
(2009) 07 AHC CK 0256
In the Allahabad High Court

Harpal Singh through its L.R.

APPELLANT

Vs

Prescribed Authority, (Under U.P. Act No. 22 of 1972) and
Others

RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 4

Citation : (2009) 4 AWC 3868

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri Y.K. Sinha, learned Counsel for the petitioners, and learned standing Counsel for the State-respondents.

2. These four writ petitions have been filed raising common question of fact and common question of law, they have been clubbed together and are being decided by this common judgment. The facts on record of Civil Misc. Writ Petition No. 27802 of 2009 are being stated for the purposes of present judgment treating the same to be the leading case.

3. Petitioners are aggrieved, by the order dated 28th September, 2006 whereby the Prescribed Authority, U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (U.P. Act No. XXII of 1972)/City Magistrate, Ghaziabad (hereinafter referred to as the "Act No. XXII of 1972"), has allowed the application and has directed eviction of the petitioners from the shops in their possession, as also against the order dated 5th May, 2009, passed by the Additional District Judge, Court No. 8, Ghaziabad, whereby the appeals filed by the petitioners against the order of the prescribed authority have been dismissed.

4. The dispute raised in these writ petitions pertains to four shops constructed an old District Court Compound, district Ghaziabad. According to the petitioners, the

building of the District Court Compound has now been shifted to Rajnagar, Ghaziabad.

5. On the basis of licence deed executed between the petitioners and District Judge, Ghaziabad dated 8th September, 1980, applications were filed on behalf of the judgship before the prescribed authority u/s 4 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (U.P. Act No. XXII of 1972)/City Magistrate with the allegation that the period of licence has expired on 31st March, 1981, but the petitioners have failed to vacate the shops in question. The applications so filed were allowed vide order dated 27th April, 1984. All the four petitioners were declared unauthorised occupant and were directed to be evicted from their respective shops. Petitioners before this Court not being satisfied with the order so passed by the prescribed authority, filed appeals u/s 9 of the Act No. XXII of 1972 before the District Judge, Ghaziabad. The appeals filed by the petitioners, which were four in number, were allowed under a common judgment dated 8th November, 2004, passed by the Additional District Judge (Special Judge), Ghaziabad and the matter was remanded for determination of the issue as to under which authority the petitioners were in possession of the shops even before execution of the licence in their favour on 8th September, 1980.

6. The prescribed authority on remand again decided the matter vide order dated 29th August, 2006 and maintained his earlier order of eviction of the petitioners from the shops in question. Not being satisfied with the order so passed by the prescribed authority, the petitioners filed four appeals before the District Judge, Ghaziabad u/s 9 of Act No. XXII of 1972 being Appeal Nos. 77 of 2006, 78 of 2006, 79 of 2006 and 80 of 2006. All the appeals have been clubbed together and have been dismissed under common judgment dated 5th May, 2009, passed by the Additional District Judge, Court No. 8, Ghaziabad, Appeal No. 79 of 2006 has been treated to be the leading case.

7. Order passed by the prescribed authority directing eviction of the petitioners as well as the order passed by the appellate authority are being questioned before this Court on behalf of the petitioners on the allegations that one Lala Bal Swaroop Goyal was the owner of the property situate outside the Civil Court Compound, parallel to G.T. Road, Ghaziabad. He got constructed a dharmshala and other buildings for public welfare, including the aforesaid four shops. Under an agreement between Lala Bal Swaroop Goyal and District Judge, Meerut, it was agreed that the District Judge, Meerut shall act as care taker of the aforesaid shops. There shops were given in the possession of the petitioners as early as in the year 1959. It is further stated that in the year 1980, Nazir of District Court, Ghaziabad summoned the petitioners in the chamber of the District Judge, Ghaziabad and obtained their signatures on blank stamp papers. By using the said stamp papers, licence deed was prepared suggesting grant of licence of the shops in question in favour of the petitioners by the District Judge, Ghaziabad. The said licence deed was counter-signed by the then District Judge, Ghaziabad on 8th September, 1980. It is on the basis of the said licence deed that the entire

proceedings have been initiated.

8. Learned Counsel for the petitioner with reference to the order passed by the appellate authority dated 8th November, 2004, whereby the matter was remanded for examination of the issue as to on what basis petitioners were enjoying the possession of the premises prior to the execution of the licence deed, contended that such issue has not been examined in its true perspective and further that the applications made for summoning of the records from the District Judgeship, Meerut were illegally rejected on 20th August, 1993. It is further contended that specific direction of the appellate authority, as noted above has not been taken care of while passing the orders impugned and therefore, the same are illegal.

9. It is stated that premises in question does not belong to the State. There is serious dispute of title in respect of premises in question and such disputes of title cannot be subject-matter of examination in summary proceedings under Act No. XXII of 1972. Reliance in that regard has been placed upon the judgment of the Hon'ble Supreme Court of India in the case of Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, the judgment of this Court in the cases of Madan Mohan Sharma and Ors. v. VIIIth Additional District Judge, Meerut and Ors. 2006 (8) ADJ 615; Jawwad Ali Shah Imambara Muslim Girls Degree College Society, Gorakhpur and Ors. v. Vice-Chancellor, Deen Dayal Upadhyaya Gorakhpur University, Gorakhpur and Ors. 2006 (8) ADJ 617 : 2006 (7) AWC 7012; Sain Das v. District Magistrate, Nainital and Ors. 1985 (11) ALR 407.

10. Contentions so raised on behalf of the petitioners have been opposed by the learned standing Counsel and it is stated that from the records it was established that petitioners were granted licence in respect of shop in question under a duly executed licence deed signed by the applicant bearing the date under the signatures of the District Judge as 8th September, 1980. Allegations of coercion etc., as pointed out before this Court were never agitated before prescribed authority. As a matter of fact they paid licence fee strictly in accordance with the licence deed for the period they were in lawful occupation thereunder without protest. The prescribed authority, on remand, has specifically examined the issue of possession of the petitioner even prior to the grant of licence deed. Judgments relied upon by the learned Counsel for the petitioner are inapplicable in the facts of the present case. There is no bona fide dispute of title over the property in question. The writ petition lacks merit.

11. I have considered the submissions made by the learned Counsel for the parties and have gone through the records of the writ petitions.

12. It has been vehemently argued by the learned Counsel for the petitioner before this Court that the directions issued by the appellate authority under order dated 8th November, 2004, annexed as Annexure-3 to the writ petition, have not been complied with, specifically with reference to the issue of legal authority, on the basis whereof petitioners were put in possession of the shops

prior to the date of issuance of the licence deed dated 8th September, 1980.

13. The contentions so raised on behalf of the petitioners is totally misconceived.

14. Prescribed authority in its order has recorded that receipts of rent produced by the petitioners do not inspire confidence. Further if the petitioners claimed to be the tenant of the premises in question, where was the occasion for them to execute the licence deed, which was duly countersigned by the District Judge, Ghaziabad on 8th September, 1980. The plea that the aforesaid licence deed was got executed by force/fraud, has not been established by cogent evidence.

15. Similarly in the appellate order dated 5th May, 2009, the Additional District Judge has detailed the reasons for execution of the licence deed between the parties in the year 1980. It has been recorded that the then Administrative Judge of the Hon'ble High Court of the District concerned on 25th March, 1975, had issued an order calling upon the District Judge to ensure that such vendors, who are occupying the premises within the Court compound were granted licence for a period of three years, with a licence fee thrice the current rate. Such vendors, who agree to pay licence fee at twice the current rate, be granted licence for a period of two years. All such vendors were directed to be evicted from premises after expiry of the period of their licence. It is in pursuance to the order of the Administrative Judge, that fresh licence deed was got executed between the petitioners and the District Judge in year 1980, which the petitioners signed without any protest and without any objection. Now after expiry of the term of the licence, when proceedings for their eviction have been initiated, all kinds of objections are being raised by the petitioners. The Additional District Judge has come to the conclusion that the payment of licence fee had been increased by the District Judge from time to time. Payment was also made and ultimately the licence deed was got executed in the year 1980, in pursuance to the order of the Administrative Judge dated 25th March, 1975. Licence deed is binding between the parties being duly counter-signed and therefore, after expiry of the term of the licence, petitioners are rendered unauthorised occupants. The Additional District Judge has conclusively held that rights of the parties have to be examined with reference to the licence deed executed between the parties, which was never challenged before any competent court of law on the ground of fraud/coercion or otherwise.

16. Categorical finding has been recorded by the prescribed authority as well as by the appellate authority that the shops in question are situate within the premises of the District Court Compound, Ghaziabad. In the written statement filed by Abdul Rashid in Case No. 29 of 1982, it has not been disputed that the shops are in the administrative control of the District Judge and that the State is the owner of the premises. Further payment for use and occupation of the shops, which according to the respondents, represented the rent throughout to the District Judge has also not been disputed including the period prior to the execution of the licence deed in 1980.

17. In these set of circumstances, this Court has no hesitation to record that (a) shops are situate within the premises of the District Court, Ghaziabad, (b) shops are under the control of the District Judge, Ghaziabad, (c) licence deed was infact executed between the parties, duly counter-signed by the District Judge on 8th September, 1980, which was valid for a period of two years, the period whereof has since expired in the year 1981 and thereafter notice for eviction has rightly been served upon the petitioners.

18. It is held that licence deed duly counter-signed by the District Judge on 8th September, 1980 has been executed between the parties out of their own sweet will, the petitioners are bound by the terms and conditions of the same. They cannot be permitted to lead oral evidence contrary to the licence deed executed in writing between the parties. It has to be kept in mind that allegation of fraud/coercion are basically allegations of fact, which have not only to be alleged but also to be established by cogent evidence, which are leading in the facts of this case.

19. Now coming to the judgments relied upon by the learned Counsel for the petitioners, this Court may point out that the judgment of the Hon"ble Supreme Court of India in the case of Express Newspapers Pvt. Ltd. and Ors. (supra), is absolutely inapplicable in the facts of the present case, inasmuch as building of Express Newspapers Pvt. Ltd. was constructed on the land allocated for the purpose by the Union of India and it has been held that such building constructed by the Express Newspapers Pvt. Ltd. cannot be said to be public premises. So far as the judgments in the case of Madan Mohan Sharma, Jawwad Ali Shah Imambara Muslim Girls Degree College Society. Gorakhpur, Sain Das (supra) are also distinguishable. The petitioners admitted that premises in question was under the administrative control of the District Judge and is the property of the State Government, which finding is based on the written statement filed by one of the petitioner, Abdul Rashid in the original application. Copy of the written statement for disputing the correctness or otherwise of the aforesaid statement of fact recorded in the impugned order of the appellate authority has not been brought on record by the petitioners. Therefore, recital made in that regard has to be accepted by the Court.

20. The orders passed by the prescribed authority dated 28th September, 2006 directing eviction of the petitioners from the shops in question as also passed by the Additional District Judge dated 5th May, 2009 dismissing the appeals filed by the petitioners is strictly in accordance with law and do not warrant any interference by this Court in writ jurisdiction.

21. All writ petitions lack merit and are accordingly dismissed.