

(1993) 04 AHC CK 0008

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 11582 of 1992

Indian Bank

APPELLANT

Vs

VII Additional District Judge and Others

RESPONDENT

Date of Decision : 29-04-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(8), 21(1)(a), 26(3), 3(o)

Citation : (1994) 1 AWC 293

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

Bench : Single Bench

Advocate : Shekhar Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Being aggrieved by the enhancement of the rent in respect of the premises in dispute which is a public building within the meaning of Section 3(o) of Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 (herein after referred to as "Act") from Rs. 4650/- per month to Rs. 8193.42/- per month in the proceedings u/s 21(1)(b) of the Act which order passed by the prescribed authority has been affirmed by the appellate authority, the Petitioner has now approached this Court for redress seeking the quashing of the aforesaid orders.

2. The facts shorn of details and necessary for the disposal of this case lie in a narrow compass. The premises in dispute is continuing to be under the tenancy of the Petitioner Bank since the year 1975. On 5-1-1986 a registered lease deed was executed between the landlord and the tenant Petitioner in respect of the premises in dispute whereunder in consideration of the rents, covenants and conditions by the lessee to be paid, observed and performed, the premises in dispute were leased out to the lessee Bank for a term of five years commencing from 16-1-1985 with an option on the lessee's part to have the terra of lease

extended by a further period of five years on 10% increase of rent only on schedule I ground floor and terminable thereafter by three calendar months" notice in writing on either side. Apart from various other terms and conditions, the lessee agreed and undertook to pay the lessor during the currency of the tenancy rent at the rate entitled in the lease deed month after month on or before the 5th of each month following the month for which the same accrued due. The lease deed further stipulated that the monthly rent payable by the lessee was to be Rs. 3500/- for the covered area of the property mentioned in schedule (i) and for properties mentioned in schedule (II) a consolidated amount of Rs. 450/- per month and a consolidated amount of Rs. 350/- per month for the properties mentioned in schedule (iii). According to the Petitioner Bank, the lease period of five years stipulated in the lease deed executed on 1-5-1986 was to expire on 16-1-1990. The Petitioner, . in the circumstances, exercised the option for the renewal of the lease with the condition for enhancement of the amount of rent by 10% so far as the property situate on the ground floor was concerned, on 4-12-1989. According to the Bank therefore, the continuance of the lease in respect of the premises in dispute on the conditions contained in the lease deed dated 1-5-1986 stood secured in favour of the tenant for the period ending 16-1-1995. The landlord however, initiated proceedings u/s 21(1)(b) of the Act on 8-2-1990 seeking enhancement of the rent to a figure of Rs. 8615/- per month w.e.f. 1-3-1990. The Petitioner Bank contested the aforesaid application on various grounds challenging its maintainability and the right of the landlord to enhance the rent contrary to the provisions contained in the registered lease deed, apart from various other grounds.

3. The prescribed authority after considering the evidence and materials on record rejected the objections of the Bank on the questions relating to the maintainability of the application and the right of the landlord to seek enhancement of the rent and after evaluating the evidence and materials on the record determined the quantum of rent payable for the premises in dispute to be Rs. 8193.42/-per month. This quantum of rent was determined in accordance with the procedure provided for in the provisions contained in section 21(1)(b) of the Act. The Petitioner Bank challenged the order of the prescribed authority in an appeal without any success as the appellate authority affirming the order of the prescribed authority dismissed the appeal

4. I have heard Shri S. N. Verma, learned Senior Advocate appearing for the Petitioner Bank as well as Sri K. M. Dayal, learned Senior Advocate for the landlord Respondents and have carefully perused the record.

5. The learned Counsel for the Petitioner has urged that in view of the terms and conditions contained in the registered lease deed dated 1-5-1986 whereunder the landlord had agreed to have that amount of rent only which stood stipulated thereunder for a period ending 16-1-1995, he had no right to seek enhancement of the rent for the premises in dispute over and above the amount of rent fixed for the premises in dispute which was to remain effective till 16-1-1995. It has

further been asserted that in face of the terms and conditions of the aforesaid lease deed, the landlord will be deemed to have waived his right to get rent for the premises in dispute enhanced at least during the period ending 16-1-1995 and in this view of the matter, it is asserted that the proceedings u/s 21(1)(b) of the Act were totally misconceived and not maintainable.

6. The learned Counsel for the landlord Respondents on the other hand has urged that the building in dispute stood governed by the provisions of the Act on 1-5-1986 on which date the registered lease deed was executed and consequently in view of the provisions contained in the aforesaid Act, the conditions mentioned in the lease deed which in any manner adversely affected the rights secured under the Act in favour of the landlord were clearly irrelevant and were liable to be ignored. It has further been asserted that in the circumstances of the case and considering the public policy underlying the various provisions of the Act, the right of the landlord to get the rent of a public building envisaged under Section 3(o) of the Act, enhanced as provided for under the provisions of section 21(1)(b) of the Act could not be waived and in this view of the matter also the application filed by the landlord u/s 21(1)(b) of the Act seeking enhancement of the rent was permissible under the law and was clearly maintainable and has been allowed in accordance with law.

7. I have given my anxious thought to the rival contentions of the learned Counsel for the parties and have perused the terms of the lease deed carefully.

8. In order to appreciate the controversy involved in the present case, it appears to be appropriate to reproduce the relevant terms and conditions of the lease deed dated 1-5-1986 which are as follows:

That for consideration of the rent, covenants and conditions by the lessee to be paid, observed and performed, the lessor doth hereby grant unto the lessee and lessee hereby doth agree to take from the lessor a lease of the house situate in....

The entire ground floor more specifically described in the schedule (i) to (iii) which was under given, to hold the same up to the lessee for a term of five years (certain) commencing from 16-1-1985 and with an option on the lessee's part to have the term of the lease extended by a further period of five years on 10% increase of rent only on schedule one ground floor and terminable thereafter by three calendar months notice in writing.

The lessee doth hereby agree and undertake :

1. to pay the lessor during the currency of the tenancy rent at the rate hereinafter mentioned month after month on or before the 5th of each month following the month for which the same shall have accrued due, as detailed and described in schedule (i) to (iii) hereunder

2.....

3.....

4.....

5.....

6.....

7.....

The lessor do hereby covenant with the lessee

a.....

b.....

c.....

d.....

The monthly rent payable will be as under; For properties mentioned in schedule I Rs. 1.75 per sq. feet for the covered area only which is 2000 square feet and hence the rent payable will be Rs. 3500/-

For properties mentioned in schedule II -- the consolidated amount of Rs. 450/- per month irrespective of any amount according to footage. For proper-lies mentioned in schedule (III) a consolidated amount of Rs. 350/- per month irrespective of any amount according to footage.

9. From a perusal of the above mentioned extract of relevant conditions contained in the lease deed it will appear that the lessee had agreed to pay the lessor during the currency of the tenancy rent at the rate stipulated in the lease deed and the lessor had agreed that the rent payable for the premises in dispute will be at a figure specified in the lease deed. It is further clear from the perusal of the lease deed that the parties had agreed that the rent in respect of the premises in dispute will continue to remain as specified in the lease deed for the period ending 16-1-1995.

10. In the above circumstances, the first question which arises for consideration in this case is as to whether the landlord will be deemed to have waived his right to seek enhancement of the rent in respect of the premises in dispute as provided u/s 21(1)(b) of the Act. This question about waiver of the right necessarily involves the consideration of the question as to whether the landlord stood estopped from claiming rent in respect of the premises in dispute at a rate above the ceiling limit specified and stipulated in the registered lease deed dated 1-5-1986. This question arises, as according to the learned Counsel for the Petitioner, in view of the clauses contained in the lease deed executed between the parties if the clauses are valid, they will estop the landlord from seeking the benefit of section 21(1)(b) of the Act, during the term of the lease.

11. The U.P. Act No. 13 of 1972 is a beneficial piece of legislation. In order to

protect the interest of helpless tenants and preventing the landlord from exploiting the situation for unjustified personal gains it had become imperative for the Legislature to intervene to protect the tenants against the harassment and exploitation by avaricious landlords by appropriate legislation which into being in the shape of the U.P. Act No. 13 of 1972. While, it is no doubt true that the Rent Control Act is essentially meant for the benefit of the tenants it cannot be lost sight of that at the same time it also seeks to safeguard the legitimate interests of the landlords. As observed by this Court in its decision in the case of *Ganpat Roy v. Additional District Magistrate* 1992 (2) ARC 494, this Rent Control Act is indeed in the nature of social welfare legislation intended to protect the tenants against the harassment and exploitation by landlords safeguarding at the same time the legitimate interests of the landlords. It was further observed in this case that the provisions contained in this Act seek to preserve the social harmony and promote the social justice by safeguarding the interest of the tenants mainly and at the same time protecting the legitimate interests of the landlords.

12. In this connection, it may further be noticed that a statute may be enacted for protecting the oppressed from the oppressor and the oppressed cannot waive the Statutory protection under the law. Further a statute may be enacted with the intention of protecting the general public or a section of general public and in such a case a member of the protected class cannot waive the statutory protection. In the case of *Kok Hoong v. Leong Cheong Kweng Mines Ltd*, (1964) 2 WLR 150 which was a case in which a question about an agreement being void and unenforceable had come up for consideration. before the Privy Council Visdane Radcliif speaking for the Court had observed that in such a case a more direct test to apply was to ask whether the law that confronts the estoppel can be seen to represent a social policy to which the Court must give effect in the interest of the public generally or some section of the public, despite any rules of evidence as between themselves that the parties may have created by their conduct or otherwise. It was further observed that a general social policy does from time to time require the denial or legal validity to certain transactions by certain persons. This may be for their own protection as in the case of infant or other category of persons enjoying what is to some extent a protected status or for the protection of the others who may come to be engaged in dealings with them, as for instance, the creditors of a bankrupt. In all such cases there is no room for the application of any general and familiar principles of law that a man may, if he wishes, disclaim a statutory provision enacted for his benefit, for what is for a man's benefit, and what is for his protection are not synonymous terms. It was further observed "nor is it open to the Court to give its sanction to departure from any law that reflects such a policy, even though the party concerned has himself behaved in such a way as would otherwise tie his hands." .

13 As observed by the Hon"ble Supreme Court in the case of *Associated Hotels of India Ltd., Delhi Vs. S.B. Sardar Ranjit Singh*, , waiver is an intentional relinquishment of a known right. It is obvious therefore, that there could be no

"waiver", unless the person against whom the waiver is claimed had full knowledge of his right and the facts enabling him to take effective action for the enforcement of such a right.

14 It is, therefore, to be examined whether the provisions contained in the Act - and the public policy underlying the same permits a landlord to abridge his rights and whether all such devices agreements and arrangements which encroach upon the rights of the landlord secured u/s 21(1)(b) of the Act can be held to be contrary to law and whether such devices etc. can be utilised as a valid defence by the tenant.

15. Significant amendments having considerable effect on the rights of the landlords so far as the "public buildings" were concerned were incorporated in the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (V. P. Act No. 13 of 1972) with the enforcement of U.P. Act No. 28 of 1976. A new clause 3 (o) defining "public building" was inserted. Under the new definition "public building" meant any building belonging to or taken on lease or requisitioned by or on behalf of the Central Government or a State Government (including the Government of any other State) and including any building belonging to or taken on lease by or on behalf of any local authority or any public sector Corporation.

16. The provisions contained in section 21 of the U.P. Act No. 13 of 1972 providing for eviction of a tenant from a building under tenancy or any specified part thereof subject to certain restrictions were also drastically amended by curtailing the right of the landlord for getting a tenant occupying a public building evicted even if the conditions which if satisfied could entitle a landlord to recover possession of the tenanted accommodation. Section 21(8) was added curtailing the right of the landlord in this connection.

17. The provisions contained in section 21(1)(a) were not to apply to a building let out to the State Government or to a local authority or to a Public Sector Corporation or to a recognised educational institution unless the Prescribed Authority was satisfied that the landlord was a person to whom clause 2 or clause 4 of the Explanation to sub-section (1) was applicable. Clauses 2 and 4 of the Explanation were, however, deleted with effect from 5-7-76, the result was that the public buildings envisaged u/s 3(o) of the U.P. Act No. 13 of 1972 as well as public sector Corporation envisaged u/s 3(p) of the said Act and recognised educational institutions envisaged u/s 3(q) of the said Act got exempted and taken out of the purview of section 21(1)(a) of the U.P. Act No. 13 of 1972 with the result that a landlord of a "public building" or a building occupied by a public sector corporation or recognised educational institution ceased to have a right to get such a building occupied by a tenant vacated, even if the requisite conditions for the eviction of tenant which could justify the eviction of tenants existed.

18. However, whereas on the one hand the right of the landlord to seek eviction of a tenant from the buildings indicated above was taken away they were vested

with another right to get the monthly rent payable for such buildings enhanced at an interval of five years in accordance with the procedure prescribed under the proviso (1) and (2) to section 21(8) of the Act. Thus, the proviso to section 21(8) conferred a valuable right on a landlord of a public building and the landlord of any other building let out to Public Sector Corporation or a recognised educational institution.

19. The public policy underlying the amended provision is, therefore, apparent. This policy appears to be to protect the interest of a particular section of the public i.e. landlords of public buildings and the buildings let out to public Corporations and recognised educational institutions who did not have any right to seek eviction of the tenant even after satisfying the restrictions/ requirements contemplated u/s 21(1)(a) of the Act. As a necessary implication the landlords of buildings falling within the purview of the Act which were continuing to be under tenancy or came under tenancy were divided into two separate categories. One category of the landlord was that which could exercise the right secured u/s 21(1)(a) of the Act and the other which had no such right. The position of the landlords of public buildings and the buildings occupied by public sector, Corporations and recognised institutions as indicated above naturally turns out to be that of "oppressed persons" who had to give way to the right of the tenants to continue in occupation of the premises let out to them. The only relieving feature was that such tenants were to be under an obligation to enhance the rent in accordance with the procedure prescribed under the provisions contained in section 21(1)(b) of the Act at an interval of five years. In the aforesaid circumstances therefore, there cannot be any room for the application of another general and familiar principle of the law that a person may, if he wishes, disclaim a statutory provision enacted for his benefit for, as pointed out in the Hoongs" case, "what is for a man's benefit and what is for his protection are not synonymous terms. The new social policy it seems to me was to protect the right of the landlords who fell in the category referred to above and constituted a definite and specified section of the public.

20. In view of what has been stated above, I am clearly of the opinion that the clause referred to by the tenant contained in the lease deed on which strong reliance has been placed indicating that the landlord had himself put the ceiling on the upper limit of the rent in respect of the building is void for it seeks to withhold the protection provided to a member of a protected class as indicated above, in contravention of the social policy animating from section 21(1)(a) and section 21(1)(b) of the U.P. Act No. 13 of 1972. All such devices, agreements and arrangements will be deemed to be contrary to law and cannot be utilised as a defence by the tenant which tend to abridge the rights of the landlord secured under the policy to which a reference has been made above.

21. It may usefully be noticed that in the decision of the Apex Court in the case of Pradeep Kumar Bajpai v. Binod Behari Sarkar, 1980 AIR 345, which was a case decided by a three Judge Bench of the Hon'ble Supreme Court, a question had

arisen about a stipulation in the lease deed providing for six months" notice period for terminating the tenancy The premises in dispute in that case had been let out in the year 1955 when the building which was the subject matter of the tenancy stood governed by the provisions of the Rent Control Act which provided the period of a notice which was lesser than that which was provided in the lease deed The Hon'ble Supreme Court while considering the implications of the applicability of the Act to the building in question observed that as the provisions of the U.P. (Temporary) Control of Rent and Eviction Act (III of 1947) are applicable the terms of the lease deed becomes irrelevant". In the present case as has already been noticed hereinbefore the building in question fell within the purview of the U.P. Act no, 13 of 1972 on the date when the lease deed was executed. The ratio of the decision in the case of Pradeep Kumar Bajpai (supra), therefore, stands clearly attracted to the facts and circumstances of the present case and in face of the clear cut provisions providing for the enhancement of the rent in a particular, manner and to a particular extent under the Act itself the terms of the lease deed to the extent of inconsistency are rendered irrelevant and can not be utilised in defence by the tenant.

22. It may further be noticed in this connection that as the lease deed was executed after the U.P. Act No. 28 of 1976 had come into force the relationship between the parties had to be regulated by the provisions of the aforesaid enactment and not by the terms of the contract. Obviously therefore, the Petitioner could not rely either on the terms of the lease or on the principle of waiver or estoppel and acquiescence.

23. Learned Counsel for the Petitioner has heavily relied upon a decision of the Apex Court in the case of Shri Lachoo Mal Vs. Shri Radhey Shyam, . In this case which was decided by a Bench of two Hon'ble Judges of the Hon'ble Supreme Court it was laid down that the general principle is that every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. The Hon'ble Supreme Court had emphasised in that case that if there is any express prohibition against contracting out of a statute in it then no question can arise of any one entering into a contract which is so prohibited but where there is no such prohibition it will have to be seen whether an Act is intended to have a more extensive operation as a matter of public policy. It was noticed in that case that there are many statutory provisions expressed to apply" notwithstanding any agreement to the contrary.

24. Under the scheme of U.P. Act No. 13 of 1972 it is noticeable that although in the provisions contained in Section 7 and section 26(3), the legislature had clearly used the language "subject to any contract in writing to the contrary" no such stipulation has been provided for in section 21(1)(b) of the Act. Therefore, in the absence of any such stipulation any agreement about a particular ceiling of the amount of rent will have to give way to the right to get it enhanced above

that ceiling which right stands protected under the Act. Further in the present case the clause in the agreement in question has to be nullified being in disobedience to a rule of public policy underlying the amended provisions of U. P, Act No. 13 of 1972 which is clearly implicit.

25. Under the provisions of U.P. (Temporary) Control of Rent and Eviction Act (3 of 1947), the provisions whereof were being considered in the case of Lachoo Mal (supra), there was no such provision as contained in U.P. Act No. 13 of 1972 and there was no occasion to consider in that case the implications arising under the provisions contained in the present Act under consideration. The aforesaid decision, is therefore, clearly distinguishable.

26. Moreover the decision in the case of Pradeep Kumar Bajpai (supra) is a decision of a larger Bench of the Hon''ble Supreme Court and is binding. In this connection it may be noticed that in its decision in the case of The State of U.P. Vs. Ram Chandra Trivedi, , the Apex Court has observed thus :

It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller Benches of this Court...the proper course...as observed by this Court in Union of India (UOI) and Another Vs. K.S. Subramanian, ...is to try to find out and follow the opinion expressed by larger Benches of this Court in preference to those expressed by smaller Benches of this Court which practice hardened as it has into a rule of law is followed by this Court.

27. Learned counsel for the Petitioner has also relied upon a Division Bench decision of this Court in the case of Raj Narain Jain v. Ill Additional District Judge, 1979 ARC 485. In this decision the provisions of the U.P. Act No. 13 of 1972 as they stood prior to 1976 were considered. As a matter of fact in the aforesaid decision it has been observed that if the lease deed had contained a covenant-surrendering any protection provided to a landlord by U.P. Act No. 13 of 1972 it might have been possible to successfully contend that such a covenant was against public policy and consequently void by reason of section 23 of the Contract Act. Such observations occur in para 17 of the said decision. Taking into consideration the amendments brought into the U.P. Act. No. 13 of 1972 in the year 1976 and further considering the implications arising thereunder to which a reference has already been made above the aforesaid decision can render no assistance to the Petitioner.

28. Learned counsel for the Petitioner has further relied upon a single Judge decision of this Court in the case of Dr. Nawal Kishore Dudey v. Sardar Khajan Singh, 1984 (1) ARC 461. This decision is also distinguishable as implications arising u/s 21(1)(b) of the U.P. Act. No. 13 of 1972 have not at all been considered in the aforesaid case. The Petitioner cannot, therefore, derive any assistance form this decision

29. Learned counsel for the Petitioner has sought to challenge the impugned order on the ground that while determining the amount of rent as contemplated

u/s 21(1)(b) of the U.P. Act No. 13 of 1972, the Respondents-authorities could not take into account the value of the land underneath the building under tenancy. This question was specifically considered by the Apex Court in its decision in the case of State of U.P., v. VII Additional District Judge, 1992 ALJ 1063 whereunder such contention was repelled. In view of this decision there is no merit in this submission.

30. I have perused the impugned orders. No such infirmity therein has been pointed out which may justify any interference in the determination of the quantum of the enhanced rent while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India. The finding on this question has been arrived at on the basis of the appraisal of evidence on the record which does not appear to suffer from any legal infirmity 31 In view of my conclusions indicated herein before the writ petition is clearly devoid of merits and is accordingly dismissed.

32. There shall, however, be no order as to costs.