

(1986) 10 AHC CK 0011

In the Allahabad High Court

Case No : Writ Petition No's. 1240 and 1456 of 1985

H.L. Kumar

APPELLANT

Vs

II Additional District Judge and Others

RESPONDENT

Date of Decision : 17-10-1986

Acts Referred:

Cantonments (Extension of Rent Control Laws) Act, 1957 — Section 3, 3(1)

Transfer of Property Act, 1882 — Section 106

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 2, 2(1)

Citation : (1987) 1 AWC 162

Hon'ble Judges : D.S. Bajpai, J

Bench : Single Bench

Advocate : P.N. Mathur, H.S. Jain, K.B. Sinha, Anurag Srivastava, Ashutosh and Amitabh, for the Appellant; R.K. Agarwal and G.S.L. Varma, for the Respondent

Final Decision : Allowed

Judgement

D.S. Bajpai, J.—By means of Writ Petition No. 1240 of 1985 the Petitioner, H.L. Kumar, has prayed for a writ of certiorari to quash the order of the II Additional District Judge, Lucknow, dated 16th March, 1985 passed in S.C.C. Revision No. 49 of 1983 (Annexure 5) as also the order of the Additional Judge Small Cause Court, Lucknow dated 3rd February, 1983 passed in S.C.C. Suit No. 430 of 1981 (Annexure 4). In the connected writ petition No. 1456 of 1985 the Petitioner, Smt. Parbhu Dutt Bajaj, has also prayed for issue of a writ of certiorari to quash the same two orders passed by the II Additional District Judge, Lucknow, dated 16th March, 1985 (Annexure 9 herein) and 3rd February, 1983 passed by the Additional Judge Small Cause Court Lucknow (Annexure 4). S.C.C. Suit No. 430 of 1981 was filed by one Smt. Santosh and Sri Mahendra Singh, inter alia, stating that the Defendant No. 1 in the suit H.L. Kumar was a tenant of Miss Agnes Felecia Periera in a portion of house No. 578-A, Sadar Bazar, Lucknow Cantonment, on a monthly rent of Rs. 55/- and that thereafter from the said owner landlady the Plaintiffs purchased the house in suit by a registered sale-

deed dated 12th May, 1981 and the Defendant No. 1 became a tenant of the Plaintiffs thereafter. A plea was taken to the effect that since the house was situated within the Cantonment limits of Lucknow, the provisions of U.P. Act XIII of 1972 were not applicable and the second plea raised was that the Defendant No. 1, H.L. Kumar, had sublet a portion of the tenanted accommodation to the Defendant No. 2, Smt. Prabhu Dutt Bajaj, on a monthly rent of Rs. 39/- without the permission or consent of the former landlady, the predecessor-in-interest of the Plaintiffs. The parties contested the suit mainly on these two points. Ancillary pleas regarding the liability of Defendant No. 1 to pay water tax as also compliance of the provisions of the Transfer of Property Act inasmuch as notice was served on the Defendant No. 1 terminating his tenancy also found place in the plaint which is annexure 1 to the Writ Petition No. 1240 of 1985. The substantive relief claimed was for ejectment of the Defendants from the suit accommodation and for payment of arrears of rent and damages, as also for recovery of water tax and pendente lite and future damages plong with pendente lite and future water tax. The Defendants filed their written-statements separately. The Defendant No. 1 took a plea that his father was inducted into the tenancy of the accommodation in his possession and that he had no concern with the accommodation in possession of the Defendant No. 2 and that the Defendant No. 1 was himself occupying the accommodation since last over 30 years, his father having died in the year 1957 leaving behind the answering Defendant, his widowed mother and the answering Defendant's widowed sister who was out and living at Moradabad. It was further stated that one Prabhu Dutt Bajaj occupied the accommodation as an independent tenant and after his death Smt. Prabhu Dutt Bajaj, the Defendant No. 2, was occupying it in her own right. The plea of the Plaintiffs regarding-non-applicability of the U.P. Act XIII of 1972, hereinafter to be referred as the Act, was repelled and it was prayed that, the suit deserved to be dismissed as frivolous, vexatious and not maintainable. The Defendant No. 2 also raised practically similar pleas stating that she, Smt. Prabhu Dutt Bajaj, (Smt. Sushila Bajaj), the answering Defendant, who was a widow of the said Sri Prabhu Dutt Bajaj, along with Sri Vijai Bajaj, Kamlesh, R.K. Bajpai and Vinod Bajaj, her children, was occupying the accommodation. She asserted that the husband of the answering Defendant was an independent tenant in his own right and that the plea of sub-tenancy was false and played that the suit be dismissed as not maintainable. It will, however, appear that no specific plea about the non-applicability of the U.P. Act XIII of 1972 was raised by the Plaintiffs and it was merely mentioned that the house being situated within the Cantonment area of Lucknow as provided u/s 2(1)(cc) of the Act, the said Act was not applicable which has been tried to be overzealously canvassed before this Court. The evidence led otherwise was confined to the plea that the Defendant No. 1, H.L. Kumar, had sublet the accommodation to the Defendant No. 2 Smt. Prabhu Dutt Bajaj; that the Plaintiffs were not entitled to recover water tax; that rent for the period 12-5-81 to 29-6-81 was due and payable and that the tenancy of the suit accommodation had been validly and legally terminated u/s 106 of the Transfer of Property Act. The suit for eviction of the

Defendants was decreed with these findings. The Defendants preferred a common S.C.C. revision against the judgment and decree of the trial court before the District Judge, Lucknow (S.C.C. Revision No. 49 of 1983)(Annexure 8 to the writ petition No. 1456 of 1985) and raised similar pleas as they had raised in the written-statements in the suit. The Second Additional District Judge, Lucknow, vide Judgment and Order dated 16th March, 1985 (Annexure 5 to the writ petition No. 1240 of 1985) upheld the said judgment and concurred with the view taken by the trial court that the Act was not applicable since the building in suit was liable to be appropriated (underlined by me) by the Central Government on lease under the Cantonments (House-Accommodation) Act, 1923. The revisional court also confirmed the finding that the Defendant No. 2 Smt. Prabhu Dutt Bajaj was sub-tenant of the Defendant No. 1 Sri H.L. Kumar and dismissed the revision. Aggrieved by the judgment and orders of the two courts below, the Defendant No. 1 in the suit, H.L. Kumar, preferred Writ petition No. 1240 in this Court and the Defendant No. 2 Smt. Prabhu Dutt Bajaj filed Writ Petition No. 1456 of 1985, both seeking issue of a writ of certiorari to quash the two impugned orders.

2. I have heard Sri P.N. Mathur, learned Counsel for the Petitioner H.L. Kumar, in Writ Petition No. 1240 of 1985 and Sri R.K. Agarwal for the opposite-parties 3 and 4, the Plaintiffs in the suit. In Writ Petition No. 1456 of 1985 I have heard Sri K.B. Sinha and subsequently Sri H. Section Jain, the learned Counsel for the Petitioner Smt. Prabhu Dutt Bajaj, and Sri R.K. Agarwal for opposite-parties 3 and 4, the Plaintiffs in the suit. In the respective writ petitions the other Defendant/Defendants who is/or not a Petitioner/Petitioners in the said petitions has/have been impleaded as opposite-party/parties and the learned Counsel for the said party has also been afforded an opportunity of hearing in both the writ petitions. I have also perused carefully the affidavits, counter affidavits and rejoinder affidavits exchanged by the parties as also the documents brought on record.

3. The controversy raised in these two writ petitions before me has been mainly confined to the non-applicability of the U.P. Act XIII of 1972 to the Cantonment area of Lucknow as a whole. A faint effort was made to bring out that even otherwise the Defendants were entitled to be evicted in view of the fact that the Defendant No. 1, H.L. Kumar, had illegally sublet the accommodation to the Defendant No. 2, Smt. Prabhu Dutt Bajaj, without permission or consent of the Plaintiffs' predecessor-in-interest, Miss A.F. Periera. Reference may here be made to a Division Bench decision of this Court in Lekh Raj Vs. 4th Additional District Judge, Meerut and Others, where a learned Single Judge of this Court took the view that the earlier decision of another learned Single Judge in Brij Sunder Kapur v. 1st Additional District Judge reported in 1980 ARC 319 holding that U.P. Act XIII of 1972 was applicable even to a house situate within the Cantonment area of Uttar Pradesh required reconsideration. Accordingly, the following question was referred for decision by a Larger Bench:

Whether the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act XIII of 1972) apply to the cantonment areas of Uttar Pradesh or not?

4. The learned Judges of the Division Bench after considering submissions of learned Counsel for the parties in their judgment answered the question in following terms:

14. In view of the foregoing discussion our answer to the question referred to us is that the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act XIII of 1972) apply to the Cantonment areas of Uttar Pradesh subject to the restrictions and exceptions contained in Act 46 of 1957 and the modifications contained in the notification dated September 1, 1973, issued by the Central Government, published in the Gazette of India dated September 29, 1973.

5. The judgment of the Division Bench is so clear and since it covers all the aspects of the question canvassed before me by the parties" Counsel 1 am afraid I would be embarking on an exercise in futility and would be guilty of committing the oft chided vice of repetition. Proceedings on the settled law that the Act (U.P. Act XIII of 1972) applies to the Cantonment areas of Uttar Pradesh subject to the restrictions and exceptions contained in Act 46 of 1957 and the modifications contained in the notification dated September 1, 1973 issued by the Central Government, published in the Gazette of India dated September 29, 1973, the provisions of the aforesaid notification S.R.O. 259 have necessarily to be examined. This notification annexure 11 to the Writ Petition No. 1456 of 1985, inter alia, provides:

In exercise of the powers conferred by Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957 (4 of 1957) and in supersession of the notification of the Government of India in the Ministry of Defence, No. S.R.O. 8, dated 3rd April, 1972, the Central Government hereby extends to all the Cantonments in the State of the Uttar Pradesh, the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972), as in force, on date of this notification in the State of Uttar Pradesh with the following modifications namely:

In the said Act,

(1)... .

(2) in Section 2,

(i)... .

The following clause shall be inserted, namely, (cc) Any building within the Cantonment which is or may be appropriated by the Central Government on lease under the Cantonments (House-Accommodation) Act, 1923 (6 of 1923).

6. It will thus appear that any building which is in a Cantonment area and which

is or may be appropriated by the Central Government on lease under the Cantonments (House-Accommodation) Act, 1923 (6 of 1923) is exempted from the operation of the Act by insertion of Section 2(1)(cc) in the Act which begins with the recital "(1) Nothing in this Act shall apply to the following namely". Thus the applicability of the Act is not confined only to a building that has been appropriated or is already appropriated, but also to a building that may be appropriated by the Central Government on lease as provided in Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957 (Act 46 of 1957) which deals with the exercise of power to be exercised by the Central Government to extend by notification issued in Official Gazette with such restrictions and modifications as it thinks fit, any enactment relating to the control of rent and regulation of house accommodation which is in force in the State in which the Cantonment is situate with exceptions enumerated in proviso in Sub-section (1) thereto. The relevant Clause (c) of the proviso carves out the exception as under:

Provided that nothing contained in any enactment so extended shall apply to-

(a)....

(b)....

(c) any house within the cantonment which is, or may be, appropriated by the Central Government on lease under the Cantonments (House Accommodation) Act, 1923.

7. Section 5 of the Cantonments (House Accommodation) Act, 1923 (Act VI of 1923) details liability of houses to appropriation.

5. Liability of houses to appropriation:

Every house situate in a Cantonment or part of a Cantonment in respect of which a notification under Sub-section (1) of Section 3 is for the time being in force shall be liable to appropriation by the Central Government on a lease in the manner and subject to the conditions hereinafter provided.

8. Provisions contained thereafter in Sections 6 and 7 indicate conditions on which houses may be appropriated and the procedure to be adopted before it is appropriated or taken on lease.

9. It thus leaves no doubt that a house that has been appropriated by the Central Government would be exempt from the purview of the Act, as also the house liable to appropriation on a lease for which resort has already been taken to the conditions provided in Sections 6, 7 etc.

10. There is no dispute in regard to the fact that the house is not appropriated and there is no evidence to indicate that any steps in pursuance to Sections 6 and/or 7 of the Act VI of 1923 have been initiated and thus no exceptions contained in Act 46 of 1957 and/or modifications contained in the notification dated September 1, 1973 (Supra) protect the house from the application of U.P. Act No. XIII of 1972 and it is difficult to accept the contention of the learned

Counsel for opposite-parties 3 and 4, the Plaintiffs in the suit on the material available on record though, no doubt, an assertion has been made to that effect in the plaint itself. Before the courts below the detailed legal position as also notification, if any, made under sections 6 and 7 were neither placed nor taken into account, and as such the matter could not be properly dealt with.

11. The second contention which has been made in passing is about the question of status of Defendant No. 2, Smt. Prabhu Dutt Bajaj, as to whether she was sub-tenant of the Defendant No. 1, H.L. Kumar, or not whether she was a tenant in her own right. The question about sub-tenancy also requires reconsideration in view of sketchy evidence which has been relied upon by the two courts below.

12. In view of discussion above, the writ petitions, are allowed and the case is remanded back to the trial court with the direction to restore it back to its original number and to reconsider the question of applicability of U.P. Act XIII of 1972 to the house in suit after affording an opportunity to the opposite-parties 3 and 4 as also the Petitioners to canvass their respective contentions. The question of sub-tenancy shall also be open for decision before the trial court and the parties may, if they so choose, adduce additional documentary evidence to that effect. It is desirable that the trial court should decide the matter afresh as expeditiously as possible. As a consequence the impugned orders dated 16th March, 1985 contained in Annexure 5 (S.C.C. Revision No. 49 of 1983) passed by the II Additional District Judge, Lucknow, and 3rd February, 1983 contained in annexure 4 (S.C.C. Suit No. 430 of 1981) passed by the Additional Judge Small Cause Court, Lucknow, in Writ Petition No. 1240 of 1985 and Annexure 9 and 4 respectively in Writ Petition No. 1456 of 1985 stand quashed. No order as to costs.