
(1999) 08 AHC CK 0184
In the Allahabad High Court
Case No : C.M.W.P. No. 19160 of 1985

Kedar Nath Agrawal and another

APPELLANT

Vs

District Judge, Ballia and others

RESPONDENT

Date of Decision : 06-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 5

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 22

Citation : (1999) 4 AWC 2884 : (1999) AWC 2884

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : R.R. Shivhare, for the Appellant; R.N. Singh, A.N. Ray and S.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Yog, J.—Smt. Dhanraji Debi and Jagdeo Shah respondent Nos. 3 and 4 (since dead represented by legal representatives) filed release application u/s 21 (11 (a). U. P. Urban Buildings [Regulation of Letting, Rent and Eviction) Act, 1972 (U. P. Act No. XIII of 1972), for short called "the Act", contending inter alia, amongst others, that they required the shop described in the release application situate in Qasba Rasra (district Ballia) wherein petitioners were tenants at the rate of Rs. 43.75 paise per month on the ground that Jagdeo Shah had to quit Calcutta because of anti-Bengali movements and riots and that he required the shop in question for carrying on his own business along with his wife Smt. Dhanraji. Landlord also filed an application (Annexure-2 to the petition) praying that an Amin be appointed by the Court for preparing site plan, Amin submitted a report dated September 30. 1983 (page 28 of the writ paper book) along with site plan (page 32 of the writ paper book).

2. Tenants filed written statement and denied the case of the landlord as disclosed in the written statement,

3. The tenant filed evidence in support of their case. Out of said evidence, only following documents have been filed with the writ petition :

(1) Affidavit of Kedar Nath dated Nil (Annexure-IV).

(2) Affidavit of Mahadev dated 21.12.1983 (Annexure-V).

(3) Copy of the application dated 21.12.1983 praying for appointment of Advocate Commissioner (Annexure-VI).

(4) Affidavit of Ram Ashish Pathak dated Nil (Annexure-VI).

(5) Affidavit of Mohan Das Agrawal dated 16.2.1984 (Annexure-VIII).

4. The prescribed authority allowed the release application vide judgment and order dated February 22, 1984 (Annexure IX) on the ground that the need of the landlords was "bona fide" and that landlord was to suffer more hardship as compared to the tenant. Judgment of the prescribed authority shows that tenant has been throughout pleading that one of the landlords (Jagdeo Shah) was old and he was not in a position to conduct business. It has also come in the order that the landlord had a minor daughter who was dependent on the income of her parents (Respondent Nos. 3 and 4) and that landlord had hosiery licence and in a position to run the proposed business in the accommodation in question. The prescribed authority also recorded a finding of fact that there is no shop as such on the southern side of the disputed shop as alleged by the tenant nor the said accommodation, could be used as show room proposed by the landlord. Tenant was using shop in question and engaged in business in the name of M/s. Kedar Nath Machinery Stores. It was also found that tenants had one shop wherein "gold and silver business" in the name and style of "M/s. Kedar Nath Sarraf" was being done, and another business of cloth was being carried on in the name and style of "M/s. Mahadeo Ranchhjordas" in another shop.

5. The tenant had relied upon the Amin's report and the map prepared by him for pleading that case of the landlord was not to be accepted. The prescribed authority also referred to the affidavit of Mahadeo (son of the tenant) and also to the Amin's report with reference to the allegations contained in the said affidavit but did not find favour with the allegations made by the tenant. Consequently, prescribed authority allowed the release application of the landlord.

6. Feeling aggrieved tenant filed Rent Control Appeal No. 4 of 1984 u/s 22 of the Act. The Appellate Authority vide judgment and order dated November 25, 1985 (Annexure-X) dismissed the appeal.

7. In these circumstances, the tenant-petitioners filed the present writ petition to challenge the concurrent Judgments passed by respondent Nos. 1 and 2. (Annexure-IX and X).

8. The original landlords (Respondent Nos. 3 and 4) died during the pendency of the petition. Initially steps were not taken by the petitioners to substitute legal representatives promptly. Applications for substituting legal representative along

with application u/s 5, Limitation Act were filed only when one of the legal representatives of the deceased landlord filed an application for abating the writ petition. Needless to mention, these procedural hastes led to pendency of the writ petition since 1983, completely frustrating the object of provisions of release in the Act.

9. Kamla Devi, one of the legal representatives of the deceased landlord Respondent Nos. 3 and 4 filed a counter-affidavit. The petitioners also filed a rejoinder-affidavit mainly contending that there is dispute amongst daughters of the deceased legal representatives and also referred to subsequent developments, which had taken place during the pendency of the writ petition.

10. Heard learned counsels for the parties.

11. On behalf of the petitioners, it is urged that both the landlords (Respondent Nos. 3 and 4) having died, leaving behind three married daughters this Court may take into account the said circumstances which came into existence after passing of the impugned orders. The learned counsel for the petitioners submitted that the application u/s 21 of the Act should be rejected as having abated since the cause of action for seeking release of the shop in question has become non-existent. Alternatively, it is submitted that writ petition should be allowed. The learned counsel for the petitioners has referred to Section 21 (1) (a) of the Act to show that law contemplates that when release of an accommodation is required by landlord or any member of his family, the same must continue. According to him, both the landlords having died during writ proceedings, leaving married daughters (who are not members of the landlord's family), the application u/s 21 (1) (a) of the Act filed for release stands abated.

12. The petitioners submit that High Court should and ought to take into account subsequent events which have emerged during the pendency of the writ petition and places reliance on the following decisions reported in :

1. AIR 1081 SC 1711 (Paragraphs 14 and 28).
2. Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina, (Paragraphs 15 and 16).
3. Gulabbai Vs. Nalin Narsi Vohra and others, (Paragraphs 20 to 23).
4. 1996 (1) ARC 572 (Paragraph 9).
5. 1989 (1) ARC 475.
6. 1997(1) ARC 627.
7. 1986 (1) ARC 416 (Paragraph 8) and
8. 1993 (2) ARC 401 (Paragraph 71)

13. The learned counsel for the petitioner has also fairly placed before this Court the following decisions wherein, according to him. a contrary view has been taken :

1. 1999 (1) ARC 188 (Paragraphs 17 and 19).

2. 1998 (2) ARC 445.

3. 1997 (1) ARC 627 (Paragraph 3) Followed in 1998 (2) ARC 445.

14. The learned counsel for the petitioner thereafter, carrying his arguments further on the above aspect submitted that this Court should refer the matter to a larger bench, in this context, he has referred to the following decisions reported in :

1. Mattulal Vs. Radhe Lal,

2. AIR 1976 SC 79 (Paragraph 22).

3. 1990 (1) AWC 308 and

4. 1991 (1) AWC 213.

15. On the other hand, contesting respondents have placed reliance on the decision in AIR 1976 SC 79. In the said decision, it is held that Court is required to determine the rights of the parties as existed on the date of institution of the suit. His submission is that "subsequent events", which have come into existence during pendency of writ petition, are to be ignored.

16. One has to bear in mind, while considering respective decisions on the question, that vital and decisive factor is as to whether the proceedings had come to an end under the Act. The matter having become final in appeal or revision and thus having come to an end, the matter stood finally decided. Filing of writ petition by invoking supervisory jurisdiction under the Constitution cannot be said to be continuation of the proceedings under the Act. It is well-settled in law that writ is not continuation of the suit, appeal or revision. For this purpose reference may be made to :

1. State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj, .

2. Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others, .

3. Udai Bhan Singh and Others Vs. The Board of Revenue, U.P., Allahabad and Others,

4. Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others,

17. Perusal of all the decisions relied upon by the learned counsel for the petitioner, (particularly Gulabbai Vs. Nalin Narsi Vohra and others, paragraph 25 which has taken note of other decisions in Hasmat Rai and Another Vs. Raghunath Prasad, and Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina, clearly shows that Supreme Court was considering the question whether a case where matter was pending in appeal, it was permissible under law to take into account subsequent events before appeal was finally decided. Paragraph 25 of the said decision shows that in that case application for additional evidence was

filed in appeal to bring on record subsequent developments. Case was not finally decided under the contemplated forum/channel. Supreme Court held, in the facts of that case that subsequent events emerging during appeal should be taken into account. No decision has been placed wherein Hon"ble Supreme Court held that even if the proceedings are finally determined under normal channel, still, subsequent developments which take place when writ petition is pending, should be taken into account.

18. There are decisions of the Apex Court wherein it has been held that once matter is finally decided in appeal. then subsequent circumstances, which occur during pendency of writ proceedings, cannot be taken into account. Reference may be made to the following decisions, which held that "Subsequent Events" after appellate stage (when matter is finally concluded) are not relevant :

(1) 1999 (1) ARC 188 (Paragraphs 17 and 19).

(2) 1997 (I) ARC 627 (SCJ).

(3) 1975 ALJ 669 (Paragraph 4).

I find no contrary decision of this Court or that of the Apex Court on the said issue. The contingency of making reference hence does not arise.

19. The release application does not abate nor writ petition, for the said reason, can be simpliciter allowed. Had the landlord got possession on the basis of the impugned orders and had the writ petition not been pending for no fault of the landlords or their legal representatives : the landlords would have certainly reaped the fruits. A party cannot be penalized for the delay in Court.

20. The learned counsel for the petitioner then submitted that the prescribed authority has erred in law in taking into account the ex parte report of the Amin, which was obtained behind the back of the petitioners and also that tenants were not allowed to cross-examine the said Amin. Reference is made to certain provisions of the Act wherein prescribed authority has power to allow cross-examination.

21. Memorandum, of appeal u/s 22 of the Act has not been annexed with the writ petition. A copy of the same was placed for perusal before the Court by the learned counsel for the petitioners. A perusal of the same shows that in Ground No. 10 (Memorandum of Appeal) tenant-appellants did express grievance on this aspect. Perusal of the appellate judgment, however, does not show any discussion on this aspect. It is clear that said ground was not raised and pressed before appellate authority. Again, in Paragraph 16 of the writ petition, petitioners have alleged that this aspect was urged and pressed before appellate authority (District Judge). The said averments are, however, sworn on the basis of the legal advice. No reliance can be placed on such averments made on legal advice on the point in question accepted and therefore, rejected. Obviously, such an allegation is an after thought made on the basis of the advice tendered by the counsel. There is nothing on record to show that the counsel before the appellate

court had, as a fact, pressed "Ground No. 10", in the writ petition. There is anything to show that any grievance was made before appellate authority by filing an application, before him pointing out alleged omission. This Court cannot allow this point to be pressed now. Averments on this point made in paragraph 16 of the writ petition cannot be accepted. There is no affidavit of the counsel before appellate court or this Court as held in 1978 (UP) RCC 503 . No one can be allowed to take advantage of lapse on his own part. See Khalil Ahmad Vs. The Manager, Abdul Karim Khan Higher Secondary School, Amroha, Dist. Moradabad and Others, and Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai,

22. The other grievance, that Amin was not cross-examined, it may be stated that it was not a mandatory obligation upon the Courts below while exercising jurisdiction under the Act. Petitioner has miserably failed to demonstrate as to how he has been prejudiced.

23. Learned counsel for the petitioner then submitted that the prescribed authority has made a perverse observation while it observed that no affidavit was filed by Kedar Nath. It is sad for the petitioners to note that such an objection is not taken before the appellate court. Paragraph 7 of the appellate judgment (particularly page 77 of the writ paper book) shows that appellant's main contention was that landlord had accommodation on the south of the shop in question. The lower appellate court found it was neither sufficient nor suitable. Petitioners cannot be allowed to find fault with appellate court's judgment on this score now. Perusal of the affidavits filed along with the writ petition shows that tenant did refer and relied upon the Amin's report.

24. Petitioners have also filed copy of application praying for appointment of Advocate Commissioner. There is nothing in the memorandum of appeal on this aspect. Petitioners not having pressed the said application cannot be permitted now at this stage to challenge the judgment of the Courts below on this score. There is no categorical pleading that the petitioners had pressed and argued before the appellate authority that their application for appointment of Commissioner has not been considered by the prescribed authority in spite of tenants pressing for it. Otherwise also, if the appellate authority has not taken into account certain application or plea raised before it, the party concerned should have approached that very Court promptly and expeditiously as that Court alone would have been in the best position to ascertain and determine the said fact.

25. The learned counsel for the petitioners thereafter referred to the appellate judgment and pointed out that in the said judgment, there is no mention of the affidavit of the tenant. It will suffice to mention that the prescribed authority had considered the matter and recorded findings of fact. The appellate authority was writing judgment of concurrence Apart from it, perusal of the appellate judgment shows that the tenant petitioners, who were appellants before the appellate authority, mainly pressed their argument regarding the fact that there was a

room on the southern side in the accommodation in question, which could be used as show room. The said argument has been repelled by the appellate authority by giving reasons in its judgment. The appellate authority further observed that Amin- Commissioner had found that appellant had sufficient accommodation in his possession. The said statement of fact in the appellate Judgment has not been specifically denied as a fact in the writ petition.

26. It is possible that the two Courts below could have delivered better judgments. This Court is, however, not expected to appraise evidence on its own and then find fault with the findings recorded by the Courts below. This Court cannot be, while exercising jurisdiction under Article 226, Constitution of India, asked to act as trial/appellate Court.

27. The learned counsel for the petitioners further urged that the Courts below have not taken into account Section 21 of the Act, which requires granting of two years of rent as compensation. There is no pleading in writ petition that such a plea was raised and pressed before the concerned Courts. It may be pointed out that the relevant provision in this aspect requires ground of compensation only when the Court feels that circumstances warrant granting of compensation and not as of course in all the cases without having regard to the facts of a case.

28. In the instant" case. Courts below were not required to consider this aspect. I have, however, examined the record and after taking into account the social status of the tenant. I do not think it is a fit case that compensation should be awarded.

29. The learned counsel for the petitioners, at this stage submitted that since accommodation in question is being used as shop, it is a fit case where this Court should protect possession of his clients for some time. Considering the request made at the Bar on behalf of the petitioners. I direct that petitioners shall not be dispossessed from the accommodation in question on the basis of the impugned orders provided they give an undertaking in writing containing the conditions as mentioned herein.

1. The tenant-petitioners shall file before concerned prescribed authority, on or before August 31, 1999, an application along with an affidavit giving an unconditional undertaking to comply with all the conditions mentioned hereinafter.

2. Petitioner-tenants shall not be evicted from the accommodation in their tenancy for six months, i.e.. up to January 31, 2000. Tenant-petitioners, their representative/assignee, etc., claiming through them or otherwise. If any, shall vacate without objection and peacefully deliver vacant possession of the accommodation in question on or before January 31, 2000 to the landlord or landlord"s nominee/representative (if any, appointed and intimated by the landlord) by giving prior advance notice and notifying to the landlord by Registered A.D. post (on his last known address or as may be disclosed in advance by the landlord in writing before the concerned prescribed authority), time and date on which landlord is to take possession from the tenants.

3. Petitioners shall on or before August 31, 1999 deposit entire amount due towards rent etc. up to date, i.e., entire arrears of the past. If any, as well as the rent for the period ending on the January 31, 2000.

4. Petitioners and everyone claiming under them undertake not to "change" or "damage" or transfer/alienate/ assign in any manner, the accommodation in question.

5. In case tenant-petitioners fail to comply with any of the conditions/or direction/s contained in this order, landlord shall be entitled to evict the tenant-petitioners forthwith from the accommodation in question by seeking police force through concerned prescribed authority.

6. Defaulting party shall pay Rs. 25,000 (Rupees Twenty five thousand only) as damages to the other party if there is violation of the undertaking or anyone or more of the conditions contained in this order.

30. The writ petition is dismissed subject to the observations and conditions mentioned above. No order as to costs.