposit and petitioner cannot take advantage of the same for two reasons. Firstly, deposit has not been made within the period of 30 days and, therefore, cannot be treated as valid tender to the landlord within the notice period. Secondly, on the other hand, deposit of rent u/s 30 (1) of the Act after receipt of the notice expressing landlord's willingness to accept rent, cannot be Justified.

30. Learned counsel for the petitioner referred to Ram Gopal v. Hari Shankar 1985 AWC 210 (para 29) wherein the Division Bench of this Court held that if some amounts are being deposited under orders of the Court, which have attained finality between the parties, the same cannot be challenged as not being valid deposit. In this case, Court was considering the case under Sections 39 and 40 of the Act. Here facts are entirely different. Any deposit made in violation of the notice (Annexure 1-A) and also in violation of the order dated 20.4.1985 (which permitted deposit u/s 30 (1) of the Act only until landlord did not agree to accept rent) cannot be said to be good deposit and tenant can have no benefit of it.

31. Learned counsel for the petitioner, then, referred to the case of Mahendra Nath Tandon v. Additional District Judge, Kanpur Nagar and others. 1997 1 ARC 139. In this case, learned single Judge was considering where landlord refused to accept rent by money order and in that case, tenant had filed application u/s 30 (1) of the Act for depositing rent. The learned single Judge on the finding that landlord did not refuse to accept rent, came to the conclusion that deposit u/s 30 (1) of the Act was not a valid deposit. In that case, there was no dispute that rent was validly deposited u/s 30 (1) of the Act.

32. Question in the present case is whether the deposit made u/s 30 (1) of the Act, in spite of landlord having expressed in writing his willingness by demanding rent through notice, could confer upon it benefit of being valid deposit.

33. On the other hand, learned counsel for the respondents referred to the decision in Kailash Chand v. IInd Additional District Judge, Meerut and others 1997 2 ARC 353. A learned single Judge of this Court held that by giving notice landlord signifies that he is prepared to accept the rent and after receipt of the notice, there is no justification for the tenant to deposit rent in Court u/s 30 (1) of the Act.

34. In view of the said decision, which applies to the facts of instant case, there remains no doubt that the deposit in question u/s 30 (1) of the Act in the present

case cannot be said to be valid deposit.

35. Learned counsel for the petitioner has also attempted to challenge finding recorded by the Court below on the question of subletting.

36. Petitioner contends that Court below did not reverse the finding recorded by trial court on the question of sub-letting nor the Court below recorded no finding to the effect that defendant No. 2 (Gauri Shankar, respondent No. 4) was occupying shop exclusively in his own right and further there was no finding on the question of partition in the shop.

37. Perusal of the trial court judgment (Annexure-8 to the writ petition) shows that the conclusion derived by the trial court on the question of sub-letting is only on the basis that if shop was partitioned (as claimed by the plaintiff) it will leave two portion measuring 3"8" and looking to these measurements it was not possible to accept the case of partition put forth by the plaintiff. The conclusion of the trial court cannot be said to be based on sound reasoning in law. Said conclusion of trial court has evidently been arrived at by adopting a wholly unacceptable approach. Finding recorded by trial court on sub-letting is apparently laboured one. Partition does not mean and should not necessarily mean by raising partition wall. Plaintiff never asserted or pleaded that shop has been partitioned by raising partition wall (see Plaint and the notice--Annexures-1 and 2 to the writ petition).

38. Provisional Court has recorded findings on the basis of material on record. There is no manifest error apparent on the face of record in appreciation of evidence which may vitiate the findings arrived at by the Re visional Court.

39. Revisional Court has categorically mentioned that tenant had led no evidence to show that Gauri Shankar was not let out the portion of the accommodation in question and not carrying betel shop therein as claimed by the plaintiff.

40. Section 12 (1) (a), (b) and (c) of the Act read as follows :

"12. Deemed vacancy of building in certain cases.--(1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if-

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) In the case of a residential building, he as well as members of his family have taken up a residence, not being temporary residence, elsewhere.

41. Section 25 of the Act reads as follows :

"25. Prohibition of subletting.--(1) No tenant shall sub-let the whole of the building under his tenancy.

(2) The tenant may with the permission in writing of the landlord and of the District Magistrate, sub-let a part of the building.

Explanation.--For the purpose of this section-

(i) where the tenant ceases, within the meaning of clause (b) of sub-section (1) or sub-section (2) of Section 12, to occupy the building or any part thereof, he shall be deemed to have sub-let that building or part ;

(ii) lodging a person in a hotel or a lodging house shall not amount to sub-letting "

42. Tenant allowed a person, other than his family members to occupy a part of the shop in question and thus he shall be deemed to have sub-let the accommodation.

43. Relevant provisions of the Act contemplate that where a tenant ceases within the meaning of clause (b), sub-section (1) of Section 12, tenant shall be deemed to have sublet the accommodation or part thereof in his tenancy under provision of the Act, Landlord is, under the Act, not required to prove actual payment of rent by the sub-lessee to the lessee. It is now enough for landlord to show that tenant has allowed a person other than his family member to occupy a part or entire accommodation under his tenancy.

44. In the instant case, averments in the plaint (Annexure-1 to the writ petition) and other evidence considered by the Revisional Court show that case of plaintiff landlord was that said Gauri Shanker has been allowed to occupy a part of shop in his own right who has been carrying on business of betel shop in the said portion.

45. The tenant-petitioner did not produce said Gauri Shanker to give evidence in his support.

46. At the bar, it is stated that Gauri Shanker did not contest the case, learned counsel for the petitioner strenuously urged that defendant Nos. 1 and 2 were doing business of Purchuni and betel together which shows that defendant No. 2 was not in exclusive possession. The argument is misconceived.

47. Revisional Court has found that contesting respondent No. 1/petitioner did not produce evidence to deny the evidence of the plaintiff and it clearly established that Gauri Shanker was allowed to carry on business of betel shop in his own right in a portion of the accommodation in question, defendant-tenant (petitioner) having failed to produce Gauri Shankar and thus plaintiffs evidence not being rebutted and in the light of undisputed facts, there is irresistible conclusion of sub-letting under Sections 12 and 25 of the Act, the revisional court cannot be said to have committed irregularity in deciding the revision by itself, as held in (1998) 1 ARC 354 : (1998) 2 ARC 45 : (1998) 2 ARC 506.

48. There is no force in writ petition. The writ petition is devoid of merit. No permissible ground for interference under Article 226. Constitution of India made

out.

49. Writ petition falls and is accordingly dismissed.

50. No order as to costs as the writ petition is dismissed at admission stage.