
(1992) 11 AHC CK 0033

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 17621 of 1987

Kewala Nand Belwal

APPELLANT

Vs

Smt. Savita Sah and Others

RESPONDENT

Date of Decision : 17-11-1992

Acts Referred:

Constitution of India, 1950 — Article 141, 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 16(1), 18

Citation : (1993) 2 AWC 1034

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

Bench : Single Bench

Advocate : Rakesh Bahadur and S.N. Verma, for the Appellant; Rajesh Tandon, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—This writ petition by a prospective allottee is directed against the orders passed by the Respondent No. 2 and 3 in the proceedings u/s 16 of the U.P. Urban Buildings. (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as Act) where-under the accommodation in dispute had been released in favour of the land lord Respondent No. 1 up-holding her claim that the said accommodation was genuinely required by her for business purposes and her need for the same was a bonafide one.

2. The facts, shorn of details and necessary for the disposal of the present case are that on the receipt of a notice dated 15-9-1975 given by the outgoing tenant, the proceedings u/s 16 of the Act were initiated In respect of the accommodation in dispute. On the occurrence of the vacancy the Petitioner applied for the allotment of the same in his favour. The landlord on the other hand moved an application seeking the release of the accommodation in his own favour During the pendency of the proceedings, the landlord died and thereafter his widow got the release application amended and was allowed to proceed with it end pressed

for the release in her favour for doing the business of woolen hosiery ready made garments, imitation etc Her claim however, was contested by the prospective allottee, the Petitioner on various grounds and a large numbers of affidavits were filed en his behalf contesting the claim of the landlady regarding her alleged bonafide requirement of the premises in dispute The authorised officer vide the judgment and order dated 31-7-1985 granted the application for release holding that the building in question was bonafide required by the landlady and her need for the same was most genuine and bonafide This order passed by the authorised officer was challenged by the prospective allottee by means of revision, filed u/s 18 of the Act, which was heard and disposed of by the Respondent No. 3 vide the judgment and order dated 17th September, 1987, whereunder agreeing with the finding of the delegated authority/authorised officer, the revision was dismissed.

3. I have heard Sri Rakesh Bahadur learned Counsel for the Petitioner in support of the writ petition and Sri Rajesh Tandon, learned Counsel representing the landlady Respondent in opposition thereto and have carefully perused the record.

4. On 28th September, 1992, learned Counsel for the Petitioner moved an application seeking amendments in the writ petition with the purpose of bringing on the record certain developments which are said to have taken place subsequent to the passing of the impugned order, alleging that the subsequent events have material bearing on the controversy involved In the case end deserved to be taken notice of in the present proceedings. A counter affidavit in reply of the allegations made in the affidavit filed In support of the aforesaid application was filed by the land lady Respondent. I had an occasion to consider in detail in my decision in the case Pharma Traders and Ors. v. VII Additional District Judge and Ors. Civil Misc. Writ Petition No. 19140 of 1989, decided on 16-10-1992, the question as to whether in the proceedings under Article 226 of the Constitution of India, events occurring subsequent to the passing of the impugned order can be taken notice of or not. Taking into consideration the nature of the facts sought to be brought on record in the present case and the ratio of the aforesaid decision, I am clearly of the opinion that this application is totally misconceived, and is hereby rejected.

5. Learned Counsel for the Petitioner has tried to assail the concurrent findings recorded by the Respondent No. 2 and 3 holding the requirement of the landlady in respect of the accommodation In dispute to be genuine and bonafide which findings have been returned after appraisal of the evidence and the materials brought on record and believing the Landlady's affidavit and the other affidavits filed on her behalf in sport of her claim. The learned Counsel has tried to challenge the said findings on the ground that the authorities below, committed manifest illegality in omitting to consider the large number of affidavit filed by the Petitioner. He has also tried to urge that the findings are based on irrelevant considerations and the fact that the landlady bad suppressed the material facts which could disentitle her from seeking the release of the accommodation in question had gone unnoticed.

6. Learned Counsel for the Respondent has however, urged that the Petitioner prospective allottee had no right to put in a contest in the proceedings in question and is not entitled to be heard. He has further urged that the finding of the Respondent No. 3 to the effect that the Petitioner had no right to contest the claim of the landlady is fully justified and in this view of the matter, it has been urged that there was no necessity for the Respondent authority to consider and evaluate the evidence and the materials brought on record by the prospective allottee, In the alternative, it has been asserted that none the less the authorities below have considered the evidence and the materials brought on the record by the Petitioner, but, for cogent reasons did not find them to be worthy] of credence and have believed the evidence brought on record by the landlady. In these circumstances, it has been urged that no ground has been made out to disturb the findings arrived at by the authorities below on the basis of the appraisal of the evidence.

7. In the aforesaid circumstances, therefore, the question arises as to whether the Petitioner, prospective allottee, had a right to put in a contest in the proceedings for release contemplated u/s 16 of the Act and had a right to lead evidence in opposition to the claim of the landlady in respect of the bonafides of the requirement set up by her on the basis whereat release was sought.

8. A full Bench of this Court in its decision In the case of Talib Hasan v. Ist Additional District Judge Nainital 1986 (1) ARC 1, after carefully considering the various provisions contained in the Act and the implications arising thereunder has laid down that an application for release u/s 16(1)(b) of the Act is a matter between the District Magistrate and the landlord in which the out going tenant or the prospective allottee does not have any right to object. It has further been observed in the aforesaid case, that the prospective allottee comes into picture only after the disposal of the landlords' application for release u/s 16(1)(b), and,, only after the same is rejected. The Full Bench went on to observe that the prospective allottee has also no right or interest in the property or claim against the landlord so as to entitle any hearing in the disposal of the release application on general principle or doctrine of audi-alteram partem.

9. The Full Bench was very much emphatic in observing that the prospective allottee has no right to be heard in opposition to an application for release filed by the landlord. The learned Counsel for the Petitioner has tried to urge that the decision of the Full Bench referred to above requires reconsideration in view of the decision of the Hon''ble Supreme Court in the case of G.R. Pillai v. Additional District Judge IV Lucknow 1986 (1) ARC 320, as the said decision has the affect of upsetting the Full Bench by necessary implication.

10. In this connection, It may be noticed that a similar argument was raised in order to get over the decision of the Full Bench, before a learned Single Judge of this Court, when the case of Talib Hasan and another was put up for disposal before the learned Single Judge after the reference made by the learned Single Judge was answered. The learned Single Judge by a detailed order reported in

1987 (1) ARC 18, considered the implication of the decision of the Apex Court in the case of G.K. Pillai (supra) as well as another decision of the Hon''ble Supreme Court in the case of Naubat Ram Shama v. Additional District Judge II Moradabad 1987 SC FB RC 51 and held that the aforesaid decision of the Apex Court had no such effect as asserted and the decision of the Full Bench could not be deemed to have been impliedly over ruled. I have also considered the judgment in the case of G.K. Filial and Naubat Ram Sharma (Supra) and I am in respectful agreement with the view expressed by the learned Single Judge. In this connection, the observations of the Hon''ble Supreme Court in the case of State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, , reproduced below may be referred to:

A decision passed sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by Court or present to Its mind (Salmond 12th Edition). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. 1941 IKB 675 the court did not feel bound by earlier decision as it was rendered without any argument, without reference to the crucial words of the rule and without any citation of the authority". It was approved by this Court in Municipal Corporation of Delhi Vs. Gurnam Kaur, . The Bench held that precedents sub silentio and without argument are of no moment. The Courts thus, have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of Issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141.

11. Since in both the cases of Sri G.K. Pillai and Naubat Ram Sharma (supra) no reasons have been given and in one case, it has been made clear that the Apex Court was not expressing any opinion on the correctness or otherwise of the High Court's judgment, the decision in both these two cases could not be taken as binding under Article 141 of the Constitution of India. The decision of the Full Bench therefore, continues to hold the field and is binding.

12. This Court had clarified in his decision in the case of Smt. Krishna Ram v. District Judge Dehradun 1990 ARC (1) 442, that in the proceedings for release u/s 16 of the Act prospective allottee had no locus standi to be heard In yet another case of Devendra Nath Misra v. District Judge Pilibhit 1990 ARC (1) 345, this Court had emphasised that the prospective allottee cannot be allowed to participate in the proceedings for the release initiated u/s 16 of the Act. Once it is held that the prospective allottee has no right to put in a contest, it is obvious that he has no right to file any objections in the proceedings. Consequently in the absence of objections containing the pleadings no question could arise of leading an evidence in support of the objection. The affidavits filed by the Petitioner were nothing else except evidence in support of the pleadings contained in his objections In view of what has been said above, the Petitioner had no right to put in a contest and file an objection. Consequently he could not be deemed to have

a right to have the evidence filed by him considered by the authorities below and can not be heard to make any grievance In this regard.

13. I have carefully gone through the impugned orders passed by the Respondents No. 2 and 3, In the circumstances of the case, I am clearly of the opinion that no exception can be taken to the judgment passed by Respondent No. 2. There is no error much less manifest error in the impugned order justifying my interference therein. The writ petition is devoid of merits and is hereby dismissed. No costs.