

(2006) 08 AHC CK 0080
In the Allahabad High Court
Case No : Writ Petition No. 4987 (M/B) of 1999

Dinesh Chandra Bajpai and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 24-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 6 AWC 6209

Hon'ble Judges : O.N. Khandelwal, J;A.K. Yog, J

Bench : Division Bench

Advocate : Rakesh Kumar Srivastava, for the Appellant; C.S.C., Anuj Kumar Srivastava, D.C. Mukherjee, A.K. Srivastava, V.K. Srivastava, G.S. Srivastava, Md. Arif Khan and Rizvan Ahmad, for the Respondent

Final Decision : Allowed

Judgement

A.K. Yog and O. N. Khandelwal, JJ.—Present petition is with respect to Nazul Plot No. 49 situate Near Cinema Crossing Hardoi, measuring 3680 square feet recorded 408 Sq. Yard (approx.) in Khata No. 412 in Revenue Record.

2. One Ram Prakash Bajpayee (father of the Petitioners), applied for seeking freehold right over aforesaid plot in pursuance to the Government order dated 3.10.1994 (Annexure-4 to the writ petition).

3. According to the Petitioners, application accompanied by Treasury Challan of Rs. 100. (Annexure-5 to the writ petition) was filed and opposite party No. 5/ Nagar Palika Parishad Hardoi, required them to deposit up to date lease rent under lease deed in their favour. It is not disputed that lease in their favour was renewed upto 27.7.1995 with a right of renewal for another 30 years, i.e., up to 2025 (total 90 years) Aforesaid plot was sub-let for 10 years to one Mohammad Sabir through registered agreement dated 3.5.1948 for raising constructions and to do business. It has come on record that said Mohd. Sabir raised certain constructions and started business of Petrol Pump over aforesaid land. After the

death of Mohd. Sabir, the opposite party No 7, Smt. Razia Begum alongwith her husband Mohd. Abid continued to run the said business. Ram Prakash Bajpai, after giving due notice-terminating said tenancy, filed a regular Suit No. 337 of 1989 for ejectment and possession of aforesaid plot, copy of the plaint is Annexure-11 to the writ petition. It appears that some interim order was passed by Munsif (West) district Hardoi which was challenged by filing Civil Revision No. 48/1995, copy of memorandum of revision is Annexure-12 to the writ petition. This shows that civil litigations was pending between the Petitioner and Respondent No. 7 while application for obtaining Free Hold Right over said plot was also pending. Government orders in succession were passed culminating into the last Government order dated 1.12.1998. Ram Prakash Bajpai, however, died on 23.7.1998 leaving the Petitioners as his heirs and legal representatives who have been now perusing the application for free hold rights. (Annexure-16 to the writ petition). After aforesaid G.O. of 1998, Respondent No. 7 claiming her rights as tenant, also submitted an application for obtaining free hold right in respect of the land of aforesaid plot.

4. The averments contained in paragraphs 23 and 24 of the petition show that the officers of Respondent Nos. 5 and 6 proceeded to entertain the said application of Respondent No. 7 ignoring application of the Petitioner for seeking free hold rights in the said land in their favour. Details of the reports/orders passed on the said application of Respondent No. 7 are not required to be referred as they are not relevant for the purposes of deciding present petition at the instance of the original lessee, the Petitioners.

5. By means of the present petition the Petitioners have claimed a writ order or direction in the nature of certiorari, calling for the records from opposite parties Nos. 2 to 6 and quash entire proceedings initiated on application dated 28.1.1999 filed by the Respondent No. 7 as well as the application dated 28.1.1999 filed on behalf of Respondent No. 7 (Annexure-13 to the writ petition) and further a writ order or direction in the nature of mandamus commanding concerned authorities / opposite parties to consider the applications/representation filed by the Petitioner on 3.1.1995 and settle the disputed plot In favour of the Petitioners and another application dated 11.10.1999 (Annexure-14 to the writ petition) requesting for grant of free hold rights under G.O. dated 1994 read with G.O. 1998.

6. No counter-affidavit has been filed on behalf of Respondent Nos. 1 to 4. A counter-affidavit has been filed on behalf of Respondent Nos. 5 and 6. In paras 5, 6, 11, 13 and 15 of the said counter-affidavit, which are relevant for the present, they have laid emphasis on the fact that Ram Prakash Bajpai (father of the Petitioners), having sub-let the aforesaid land in violation of terms and conditions of the lease, rendered himself disqualified and therefore, not eligible for grant of free hold rights. It is, however, not disputed that Ram Prakash Bajpai had submitted requisite application under Government order dated 5.10.1994 (Annexure-4 to the writ petition) alongwith prescribed fee of Rs. 100 for

acquiring free hold rights in the land.

7. The defence of these Respondents, contained in para 6, of this counter-affidavit reads "no attempt has been made by the Petitioners either in respect of the renewal of the lease or to get the land free hold. Only one application alongwith prescribed fee of Rs. 100 was deposited by the Petitioners with the State Government in the year 1995 and since then no action has been taken by the Petitioners.....

8. The second ground of defence, as given in para 11 of the counter-affidavit, is that the Petitioner had failed to file application or deposit the requisite amount on the basis of self assessment of the land as required under the Government order, 1998.

9. The Petitioners have denied above contention by filing rejoinder-affidavit. Vide paragraphs 8 and 13 of the rejoinder-affidavit (sworn by Dinesh Chand Bajpai one of the Petitioner) their contention in writ petition have been reiterated. They also stated that they had deposited Rs. 20,000 on 25.6.2002 being arrear of lease rent for the period up to 2025 as and when demanded by the concerned authorities.

10. From the undisputed facts on record and in view of the stand taken by the learned Counsel for the parties, it is clear that case of the Petitioner is to be considered under para 13 of G.O. 1998. which confers right upon the person like the Petitioners to seek free hold rights.

11. Respondent No. 7 also filed a counter-affidavit. Learned Counsel representing Respondent No. 7 has laid emphasis on the fact that the application of the Petitioners was rejected by means of order dated 25.7.1995 on the ground of violation of terms and conditions of lease. Copy of the said order has not been annexed nor any such averment has been made by Respondent Nos. 5 and 6. It may be further stated that in paragraph 23 of the counter-affidavit, it is alleged that application was cancelled vide order dated 20.12.1997 (and not 25.7.1995). There is an apparent contradiction.

12. Learned Counsel representing Respondent No. 7, placed photocopy of certain orders to show that the application of the Petitioners for "part" of plot in question (moved by Ram Prakash Bajpai prior to G.O. 1998) was cancelled vide order dated 20.12.1997. There is no reference to the said order in the counter-affidavit of the Respondent Nos. 5 and 6 or that the Petitioners were given opportunity to meet the same at any stage.

13. The above submissions of Respondent No. 7, beside the above, are of no avail and devoid of merit in view of subsequent enforcement of G.O. 1998 which conferred right upon the Petitioners case to be considered as per its para 1.3 (referred to above).

14. In para 12 of the rejoinder-affidavit (filed in reply to the counter-affidavit of Respondent No. 7), Petitioners have categorically stated that no such order

terminating the lease or application for conversion of free hold rights in their favour was communicated to them.

15. The contention of Respondent No. 7 is that the Petitioners did not avail themselves the opportunity of getting free hold rights in respect of the plot in question, as they failed to submit application required under Government order 1998. In support of aforesaid contention, Respondent No. 7 relies upon para 1.3 of G.O. 1998.

16. We have perused the Government orders of 1994 and 1998 and heard the learned Counsel for the parties and find that these Government orders nowhere provide that application for conversion of free hold rights stood automatically rejected at any stage or it could be rejected on the ground that the lessee had violated terms and conditions of the lease in his favour. It is therefore, clear that the application for conversion of free hold rights, filed by the Petitioners cannot be said to have been finally disposed of.

17. We have carefully gone through the said para 1.3 of G.O. 1998 and find that no time limit has been prescribed therein for submitting the application. It is true that under the Order, 1998, a person (like the Petitioners) had to take certain steps but in case of failure, he was not non-suited, or excluded for seeking "free hold rights".

18. Para 10 of G.O. 1998, contemplates procedure with respect to the conversion of free hold rights at the instance of a tenant. This para 10 clearly provides that before a request of tenant (for free hold rights) is being considered, the original lease holder is to be served with "three months" notice to take steps and complete formalities under said G.O. 1998 for seeking free hold rights and in case such lease holder still fails, then only case of sub-tenant (unauthorised occupant) could be considered. It may be further stated that even if lessee failed to take steps to get "free hold" in his favour inspite of time bound notice given, the State Government was required to take steps to cancel the lease and only thereafter proceed to consider case of Tenant/unauthorized occupants. Interestingly, lessees-who moved within one month of commencement of G.O. 1998- were given certain privileges for valuing the premises in question for the purposes of payment of stamp duty-on the deed to be executed for grant of free hold rights vis-a-vis those who applied thereafter.

19. We are of considered opinion, that inspite of admitted position that no time bound notice was given to the Petitioners, the tenant had no locus to apply and to be considered to seek free hold right in her favour. In this view of the matter the contention of the Respondent No. 7 has no merit and fails.

20. Respondent authorities have failed to consider the application of the Petitioners for free hold rights without lawfull excuse and it is still to be considered on merit,

21. In view of the above, we direct the State Government/concerned Respondent

to consider the request/ application of the Petitioners for conversion of free hold right in accordance with relevant Government orders existing on date in the light of the observations made above.

22. Writ petition is allowed in view of the observations made above.

No order as to costs.