
(1998) 07 AHC CK 0055
In the Allahabad High Court
Case No : C.M.W.P. No. 28781 of 1993

Jawahar Lal

APPELLANT

Vs

Prescribed Authority/Ist Additional Civil Judge and another

RESPONDENT

Date of Decision : 29-07-1998

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 11, 13, 16, 21(1), 21(6)

Citation : (1999) 1 AWC 43

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Tej Pratap Singh, for the Appellant;

Final Decision : Dismissed

Judgement

J.C. Gupta, J.—This writ petition is directed against the order dated 19.7.1993 passed by the Prescribed Authority respondent No. 1. copy of which has been annexed as Annexure-3 to the writ petition.

2. Parties" counsel S/Sri T. P. Singh for the petitioner and Sankatha Rai and B. B. Paul have been heard and record has also been perused.

3. The impugned order has been passed in the proceedings pending before the Prescribed Authority respondent No. 1 on the application moved by landlady respondent No. 2 for the enforcement of the order dated 19.10.1987 passed on the application moved by the landlady u/s 21 (1) (a) of the U. P. Act No. XIII of 1972. It appears that after filing the written statement, the petitioner who was occupying the premises in question as tenant entered into a compromise with the landlady wherein he accepted the bona fide need of the landlady and on the basis of the said compromise, release application was allowed by the Prescribed Authority by the order dated 19.10.1987. In the said compromise, the landlady also agreed and allowed five years time to the tenant-petitioner to vacate the shop in question. After the expiry of the aforesaid period of five years, when the

possession of the tenanted shop was not handed over back to the landlady, the landlady moved the Prescribed Authority for the enforcement of the order by filing an application u/s 23 of the Act. The petitioner resisted the claim of the landlady by filing objections to the effect that there had not been any adjudication of the personal need of the landlady while deciding the release application. It has also been pleaded that before the expiry of period of five years, the parties entered into an oral settlement by which the petitioner was allowed to continue in occupation at the enhanced rate of rent at the rate of Rs. 2,400 per month. This fresh contract was entered into on 4.2.1988 when petitioner's mother died. It has also been pleaded that the parties are relatives and, therefore, only an oral settlement was arrived at. In pursuance of the said settlement, the tenant started paying rent to the landlady at the aforesaid enhanced rate and the same was accepted by the landlady without any objection. The landlady filed her reply, *inter alia*, pleading that the order of release was legal and the Prescribed Authority has no Jurisdiction to go behind the said order nor the petitioner has a right to challenge the correctness of the release order dated 19.10.1987 in the execution proceedings. It has also been denied by her that there has been any oral settlement as alleged by the petitioner. As regards to the payment of rent at the rate of Rs. 2,400 per month, the case of the landlady was that the rent was enhanced at the time when the parties had entered into compromise and since the tenant had agreed to enhance the rent, five years period was allowed to him to vacate the shop in question. However, inadvertently the said term could not be incorporated in the compromise filed before the Prescribed Authority but an agreement on stamp paper was executed in between the parties. The petitioner denied his signatures on the said agreement.

4. It further appears that during the pendency of the proceedings u/s 23. the petitioner moved an application for getting his signatures appearing on the agreement compared with his admitted signatures by a hand writing expert. The petitioner also moved an application to permit him to lead oral evidence in support of his objections. By the impugned order, the Prescribed Authority has allowed the petitioner's prayer for comparison of signatures alleged to be appearing on the agreement filed by the landlady. However, the prayer of the petitioner for leading oral evidence has not been accepted and the Prescribed Authority has directed the petitioner to adduce evidence on affidavits, if he so chooses.

5. Sri T. P. Singh learned counsel for the petitioner argued that by virtue of Section 34 of the Act, it was within the power of the Prescribed Authority to summon and enforce the attendance of any person and examine him on oath and in the facts and circumstances of the present case, the Prescribed Authority should have allowed the petitioner's prayer to examine witnesses on oath. On the other hand, Sri Sankatha Rai counsel for the respondents argued that this writ petition has been filed only with a view to further delay the execution proceedings. He submitted that the objections of the petitioner are untenable

and could not be gone into in the proceedings u/s 23 of the Act. It has rightly been argued by him that so far as the correctness of the release order dated 19.10.1987 was concerned, the same could not be challenged now by the petitioner in execution proceedings. In the case of Gulab Singh Rawat v. District Judge, Uttar Kashi and others 1984 (1) ARC 468 it was held by a single Judge of this Court that the Prescribed Authority has the jurisdiction to execute the order u/s 23 of the Act passed on the basis of compromise. In that case also, it was urged on behalf of the tenant that the order of release on the basis of a compromise was itself without jurisdiction and not executable u/s 23 of the Act. as the Prescribed Authority while allowing the application for release on the basis of compromise did not record any specific finding that the need of the landlord was bona fide. It was held that the application for release was made by the landlord on the ground that the same was required by him bona fide and the case was accepted by the tenant in the compromise. Simply because a specific formal finding that the need of the landlord was bona fide was not recorded, it could not be said that the order passed by the Prescribed Authority was without jurisdiction. It is not the form of the order but the substance thereof which is to be looked into in such matters. I do not find any reason to take a view different from that as has been expressed in the aforesaid decision of Gulab Singh Rawal. In view of this, the release order dated 19.10.1987 cannot be challenged on the aforesaid ground by the petitioner.

6. Sri Sankatha Rai learned counsel for the respondents then vehemently argued that the respondent has no right vested in himself and, therefore, the writ petition is not legally maintainable as before invoking writ-jurisdiction of this Court, the petitioner has to satisfy the Court that he possesses a legal right in himself which has been infringed and that substantial injustice has been done on account of that infringement. Sri Rai contended that even as per the own case as taken up by the petitioner in his objections, alleged fresh contract of tenancy was entered into between the parties on 4.2.1988 as such it was void on account of the prohibitions and restrictions imposed by Sections 11 and 13 of the U. P. Act No. XIII of 1972. In reply to this, Sri T. P. Singh argued that before attracting Sections 11 and 13 of the Act, the building should be vacant either actual or deemed and for treating a building to be vacant under the deeming provisions of the Act. It is necessary that there must be cessation of occupation by the landlord or the tenant, as the case may be. He submitted that in the present case, at no point of time, there has been cessation of occupation by the tenant-petitioner. Sri Rai also invited the attention of the Court to Section 21 (6) of the Act which provides that on the expiry of period of one month from the date of release, the tenancy shall stand terminated in its entirety and it is sought to be argued that after the expiry of period of one month from the date of the order of release, i.e., 19.10.1987, the petitioner's tenancy stood determined and thereafter he was in unauthorised occupation. Strongly opposing this argument, Sri T. P. Singh argued that the mere fact of determination of tenancy does not ipso facto amount to cessation of occupation by the tenant under the provisions

of the Act, and as the tenant-petitioner was already allowed to occupy the shop in question for a period of five years under the terms of the release order, his occupation until the expiry of the period aforesaid could not be said to be unauthorised. He further argued that Section 11 of the Act imposes a prohibition against letting. It provides that no person shall let out any building to any person excepting by an order of allotment made by the District Magistrate. The order of allotment by the District Magistrate is made u/s 16 of the Act which presupposes existence of vacancy. In other words, the District Magistrate could exercise power of allotment only where the building is vacant either actual or expected or where it is deemed to be vacant and not otherwise. In short, Sri T. P. Singh argued that in the present case, the shop in question never fell vacant either actual or by legal fiction under the deeming provisions of the Act.

7. Since the Prescribed Authority has not yet gone into the merits of the claim of the petitioner's objections and of the reply filed by the landlady, it is not necessary for me to decide the above controversy as for deciding the said questions essential finding of facts are necessary, one of the most important finding being that whether at any point of time, the tenant-petitioner had ceased to occupy the shop in question either in fact or in law. It may also be necessary to have a finding whether the alleged oral settlement as pleaded by the petitioner was in continuation of the old tenancy or it created a fresh tenancy. These controversies are, therefore, left open for being decided at appropriate stage.

8. As far as the merits of the impugned order is concerned, this writ petition has undisputedly been filed against an order which has been passed at an intermediate stage of the proceedings, it is well-settled law that in such matters, this Court makes interference only in special and exceptional cases where the Court feels that great injustice would be occasioned to the petitioner if interference is not made. In the present case, the petitioner has already been allowed permission to get the signatures compared by a hand writing expert. As far as the prayer to lead oral evidence is concerned, a plain reading of Section 34 would itself indicate that primarily evidence in the proceedings under the Act is to be received on affidavits, and the affidavits are to be filed as per the provisions of the Code of Civil Procedure. A similar view was expressed by Hon"ble R. M. Sahai. J. as then he was a Judge of this Court in the decision in Radha Kishan v. IVth Additional District Judge. Jalaun at Oral 1986 (2) ARC 293. In that case, it was observed :

"Evidence on affidavits is permissible by Section 34 itself and is necessary as well, as the primary object of Act XI of 1972 is expeditious disposal of the cases. It may be hindered if parties are permitted to lead oral evidence."

The Hon"ble Judge also repelled the contention raised before him by the petitioner that the authorities could not have decided the application of the parties on affidavits only and parties should have been given opportunity to examine witnesses on oath.

9. In view of the aforesaid decision as well as having regard to the facts of the present case. I am of the opinion that the view taken by the learned Prescribed Authority that the parties may adduce evidence on affidavits does not suffer from any error of law. It is always open for the authority concerned at a later stage to examine whether or not justice could not be done without permitting a party or the other to cross-examine witnesses of the other party but then the stage for considering the said aspect has not yet reached in the present case as the parties are yet to adduce evidence on affidavits.

10. For the above reasons, this writ petition is dismissed. Since the matter has already become very old, the Prescribed Authority is directed to conclude the proceedings according to law expeditiously, preferably within a period of two months from the date a certified copy of this order is produced before him.

11. In the circumstances, parties are directed to bear their own costs. Stay order granted earlier stands vacated.