
(1984) 12 AHC CK 0060
In the Allahabad High Court
Case No : Civil Revision No. 548 of 1982

Khadi and Village Industries Commission	APPELLANT
Vs	
Sateyswar Prasad Nautiyal	RESPONDENT

Date of Decision : 04-12-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Transfer of Property Act, 1882 — Section 106

Citation : (1984) AWC 384 Supp

Hon'ble Judges : N.N. Sharma, J

Bench : Single Bench

Advocate : V.K. Upadhyaya, for the Appellant; Subhasish Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Sharma, J.—This revision is directed against judgment and decree dated 31.8. 1982 recorded by Sri J.S. Misra, learned Judge Small Causes Court (District Judge), Uttar Kashi in S.C.C. Suit No. 7 of 1981. Defendant is revisionist.

2. I have heard learned Counsel for the parties and perused the record.

3. It appears that plaintiff-respondent claimed to be owner and landlord of the disputed house detailed at the foot of plaint. Defendant revisionist Khadi and Village Industries Commission is a public Sector Corporation registered under the Societies Act. The agreed rent was Rs. 250/- per month. The premises were let out to the aforesaid defendant through the Assistant Director.

4. The tenancy was determined by a notice u/s 106 of Transfer of Property Act dated 31.12.1980 received by defendant on 1.1.1981 requiring the tenant to vacate the premises on expiry of statutory period and to hand over the possession to the landlord. The defendant did not comply and so the damages for use and occupation were claimed by the landlord subsequent to 1.2.1981 at the said rate.

5. The defendant contested the claim on the ground that the said notice was invalid and did not terminate the tenancy. Other pleas were also raised which are not material to be detailed for the disposal of this revision.

6. It was held by learned Judge that notice dated 31.12.1980 has not been waived. It was further found that the said notice was valid. Other issues terminated in favour of plaintiff. In the result the claim was allowed with costs.

7. Learned Advocate for revisionists questioned the validity of notice u/s 106 of Transfer of Property Act: Annexure-1 appended to the stay application is the notice which has to be construed in this revision. The relevant portion of the notice is extracted below:

...You are informed through this notice that within the statutory period of the receipt of notice, you pay the balance of arrears of rent (for the period from September 1980 amounting to Rs. 916. 50) and give possession over the premises detailed in paras 2 and 3 of the notice; in default on expiry of statutory period, my client would be obliged to file a suit in the competent court against you for recovery of arrears of rent and damages for use and occupation and in that event you would be liable to pay the costs of the proceedings also....

8. The contention put forward by learned Advocate for revisionist was that the aforesaid notice did not specify the statutory period nor give clear 30 days time to the tenant to remain in possession and thereafter to vacate the premises. By the said notice, the tenancy was terminated in presenti and so he did not satisfy the requirement of Section 106 of Transfer of Property Act (Act 4 of 1882). In this connection reliance was placed upon *Fakiragouda S. Patil v. Smt. Parvatibai Mahadeo Mahendrakar* reported in AIR 1977 Karnataka page 112. It appears that in that case, the tenancy was to expire on 31.12.1972. The language used in the notice ran as below:

I request therefore to vacate the house by the end of December, 1972 and before the beginning of January 1st, 1973.

9. It was held that the notice was invalid inasmuch as the land lord wanted the tenant to vacate the premises before the beginning of January, 1973 which means before the end of 31st December, 1972. So the notice required the tenant to vacate the premises before the end of tenancy.

10. The next authority relied upon has been reported in a Division Bench Case *Abul Jalil v. Haji Abdul Jalil* AIR 1974 Allahabad 403. It appears that in that case some illustrations were given by court to distinguish languages of valid and invalid notices. In this connection illustration (D) was cited by learned Advocate for revisionist and it was argued that the language of this notice was taking to the language used in illustration "D" which was held invalid. Illustration "D" runs as below:

D. Your tenancy is terminated with effect from today and you are required to vacate the premises on the expiry of thirty days from the date of service of this

notice on you.

11. It was held that there was a distinction between terminating the tenancy atonce and calling upon the tenant to deliver possession after thirty days and terminating the tenancy after thirty days. In the former case, relationship of landlord and tenant comes to an end atonce and the tenant is given a right to remain in possession for thirty days either as a licensee or as a tenant on sufferance whereas in the latter case he remains a tenant for thirty days.

12. Learned Advocate for respondent referred to Chandika Vs. Sukhnandan, which posited:

The word hereby" used in a notice terminating the tenancy only means that such termination is done through that notice and when the notice read as a whole conveys that the termination is intended to take effect at the end of 30 days, the word "hereby" cannot be taken to mean that the termination is forthwith and thereafter not in accordance with law.

In that case, the notice construed was that my clientess does not want to keep an undesirable tenant like you and thus your tenancy is hereby terminated by this notice.

I, therefore, hereby call upon you to pay the aforesaid amount of Rs. 64/-(Rs. sixty four) to my clientess within a month and to deliver the actual possession of the house in your occupation to my clientess within thirty days next after the receipt of the notice failing which I hold instructions to file a suit for the recovery of the amount and your ejection and thus you shall be liable for all its costs as to consequences which please note.

13. It was held that such notice was valid despite the use of the word "hereby" in the notice. It did not indicate that the plaintiff intended to terminate the tenancy of defendant in presenti.

14. It is significant to note that in the notice in suit, the tenancy was not terminated in presenti. It gives the tenant a full month time of statutory period for payment of rent and occupation: he was to be treated as a trespasser only after the expiry of the statutory period.

15. While construing a notice u/s 106 of Transfer of Property Act, the Courts are to put a rational construction of the notice and ought not to split a straw vide Bharat Sahu and Another Vs. Gadadhar Ramanuj Das and Others, . In Harihar Banerjee v. Ramshahi Roy AIR 1918 PC 102, it was observed that a notice to quit ought not to be construed with a desire to find fault with it but that it should be construed utters magis valeat quam pereat.

16. In the instant case the suit was filed much after the expiry of the period mentioned in this notice calling upon the tenant to vacate the premises after occupying it for a period of 30 days.

17. The mere fact that the tenant was required to vacate the premises within the

statutory period does not invalidate the notice as was held in *Gorakh Lal v. Mana Prasad Narain Singh* reported in AIR 1964 Allahabad 260. I respectfully follow the above authorities in this case.

18. The next contention was that the landlord gave a notice u/s 80 of CPC to the defendant. It is annexure 2 to the Stay application. It was Ext. 4 on the record. This notice was held as superfluous. Learned Counsel for the revisionist also contended that giving of such notice by landlord to defendant was unnecessary in this case. However, this notice was sought to be read in order to determine the intention of landlord together with the earlier notice given u/s 106 of Transfer of Property Act. It was argued that this notice is dated 10.4.1981. Para 7 of the said notice refers the earlier notice dated 31.12. 1980 received on 1.1.1981 by the tenant. The tenancy was terminated through that notice. It was further alleged in para 8 of the notice that your occupation subsequent to 1.1.1981 despite the service of that notice was terminated and your tenancy of the disputed premises became unauthorised and you were liable to pay the damages for use and occupation for the period subsequent to 1.1.1981.

19. Thus, the contention was that when both these notices are read together, it implies that the tenancy was terminated in presenti. It did not give any time to the tenant to make the payment or remain in occupation and did not expire with the end of tenancy and so the earlier notice was invalidated.

20. I do not subscribe, to this contention for the simple reason that the subsequent notice was a notice u/s 80 of CPC and not a notice u/s 106 of Transfer of Property Act. The tenancy had already been terminated under the earlier notice. There was nothing in the subsequent notice to evince any intention on the part of landlord to waive the earlier notice or to express any conduct towards the tenant which may be inconsistent with the earlier notice. The giving of subsequent notice was not necessary nor it imposed any fresh condition on the tenant nor it imputed any fresh term of continuance of tenancy and under such circumstances, it had No. effect. Learned trial Judge rightly found that the intention of landlord was to terminate the tenancy throughout. That notice was never changed nor the earlier notice u/s 106 of Transfer of Property Act has been invalidated by the subsequent notice as the subsequent notice is not the same character as was the first one. Under such circumstances this argument cannot advance the case of defendant.

21. In the result, I do not find any force in this revision which is dismissed with costs. The ad interim stay order dated 23.9.1982 confirmed on 26.11.1982 is vacated herewith.