

(2016) 01 AHC CK 0216
In the Allahabad High Court
Case No : Writ-A No. 31194 of 2013

Khoob Chandra Kedia

APPELLANT

Vs

Addl. Dist. Judge Iii and Others

RESPONDENT

Date of Decision : 27-01-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 37
Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 10
General Clauses Act, 1897 — Section 3(17)
Uttar Pradesh Urban Buildings (Regulation of Let

Citation : (2016) 4 AILLJ 318 : (2016) 2 AIWC 2044 : (2016) 115 ALR 777 :
(2016) 1 ARC 582 : (2016) 1 RCRRent 333

Hon'ble Judges : Sunita Agarwal, J.

Bench : Single Bench

Advocate : Arvind Srivastava, for the Appellant; K. Ajit, for the Respondent

Final Decision : Dismissed

Judgement

Sunita Agarwal, J.—1. Heard Sri Arvind Srivastava, learned counsel for the petitioner, Sri K. Ajit and Sri Ashok Kumar Dubey, learned counsels for the respondent Nos. 3 & 5 respectively.

2. By means of the present writ petition, the petitioner is challenging the orders of release passed by the Courts below in a proceedings under Section 21(1)(a) of U.P. Act No. 13 of 1972 Act (hereinafter referred to as the "1972 Act").

3. The release application was filed by respondent No. 3, Vijay Kumar Verma in the year 2002 which was registered as P.A. Case No. 3 of 2002.

4. In the release application, a categorical stand has been taken by the applicant-landlords that the house in which the shop in question exist was purchased on 23.04.1986 by the applicant-landlords and his brother. After purchase, a registered notice dated 01.06.1987 was sent to the tenant asking him to vacate the shop in question narrating the requirement of the landlords. A demand for

payment of the rent was also raised.

5. At the time of purchase, the applicant's sons were minor and with the passage of time, his family had grown. On account of some dispute the Original Suit No. 544 of 2000 for partition was brought before the Civil Court by the co-owners which was decreed on 23.08.2001. The suit property i.e. the shop in question came in the share of the applicant/landlord and again an information in this regard was given to the tenant reiterating the need of the applicant-landlord.

6. The applicant-landlord is doing the business of "Sonary" in a 5 x 9 ft. shop, which he had taken on rent from the Nagar Nigam in Bandhu Singh Market. His elder son left studies in the year 1998 and has gained experience of the cloth business while working as a salesman in a cloth merchant shop. Another son Abhay Kumar left his studies in the year 2000 and is unemployed. The shop in question is required to establish both the sons in cloth business and is most suitable place for the business proposed by the landlord.

7. The release application was contested by the tenant mainly on the ground that the house in which the shop in question exists has not been partitioned. The share of other brothers in the shop in question has not been disclosed and further the applicant-landlord does not require the shop for the need of his sons. There are other business of the applicant-landlord and the need for the shop in question is merely a desire to evict the tenant.

8. So far as the service of notice is concerned, it was not disputed rather the contention was that the notice was given with a view to exert pressure upon the tenant to enhance the rent.

9. Both the Courts below have found that from the decree dated 23.08.2001 passed in Original Suit No. 544 of 2000, it was established that the shop in question came in the share of the applicant-landlord. He needed the shop to establish his sons. The applicant himself is doing business in a tenanted shop and his sons cannot be forced to start their business also in a tenanted shop or in partnership with other members of the family.

10. On the question of maintainability of the release application, it was held that admittedly the applicant has 1/4th share in the house in which the shop in question exists and even if it is accepted that other co-owners are also there, the application filed by one of the co-owner-landlords is clearly maintainable. Consent of other co-owners is presumed in the instant case.

11. On comparative hardship, it was found that the shop in question is the only shop in which the business proposed can be done. There is no other place for business of the applicant's son.

12. On the other hand, the tenant did not make any effort to search for an alternative accommodation since the date of filing of the release.

13. Challenging these findings, the main contest of learned counsel for the

petitioner is on the validity of the order of release passed by the Prescribed Authority. The submission is that Pawan Kumar Tiwari, Judge Small Causes Court, was designated as Prescribed Authority by the Incharge District Judge on 17.12.2009. The Incharge District Judge was authorized to discharge the judicial and financial powers of the District Judge, however, the administrative powers of the District Judge to designate "Prescribed Authority" under Section 3(e) of the 1972 Act could not have been exercised by him.

14. In support of this submission, reliance has been placed upon the Division Bench judgement of this Court in Northern Coalfields Ltd., Singrauli (M.P.) v. Aluminium Industries Ltd., Kundara (Kerala) , 2013(6) ADJ 104, wherein an earlier judgment of a learned Single Judge in M/s. ITI Ltd., Alld v. District Judge Alld and Ors., AIR 1988 Alld 313(1), has been approved.

15. The Judicial Officer who was designated as a Prescribed Authority, therefore, was lacking in jurisdiction to decide the release application. This fact came to the knowledge of the petitioner only when an information under RTI Act was received by him. Plea of lack of jurisdiction of the Prescribed Authority was taken before the Appellate Authority but was wrongly rejected.

16. Elaborating his submissions, reference is made to Section 3(e) of 1972 Act, to submit that the word "District Judge" has been used in sub-section (e) of Section 3 of 1972 Act which means that a Judicial Officer authorized by the District Judge only could perform powers, functions and duties of the "Prescribed Authority" under the Act.

17. The definition of "District Judge" as provided under Section 3(17) of the General Clauses Act, 1897 (hereinafter referred to as the "1897 Act") does not include any Additional District & Sessions Judge as the Principal Civil Court.

18. Referring to the judgment of this Court in Hari Shankar Mishra Advocate v. Prescribed Authority, Allahabad & Ors., 1988(2) ARC 266, learned counsel for the petitioner submits that the powers given to the District Judge to designate a Judicial Officer as Prescribed Authority under Section 3(e) of the 1972 Act has been recognised as the administrative powers of the District Judge. The District Judge being a Principal Civil Court of original jurisdiction and having control over all the Civil Courts in his jurisdiction has been conferred upon the power to designate a Prescribed Authority.

19. A combined reading of the provisions of Section 3(17) of the 1897 Act and Section 3(e) of the 1972 Act, it is clear that only the District Judge was empowered to designate a Prescribed Authority under Section 3(e) of the 1972 Act. Admittedly, on 17.12.2009 the office of the District Judge was vacant and the Incharge District Judge cannot be said to be the Principal Civil Court having control over all the Civil Courts within the meaning of section 3(17) of 1897 Act. The Incharge District Judge, therefore, was not empowered to appoint/authorize the Judicial Officer as a "Prescribed Authority" under Section 3(e) of the 1972 Act.

20. Repelling these submissions, learned counsel for the respondents with reference to Section 10 of Bengal, Agra and Assam Act, 1887 (hereinafter referred to as the "1887 Act") contends that the Incharge District Judge, who was holding the office of the District Judge, was having power to discharge all the functions and duties and exercise all the powers of the District Judge as soon as he assumed charge of the office of the District Judge, in addition to his ordinary duties. The temporary arrangement for the office of District Judge was made as per Section 10 of the 1887 Act subject to the rules made by the High Court, if any. There are no rules to the contrary and, therefore, the administrative powers under Section 3(e) of 1972 Act were rightly exercised by the District Judge.

21. Referring to the judgment of this Court in Hari Shankar Mishra Advocate v. Prescribed Authority, Allahabad & Ors., 1988(2) ARC 266, learned counsel for the respondent also submits that the powers of the District Judge to designate a Judicial Officer as Prescribed Authority under Section 3(e) of the 1972 Act has been recognised in the nature of the administrative powers of the District Judge. The validity of the provision has been upheld by this Court.

22. As this question has been raised as a preliminary issue and the learned counsel for the petitioner laid much stress on this point, this issue is decided first before examining on the merits of the case.

23. It is not a case where a dispute is raised that the Judge, Small Causes Court/ concerned Judicial Officer could not have been designated as "Prescribed Authority" or he was incompetent to act as a "Prescribed Authority" even in case he was designated as such by the District Judge. Rather the dispute raised is regarding the powers of the Officer who had designated him as the "Prescribed Authority".

24. The office of the District Judge was vacant on 17.12.2009 and the Additional District & Sessions Judge, Gorakhpur, Sri Deepak Kumar was already designated as Incharge District Judge. He was authorized to hold the office of District Judge temporarily, till the new District & Sessions Judge, Gorakhpur, assumed charge of his office. This arrangement was purportedly made under Section 10 of 1887 Act which reads as under:-

"Temporary charge of District Court.- (1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not present at that place, the senior Subordinate Judge present thereat, shall, without relinquishing his ordinary duties, assume charge of the office of the District Judge, and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer appointed thereto.

(2) While in the charge of the Office of the District Judge, the Additional Judge or subordinate Judge, as the case may be, may, subject to any rules which the High

Court may make in this behalf, exercise any of the powers of the District Judge."

25. Sub-section (2) of Section 10 of 1887 Act states that the Officer/Additional District & Sessions Judge, while in the charge of the office of District Judge, may exercise any of the powers of the District Judge subject to any rules made by the High Court in this behalf. The words used in sub-section (2) of Section 10 of 1887 Act are "exercise any of the powers of the District Judge."

26. Accordingly, Sri Deepak Kumar, Additional District & Sessions Judge, Gorakhpur, who had assumed the charge of the office of the District Judge, in addition to his ordinary duties, was empowered to exercise both judicial and administrative powers of the District Judge. The Notification dated 04.11.2009 was issued to delegate the financial powers of the District Judge, in addition to his judicial and administrative powers.

27. The contention of the learned counsel for the petitioner, therefore, that Sri Deepak Kumar, Additional District & Sessions Judge was authorized only to exercise the judicial and financial power and not the administrative powers is without any substance. The use of words "any of the powers of the District Judge" makes the intention of the Legislature clear to include both judicial and administrative powers. The District Judge is the Principal Civil Court and is having administrative control over the Civil and Criminal Courts in the district. In the absence of the District Judge, the designated Incharge District Judge was assigned the duties and powers of the District Judge as this office cannot be kept vacant. There is no Rule to the contrary. Hence there was no defect in the appointment/designation of the Judge, Small Causes Court as the "Prescribed Authority".

28. Moreover, the challenge is not on the ground of incompetence of the Judicial Officer, i.e. the Judge, Small causes Court, who was designated as the "Prescribed Authority" rather the challenge is to the powers of the Officer who had designated him and, therefore, the Judge, Small Causes Court/Prescribed Authority cannot be said to be lacking in its jurisdiction. The Appellate Court has rightly dealt with this issue.

29. In view of the above discussion, the challenge to the order passed by the Prescribed Authority on the ground of alleged fault in his appointment/designation cannot be sustained.

30. The judgments relied upon by the learned counsel for the petitioner are of no benefit to him inasmuch as in the case of Northern Coalfields (Supra). In the said case, the challenge was to the judicial powers of the Additional District Judge to decide an Appeal under Section 37 of Arbitration and Conciliation Act, 1996. The Additional District Judge therein, had entertained the appeal upon transfer of the appeal by the District Judge. It was held that the appeal could only be heard by the Principal Civil Court, which is the District Judge as per Section 3(17) of the 1897 Act and, therefore, the transfer by District Judge was bad and the Additional District Judge had no jurisdiction. The reliance placed upon the

Division Bench judgment in Northern Coalfields (Supra) by the learned counsel for the petitioner is, therefore, misconceived.

31. However, there is yet another angle, the order of the Prescribed Authority is challenged on the ground that the concerned Judicial Officer was not properly appointed and as such he had no jurisdiction to decide the release application. The learned counsel for the petitioner urged that as the order of the Prescribed Authority without jurisdiction, the entire proceedings are illegal and both the orders of release against the petitioner are liable to be set aside. Similar issue come up for consideration before this Court in Abdul Hameed v. VII Additional District & Sessions Judge, Kanpur & Ors. , 1976 ALJ 421. The question in the said case was whether a defect in the judgment of the Prescribed Authority was cured by the fact that the same had been taken up in appeal and the Appellate Court decided the same on merits.

32. Placing reliance upon the judgment of the Apex Court in Janardhan Reddy & Ors. v. The State of Hyderabad & Ors., , AIR 1951 SC 217 and Division Bench judgement of this Court in Purshottam v. Sheo Prasad & Ors. 1972 ALJ 742, it was held in paragraph 10 and 11 of the judgment in Abdul Hameed (Supra)

"..... Applying the law in the instant case it appears to me that although the judgment of the Prescribed Authority was without jurisdiction but as the District Judge to whom the appeal was filed was competent to decide the same, the judgment given by the appellate court is binding.

11. It would have altogether been different if the learned District Judge would have allowed the appeal filed against the judgment of the Prescribed Authority on the ground that the judgment rendered by it was without jurisdiction and would have thereafter directed for the case to be decided by a proper authority. But where, as here, the appellate court the course mentioned above and adjudicates on merits, the finding recorded by the appellate court could not be said to be without jurisdiction. The infirmity in the order of the Prescribed Authority was cured and can no longer be a ground for setting aside the judgment of the Prescribed Authority as well as that of the appellate authority. Hence the submission of Sri S.N. Verma, counsel for the petitioner, that when the order of the Prescribed Authority was a nullity, the order of appeal therefrom could not be of greater validity must be held as unsound."

33. The contest in Abdul Hameed was that as the judgment of the Prescribed Authority was without jurisdiction and was a nullity, therefore, the same would not merge with that of the Appellate Court. Placing reliance upon the view taken by the two Division Benches of this Court in Purshottam (Supra) and another Division Bench judgment in Man Singh v. Beer Singh , AIR 1973 ALL 435, it was held that the jurisdictional defect stands cured even if the Appellate Court decided wrongly that the Trial Court had jurisdiction. The decision of the Appellate Court not being nullity, is binding on the parties in subsequent litigation is res-judicata. As the judgment of the Appellate Court has attained finality and

there is no dispute that the Appellate Court had jurisdiction to decide the appeal on merits, it cannot said that the jurisdictional defect in the judgment of the Prescribed Authority will render the judgment of the Appellate Court on merits, a nullity.

34. Following the law laid down in the Division Benches judgment of this Court in Purshottam (Supra) and Man Singh (Supra) followed in Abdul Hameed (Supra), it is held that even if it is accepted for a moment that there was defect in the appointment of the Prescribed Authority resulting in the lack of his jurisdiction, it would not render the judgment of the Appellate Court on merits, a nullity. The infirmity in the judgment of the Prescribed Authority stands cured and can no longer be a ground for setting aside the judgment of the Prescribed Authority as well as that of the Appellate Authority.

35. Thus, from each angle, the orders of release passed by the Prescribed Authority and the Appellate Authority cannot be said to be defective.

36. Now on merits of the release application, on the question of bona fide need learned counsel for the petitioner submits that the alternative accommodation in possession of the applicant-landlords has been ignored.

37. On comparative hardship, the contention is that the requirement of Rule 16 has not been given due consideration by the Courts below while ignoring the goodwill earned by the tenant.

38. The other accommodations which were stated to be in possession of the landlord appears to be the accommodations in the name of other family members namely brothers and parents of the applicant-landlords. The learned counsel for the petitioner has not been able to establish otherwise.

39. So far as the decree of partition of the Civil Court is concerned, the tenant cannot challenge the said decree between the co-owners.

40. As far as the ownership of the applicant-landlords about the house in question is concerned, it can be a point of contest between the landlord and the other co-owners but the pendency of litigation between them would be of no relevance so far as the release proceedings are concerned.

41. The Courts below after going through the decree dated 23.08.2001 passed in Original Suit No. 544 of 2000 recorded that after partition an information was given to the tenant by the applicant-landlord. The landlord's two sons were unemployed at the time of filing of the release application. There is nothing on record to establish that they have been able to start their independent business. The applicant-landlord himself is doing business from a tenanted shop and the shop in question has been proposed for the business of two adult sons of the applicant-landlord.

42. Every adult member of the family has a right to do his independent business and as such it cannot be said that the shop in question is not required by the

applicant-landlords.

43. So far as the other co-owners is concerned, it is settled proposition that any of the co-owners can maintain the release application and the consent of other co-owners is presumed in a case of the release of the joint property.

44. Moreover, in the present case, there is a decree of partition of the Civil Court which shows that the shop in question came in the share of the applicant-landlords.

45. In view thereof, the grounds of challenge to the findings on bona fide need are without any substance.

46. So far as the comparative hardship is concerned, the tenant did not make any effort to get an alternative accommodation. This finding of fact has been recorded by both the Courts below. The Release Application has been filed in the year 2002 when the sons of the applicant-landlord were about 22 and 20 years old. For a period of about more than 13 years, no effort has been made by the tenant to get an alternative accommodation. No material has been brought on record to prove otherwise.

47. In the light of the above discussion, this Court does not find any justification to interfere in the findings of fact recorded by both the Courts below.

48. There is no merit in the writ petition.

49. Lastly, learned counsel for the petitioner requested that some reasonable time may be provided to the tenant to shift his belongings elsewhere.

50. To this submission, no objection was taken by the learned counsel for the respondents.

51. It is, therefore, directed that the petitioner shall file an undertaking within a period of four weeks before the Court below that he will vacate the shop in question on or before 01.10.2016. In case the petitioner fails to furnish the undertaking or vacate the shop in question within the time given above, proceedings for his eviction may be initiated.

52. With the above observations/directions the writ petition is dismissed.