

(2005) 08 AHC CK 0063
In the Allahabad High Court
Case No : C.M.W.P. No. 22405 of 2001

Girish Chandra Gupta and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(4)

Citation : (2006) 1 AWC 711

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : V.K. Agnihotry, for the Appellant; Atul Dayal, S.C., for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—By means of present writ petition under Article 226 of the Constitution of India, the petitioners, who are tenants of the accommodation in question, have challenged the order dated 19th May, 2001, passed by the revisional court in S.C.C. Revision No. 119 of 1999, copy whereof is annexed as Annexure-4 to the writ petition, whereby the revisional court allowed the revision filed by the respondents-landlord against the order dated 30th March, 1999, passed by the Judge, Small Cause Courts by which the trial court dismissed the suit filed by the respondents-landlord.

2. The facts giving rise to the present writ petition are that the respondents-landlord filed a suit being S.C.C. Suit No. 618 of 1993 before the trial court for arrears of rent and ejectment against the tenants-petitioners on the ground that the tenants are in arrears of rent for more than four months and further that the tenants have made structural changes in the accommodation in question. The landlord therefore served a notice demanding the rent after terminating the tenancy of the tenants. It is further contented that since neither rent was paid, nor the premises has been vacated by the tenants, therefore the suit was filed.

The tenants-petitioners filed its written statement denying the plaint allegations and adduced the evidence. The trial court after going through the material evidence on record have dismissed the suit filed by the plaintiff-respondent vide its order dated 30th March, 1999.

3. Aggrieved by the order passed by the trial court, the plaintiff-landlord filed a revision before the revisional court being S.C.C, Revision No. 119 of 1999. The revisional court in paragraph 11 of its judgment have narrated that though the tenants have not paid the rent on demand, but before the first date of hearing the tenants have since deposited a sum of Rs. 700 for the purposes of taking the benefit of Section 20 (4) of the U.P. Act No. XIII of 1972 (in short "the Act"). After recording the aforesaid finding with regard to the benefit of Section 20 (4) of the Act, the revisional court found that this benefit cannot be given to the petitioners-tenant because proviso to Section 20 (4) of "the Act", which reads as under :

20. Bar of suit for eviction of tenant except on specified grounds:--

(1) ...

(2) ...

(3) ...

(4) ...

Provided that nothing in this sub-section, shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

4. The revisional court further recorded a finding that on the basis of evidence, it is apparent that one of the member of the tenants family has acquired a residential house in vacant stage, therefore the tenants-petitioners are not entitled to the benefit of Section 20(4) of "the Act". The revisional court therefore allowed the revision filed by the respondents-landlord and decreed the suit and the petitioners-tenants were directed to vacate the accommodation in question.

5. Before this Court, learned Counsel appearing on behalf of the petitioners-tenants contended that the plea of Sub-section (4) of Section 20 of "the Act" being not available to the tenants-petitioners in view of the proviso to Section 20(4) of "the Act" has neither been taken in the plaint, nor by way of any amendment, therefore the revisional court have gone beyond its jurisdiction in decreeing the suit filed by the landlord. It is settled law that without pleadings, no one can be permitted to led evidence beyond the pleadings. Learned counsel for the respondents-landlord referred to the plaint, which has been annexed as Annexure-CA I to the counter-affidavit. A perusal thereof reveals that there was no such plea that the petitioners-tenants are not entitled to get the benefit of

Section 20(4) of "the Act", has been taken by the respondents-landlord. In this view of the matter, the orders passed by the trial court as well as by the revisional court deserve to be quashed and are hereby quashed. The matter will now go back to the trial court to decide the suit afresh in the light of the observations made in this judgment and in accordance with law.

6. In the result, the writ petition succeeds and is allowed. The order dated 30th March 1999, passed by the trial court and the order dated 19th May, 2001, passed by the revisional court are quashed. The matter will now go back to the trial court to decide the suit afresh in the light of the observations made in this judgment and in accordance with law.