
(1994) 10 AHC CK 0085
In the Allahabad High Court
Case No : Second Appeal No. 2135 of 1983

Hira Lal

APPELLANT

Vs

Mast Ram and Others

RESPONDENT

Date of Decision : 19-10-1994

Acts Referred:

Specific Relief Act, 1963 — Section 34
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 16(5), 18, 37

Citation : (1994) 3 AWC 1760

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : A.N. Bhargava, for the Appellant; K.N. Saxena, Shashi Nandan and K.K. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—The Defendant-Appellant by means of this second Appeal seeks the setting aside of the decree passed by the first appellate court whereunder reversing the judgment and decree of the trial court dated 7-7-80, the suit of the Plaintiff was decreed and it was declared that the allotment order dated 16-7-77 was illegal and without jurisdiction and had no binding effect.

2. The Plaintiff's case, briefly put, was that he was the owner of the house No. 157 situated in Azad Ganj, Sipri Bazar, Jhansi. In this house Smt. Prema Bai, wife of Laxmi Narain was a tenant at a monthly rental of Rs. 30/- Mastram filed a suit No. 33 of 1973 against her for ejectment and recovery of rent which was decreed. Prakash Narain and Kailash Narain sons of Smt. Prema Bai filed a suit No. 536 of 1974 against Mastram in the court of Munsif, Jhansi for declaration to the effect that they were not liable to ejectment on the basis of decree No. 33 of 1973. They also moved an application on 19-8-74 for restraining Mastram from dispossessing them on the basis of the decree No. 33 of 1973. The parties were directed to maintain status quo. The Defendant in collusion with Prakash Narain

moved an application before Rent Control and Eviction Officer, Jhansi for allotment of house No. 157 and obtained an illegal allotment order No. 40 of 1977 dated 16-7-77. The Rent Control Officer had no jurisdiction to make the allotment order on the basis of that allotment order, the Defendant obtained possession over the house No. 157 which is illegal. The house was not vacant on 16-7-77 and was not likely to fall vacant and, therefore, it could not be allotted. The allotment order is without jurisdiction and is null and void. The Plaintiff claimed a declaration that the allotment order is null and void.

3. The Defendant Appellant contested the aforesaid suit asserting that when the allotment proceedings were going on the Rent Control and Eviction Officer sent registered notice to the Plaintiff but no objection was filed and the allotment order was duly passed. No revision was filed against that order and it has become final. On the basis of decree No. 33 of 73 execution proceedings were started in which the court issued the writ for recovery of possession and thus, the house was likely to fall vacant. The allotment order had been well within jurisdiction. Smt. Prema Bai had vacated the house and the Rent Control Officer had the jurisdiction to pass the allotment order. The allotment order has been acted upon and its legality cannot be considered now. There is no collusion in obtaining the allotment order. The suit is barred by Section 37 of Act No. 13 of 1972. The suit is barred by Section 34 of the Specific Relief Act and for non-joinder of necessary parties.

4. The trial court came to the conclusion that the order of interim injunction" issued in O.S. No. 536 of 1974 was not binding on the executing court which was executing the decree passed in O.S. No. 33 of 1973. It also held that the Plaintiff had ample notice of the allotment proceedings and it did not appear that the order of allotment (sic) either illegal or without (sic). In this connection, the trial court opined that the accommodation in dispute was in fact available for allotment as contemplated under the provision of Section 16 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. XIII of 1972). The trial court further held that the suit was barred by Section 37 of the aforesaid Act. In view of the aforesaid findings the suit of the Plaintiff was dismissed

5. The first appellate court after carefully considering the evidence and materials brought on record reversed all the findings recorded by the trial court. It came to the conclusion that the affect of the injunction order issued in original suit No. 536 of 1974 was that the delivery of possession pursuant to the decree passed in O.S. No. 33 of 1973 stood suspended and so long as the latter suit was pending. Mastram could not take possession of the premises in dilute and the effect of the order issuing the writ of delivery of possession stood neutralised by the Interim order of injunction issued in the suit of 1974 which was against Mastram It was noticed that the allotment order had been passed on 16-7-77 whereas the Interim injunction which was issued on 19-8-74 was continuing on the said date and had lapsed on 15-11-77 when suit No. 536 of 1974 was

dismissed for non prosecution. The first appellate court came to the conclusion that the allotted order in question was clearly without jurisdiction as the disputed accommodation was neither vacant nor could be deemed to have likely to fall vacant on the date of the passing of the allotment order. In this connection the first appellate court also observed that the sitting tenant or her sons had not been served any notice intimating any vacancy according to law. In the circumstances it was held that. Smt. Prema Bai or her sons could not be deemed to have vacated the house before the allotment order was passed. The first appellate court on an appraisal of evidence on the record came to the conclusion that the Defendant had failed to show that house in dispute was actually vacant when the allotment order was passed. It was also found that the notice In respect of the proceedings for allotment were served on Mastram on 18-4-77 fixing 20-4-77 for the hearing of the application. Since Mastram was at that time at a place in detect Vishidha (Madhya Pradesh), it was impossible for him to attend the hearing fixed for 20-4-77. It was concluded that the grant of time of only two days to the landlord when he was not at Jhansi could not be deemed to be reasonably sufficient. In the circumstances the first appellate court came to the definite conclusion that the order of allotment dated 16-7-77 was without jurisdiction, null and void. The plea raised by the defend tint that the suit was defective for non-joinder of necessary parties and was barred u/s 34 of the Specific Relief Act were also negatived.

6. I have heard the learned Counsel for the Appellant and have carefully perused the record.

7. The learned Counsel for the Appellant has urged in support of this appeal that the suit was clearly barred by Section 37 of the U.P. Act No. XIII of 1972 and has heavily relied up an in this connection on a decision of a learned Single Judge of this Court in Civil Misc. Writ Petition No. 14055 of 1981 Sri Hiri Mohan Bhardwaj v. Jayaati Prasad Sharma and Ors. decided on 3-8-99.

8. The provisions contained in Section 37 of the U.P. Urban Bail dings (Regulation of Letting, Rent and Eviction) Act, 1972 are to the following effect.

37. Finality and presumption--(1) no order made in exercise of any power conferred by or under this Act shall be called in question in any court.

(2) Where an order purport to have been made and signed by any authority in exercise of any power conferred by or under this Act, a court shall, unless (he contrary is proved, presumed that such order was so made by that authority.

9. It will be apparent from the above that the legislative intent behind the aforesaid provision is to protect only such orders from being challenged in any court which are passed by the authority concerned in the exercise of any power conferred on it by or under the Act and an order passed in the purported exercise of any power conferred by or under the aforesaid Act cannot be deemed to have been protected from judicial scrutiny by civil court of competent jurisdiction. It seems to me that the bar created by this section is against the challenge on the

ground of being Incorrect and not on the ground of Illegality of the order either for want of jurisdiction or excess of jurisdiction This bat could not be deemed to operate in cases where the plea raised before the civil court goes to the root of the matter and would if upheld lead to the conclusion that, the impugned order was a nullity because such an order cannot be deemed to have been made in the exercise of any power conferred by or under the Act.

10. In the facts and circumstances of the present case there can be no manner of doubt that the Plaintiff-Respondent could not be deemed to have any remedy under the scheme of the U.P. Act No. 13 of 1972 against the order passed by the Rent Control and Eviction Officer holding the premises in dispute to be vacant and proceeding to pass the order of allotment on its basis. There is consensus of authorities that the mere fact that a decree for eviction had been passed with respect to an accommodation does not per-se create a vacancy, actually or likely, which may form the basis of an allotment order. The decree for ejection is more or less a neutral act and something more eventful has to happen which would really create a situation susceptible for an allotment order.

11. An order declaring a vacancy in respect of an accommodation which can form the basis of an allotment order, cannot be challenged in a revision, contemplated u/s 18 of the U.P. Act No. XIII of 1972. This position in law stands settled in view of the decision of the Apex Court in the case of Ganpat Roy v. Addl District Magistrate 1985 (2) ARC 73 and various other decisions of this Court wherein the decision of the Apex Court and the implications arising thereunder have been considered. It was observed by the Hon'ble Supreme Court in the aforesaid case that where it was found that there is a deemed vacancy, an occupant had no efficacious or adequate remedy under the Act to challenge such a finding. The Plaintiff could not avail of the remedy provided u/s 16(5) of the Act as he could not be deemed to be in occupation of the accommodation as his effort to get the decree for eviction of the sitting tenant and recovery of possession of the accommodation in dispute stood thwarted in view of an order of indium lion issued by the civil court in O.S. No. 330 of 1974. The appellate court has recorded a categorical finding that by the date of the order of allotment the sitting tenant had not vacated the premises in dispute and the Plaintiff Mastram had not been able to obtain possession thereof. It is, therefore, obvious that the Plaintiff did not fall in the category of "occupant" contemplated u/s 16(5) of the Act and could not, therefore, move any application contemplated thereunder.

12. In the case of Sri Had Mohan Bhardwaj relied upon by the Appellant the suit had been filed by a sitting tenant who claimed to be the occupant of the accommodation in suit as envisaged u/s 16(5) of the Act and whose application filed under that provision had been rejected. Such an order was revisable u/s 18 of the Act, and thus, a remedy stood provided under the scheme of the Act which could be availed of. As has already been noticed above in the facts and circumstances of the present case the Plaintiff-Respondent could not be deemed to have any adequate or efficacious remedy available to him under the scheme of

the Act for challenging an order holding the premises in dispute to be vacant as has already been indicated above

13. Considering the implications arising under the provisions contained in Section 37 of the Act on the findings recorded in the lower appellate court, there could be no impediment against the maintainability of the suit. The decision relied upon by the learned Counsel for the Appellant is clearly distinguishable and cannot come to his rescue.

14. On the findings recorded by the lower appellate Court which have been arrived at after carefully considering the evidence and the materials on the record which findings do not appear to be vitiated in law. There can be no escape from the conclusion that the impugned order of allotment dated 16-7-1977 was clearly without jurisdiction null and void.

15. In the circumstances, therefore, the contention of the learned Counsel for the Appellant is devoid of merit and is not acceptable.

16. No other point has been pressed.

17. In view of the conclusions indicated hereinbefore, this appeal deserves to be and is hereby dismissed.