

(2013) 04 AHC CK 0083

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 56014 of 2009

Farid Ahmad Khan and Another

APPELLANT

Vs

Rent Control and Eviction Officer/City Magistrate and Others

RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 34(1)

Citation : (2013) 4 ALJ 599 : (2013) 98 ALR 446 : (2013) 5 AWC 4480

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Pankaj Agrawal, M.K. Gupta and Murlidhar, for the Appellant;
Akhilesh Chandra Shukla, Ashok Kumar Pandey and Udayan Nandan, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Through this writ petition filed under Article 226 of Constitution of India, the petitioner has sought for issuance of a writ of certiorari for quashing the order dated 12.10.2009, of Rent Control and Eviction Officer/City Magistrate, Saharanpur (hereinafter referred to as "RCEO") rejecting petitioner's application u/s 29-A of U.P. Act No. 13 of 1972. The dispute relates to a property, earlier known as Red House, Saharanpur. It was in possession of Mrs. Julia Walker (Nee Powel), W/o Mr. Eden Walker. It is said that the disputed land was absolutely seized and possessed by Sri Alfred Powell who constructed a house thereon. Vide will deed 11.04.1907, Sri Alfred Powell bequeathed the said premises to Mr. Harriet Adelaide Powell, who, further, through a will deed dated 10.02.1915, bequeathed the same to Mrs. Mand Julia Walker, probate whereof was granted on 19.04.1923 in Misc. Case No. 26 of 1923. She transferred, by sale, the aforesaid property to one Sunder Lal Mehta, vide sale deed dated 30.01.1937. Sale deed contains a stipulation that purchaser shall have all the

rights in respect to property, as possessed by vendor, subject to payment of premium of Rs. 19/10 Anna per year and enhanceable rent payable to Zamindars in perpetuity.

2. Sri Sunder Lal Mehta built a house on the aforesaid land. The said house along with another house came in possession of Imperial Bank of India, for residence of its Manager, pursuant to lease dated 1.9.1938 on a consolidated rent of Rs. 185/- per mensem.

3. The aforesaid two houses were subsequently held by Seth Sewak Ram, Seth Rati Ram, Seth Mewak Ram and Seth Keshavdeo vide conveyance dated 15.12.1938 registered on 19.12.1938 executed by Sri Sunder Lal Mehta. The properties proceeded to further transfer by sale to Rai Bahadur Phool Chand Mogha (father of respondent No. 2), vide sale deed dated 10.8.1939. The sale deed mentioned that the land, subject-matter of instrument, shall form part of Khasra No. 538, measuring 31 Bighas 11 Biswas, of which, 28 Bighas 9 Biswas is situate in Khewat No. 13, Mahal Mohammad Hasan Khan, 15 Biswas in Khewat No. 6, Mahal Mahibullah, 7 biswas in Khewat Nos. 3 and 2 Bighas in Khewat No. 4, Mahal Ismail Khan. All these khasras and Mahals situate in Mauza Pathanpura, Pargana, Tehsil and District Saharanpur.

4. The aforesaid land, was on perpetual lease, granted to Sri Alfred Powell from Zamindar, on a fixed and unenhanceable rent of Rs. 19/- and Annas 10 but changed various hands, as detailed above. It cannot be doubted that only such rights could have been transferred by Sri A. Powell as he himself possessed.

5. It is said that a suit u/s 151 of Tenancy Act for ejectment of Sunder Lal Mehta and his transferees as "occupancy tenants" was filed sometime in 1939. The suit was dismissed on 30.7.1941 by A.C. Saharanpur who held that apart from interest of Rs. 19/- and Annas 10, the plaintiffs and Zamindar had no interest in the land or anything built on it. The defendants therein had right to mortgage or transfer the property, subject to payment of Rs. 19/- and Annas 10 to Zamindar for the land underneath.

6. Jalil Ahmad (petitioner No. 2) instituted Civil Suit No. 21 of 1999, alleging that he is owner of the aforesaid property and, therefore the defendants therein namely, the respondents and State Bank of India be evicted from the property, and damages and arrears thereof, as also mesne profits, be decreed in his favour. He claimed his rights on the basis of an award in Arbitration case No. 17 of 1950, in the Court of Judge, Small Causes, Saharanpur, whereby the property came to Smt. Ummehani and thereafter to her daughter Smt. Anisa Begum and then to petitioners, who are the sons of Smt. Anisa Begam.

7. The suit was contested by respondents. They disputed the alleged claim of title of petitioners.

8. While the suit was pending, the petitioners filed an application u/s 29A, Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter

referred to as "the Act, 1972") before RCEO for determination of annual rent in respect of property in dispute, which according to them, should be Rs. 47,25,000/-per annum, since 5.7.1976. The aforesaid application was registered as Case No. 3 of 2007.

9. The respondents filed application u/s 10, CPC. read with Section 34(1) of Act 1972 and Rule 22 of Rules framed under Act, 1972 requesting RCEO to defer proceedings on the aforesaid application filed u/s 29-A, till O.S. No. 21 of 1999 filed by petitioners is disposed of. This application was rejected by RCEO vide order dated 27.12.2008, holding that Section 10, CPC is not applicable to the proceedings before him under Act 1972. Subsequently, RCEO vide order dated 12.10.2009, rejected petitioners' application u/s 29-A, i.e. case No. 3 of 2007. This order dated 12.10.2009 has been assailed in the present writ petition.

10. Just to complete the chain of events, it may also be placed on record that the order dated 27.12.2008 of RCEO was challenged by Sri Gyan Chand Mogha and others, in writ petition No. 6929 of 2009, but after dismissal of the application of petitioners, the very basis of the writ petition disappeared, hence, the aforesaid writ petition was dismissed, having rendered infructuous, on 01.12.2009.

11. Heard Sri M.K. Gupta, and Pankaj Agarwal, Advocates, for the petitioners and Sri Udayan Nandan, Advocate for respondents Nos. 2 and 3 and Sri Rakesh Mogha respondent 4 in person.

12. In my view, the basic question which would go to the root of the matter and needs be considered in this case is, about applicability of Section 29-A(5) of Act 1972, therefore, I proceed to consider this question first.

13. Section 29-A reads as under:

29A. Protection against eviction to certain classes of tenants of land on which building exists.--(1) For the purposes of this section, the expressions "tenant" and "landlord" shall have the meanings respectively assigned to them in clauses (a) and (j) of Section 3 with the substitution of the word "land" for the word "building".

(2) This section applies only to land let out, either before or after the commencement of this section, where the tenant, with the landlord's consent has erected any permanent structure and incurred expenses in execution thereof.

(3) Subject to the provisions hereinafter contained in this section, the provisions of Section 20 shall apply in relation to any land referred to in sub-section (2) as they apply in relation to any building.

(4) The tenant of any land to which this section applies shall be liable to pay to the landlord such rent as may be mutually agreed upon between the parties, and in the absence of agreement, the rent determined in accordance with sub-section (5).

(5) The District Magistrate shall on the application of the landlord or the tenant

determine the annual rent payable in respect of such land at the rate of ten percent per annum of the prevailing market value of the land, and such rent shall be payable, except as provided in sub-section (6) from the date of expiration of the term for which the land was let or from the commencement of this section, whichever is later.

....

14. Applicability of Section 29-A(5) of Act 1972 came to be considered by a Full Bench in Trilok Chand Vs. The Rent Control and Eviction Officer/S.D.M. Naku and Another, .

15. The Full Bench said that with reference to Section 29A(4) that the words "may be" are preceded by the word "as" and are followed by the words "mutually agreed upon" which indicate that the words are used with reference to the future transactions. This is also supported from sub-section (7) which gives overriding effect to the provisions of Section 29-A over an existing contract. Thus it can safely be said that Section 29A(4) envisages an agreement with regard to rent entered between the landlord and tenant after coming into force of Section 29-A. However, to attract Section 29-A(5), the choice of the phrase is different and wider. An agreement entered into between the parties prior to commencement of Section 29-A would not preclude determination of rent u/s 29-A(5). This decision of the Full Bench has been affirmed by the Apex Court in Vinaya Kumar Shukal Vs. Lakhpat Ram and another, .

16. Sub-section (2) of Section 29-A came to be considered by the Apex Court in Trust Jama Masjid Waqf No. 31 Vs. Lakshmi Talkies and Others, . The Court said that for applicability of Section 29-A as provided by sub- section (2), two conditions are necessary (i) that land alone has been let out and (ii) that permanent structure has been constructed by the tenant with landlord's consent incurring his own expenses. The Court said that it is unimportant whether the land has been let out either before or after the commencement of Section 29-A.

17. Following the Full Bench decision in Trilok Chand Vs. The Rent Control and Eviction Officer/S.D.M. Naku and Another, , this Court in Roshan Lal Mittal Vs. Rent Control and Eviction Officer/S.D.M. and Another, , in paras 22 and 23 of the judgment, said:

22. ...on a plain reading of sub-section (5) of Section 29A, the intention of the Legislature is clear that fixation of rent u/s 29A shall be applicable from the date of expiration of term for which the land was let out or from the commencement of Section 29A of the Act whichever is later....

23. Three situations can be visualized--(i) where a lease has expired before the commencement of Section 29A of the Act, (ii) where a lease has expired after commencement of Section 29A of the Act, and (iii) where a lease has not yet expired and Section 29A of the Act has come into operation. Situations (i) and (ii) are covered within the ambit and scope of Section 29A of the Act. But in my

opinion, Section 29A of the Act is not attracted in situation (iii), as is the present case, on a plain and simple reading of sub-section (5) of Section 29A of the Act. Otherwise, a lessee, for whose benefit Section 29A of the Act has been enacted, would be placed in a worst position to pay the enhanced rent proportionate to the prevailing market value of the land on the date of commencement of Section 29A of the Act and not at the agreed rate.

18. The above Full Bench decision was also considered and followed in *Rahamatullah v. S.D.M./Rent Control & Eviction Officer & others* (Writ A. No. 54263 of 1999, decided on 23.11.2012) and this Court in paras 7 and 8 said:

7. Further the Full Bench decision in *Trilok Chand Vs. The Rent Control and Eviction Officer/S.D.M. Naku and Another*, was also referred to in *Roshan Lal Mittal Vs. Rent Control and Eviction Officer/S.D.M. and Another*, and in para 15 of judgment the Court said as under:

15. ...The said observation of the Full Bench should be understood in the background facts of the case. Facts were that the lease had already expired in the year 1958. In that fact situation the aforesaid objections were made. It has taken care to observe that subsection (5) has made a provision "that the terms of the original lease have been kept undisturbed and the rights of parties thereunder are kept unimpaired." in the case of an unexpired lease, the mutually agreed rent is always there and this supports the view which is proposed in the judgment that in such cases an application under sub-section (5) shall not be maintainable.

8. The above exposition of law squarely apply to the case in hand and if there is nothing to show that an agreement has expired, question of application of Section 29-A(5) of Act, 1972 would not arise for the reason that either it is a date of commencement of said statute or the date of expiry of agreement, whichever is later. Unless that stage comes, question of determination of rent u/s 29-A(5) shall not arise.

19. In the present case also, admittedly, there is no agreement between the parties. In the absence of any agreement, there does not arise any occasion for the date of expiry of the agreement and unless that stage comes, the question of determination of rent u/s 29A(5) shall not arise. In view of the aforesaid binding precedent, which neither could be distinguished nor could be shown inapplicable to the case in hand, I find no hesitation in holding that the petitioners had no occasion or justification to invoke Section 29A of Act 1972 by filing application and requesting the competent authority to determine the rent of the land in question and RCEO, therefore, has rightly rejected the application and order impugned in the writ petition warrants no interference.

20. Sri M.K. Gupta, learned counsel for the petitioner, however, sought to argue that rent having been determined decades ago, cannot be allowed to remain static. It would be wholly unjust and unreasonable. He also submitted that RCEO misdirected himself by holding that the petitioners are not owner or landlord in

respect of the land in question and the aforesaid finding is illegal and perverse. He submitted that the rights of the petitioners having already been determined in Arbitration Case No. 17 of 1950, pursuant thereto, the property in question came to the share of Smt. Ummehani, and thereafter to her daughter Smt. Anisa Begum, mother of petitioners and then inherited by the petitioners. RCEO, it is contended, has committed patent error in observing that the petitioners are not landlords. In my view, for the purpose of the present case, it would be wholly irrelevant to decide the question of ownership inasmuch as, Section 29A(5), ex facie, is not applicable and attracted in the case in hand and the application filed being without jurisdiction, was rightly rejected by the RCEO.

21. So far as the question of status of petitioners as landlord or owner of the property in dispute is concerned, in my view, proper remedy available to the petitioners may lie elsewhere, either to get the aforesaid dispute adjudicated in a regular suit or in such manner, as they are advised, but for the purpose of the present case, it is not necessary to look into this question and, therefore, I do not find any reason to enter into this controversy. Suffice it to mention that whatever observations of RCEO are made in the order impugned, are only for the purpose of deciding application u/s 29-A and would not constitute adjudication of rights regarding relationship of petitioners and respondents and the observations made in the impugned order in this regard, therefore, would not prevent the parties in getting the aforesaid issue decided in appropriate proceedings wherein the competent court shall address itself in deciding the issue independently on the basis of material available on record.

22. With the aforesaid observation/clarification, the writ petition stands dismissed. Costs made easy.