
(1996) 10 AHC CK 0125
In the Allahabad High Court
Case No : C.M.W.P. No. 4883 of 1993

Lakshmi Kackkar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-10-1996

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 65(1)

Citation : (1996) 10 AHC CK 0125

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : Ajeet Kumar and Yasharth, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order dated 9.11.1992, Annexure 9 and the notice dated 7.9.1992, Annexure 19 to the writ petition.

2. Heard the learned Counsel for the parties. The facts of the case that a lease regarding non-Zamindari Abolition Area was executed relating to plot Nos. 23, 39/2, 40, 43 and 44/2 having total area of one bigha 19 biswas and 5 d'Hours situated in village Beli Uparhar, pargana and tahsil Chail, district Allahabad on 26.12.1964 by the Government Estate Department, Allahabad. This was said to be occupancy tenancy within the meaning of the U.P. Tenancy Act. Under Sections 3(8)(1) read with Section 65(1) of the U.P. Tenancy Act, permission was accorded on 21.4.1965 by the Respondent to build a building on the said land. The lease was executed in favour of the Petitioner as well as other persons. There was inter se partition between the lessees which was duly recognised by all the Respondents. Plot No. 40 came to the share of the Petitioner and her name was mutated over the said plot. A deed was also executed on 20.6.1966 permitting her to make construction over the property in dispute. True copy of the lease deed dated 26.12.1964 is Annexure 1 to the petition. True copy of the permission dated 21.4.1965 is Annexure 2. True copy of the deed dated

20.6.1966 is Annexure 3 and the true copy of the revenue records is Annexure 4 to the petition.

3. In consequence of the permission to erect the building, the Petitioner submitted a plan to the Nagar Mahapalika, Allahabad which after due enquiry was sanctioned on 6.10.1966. A covering letter dated 16.10.1966 was issued to the Petitioner stating that her plan had been sanctioned. True copy of the covering letter dated 16.10.1966 is Annexure 6 to the petition. True copy of the sanctioned plan is Annexure 7 to the petition.

4. In paragraph 5 of the petition, it is alleged that in accordance with the sanctioned plan, the Petitioner completed the construction in 1966-67 and the Nagar Mahapalika also assessed the building. True copy of the assessment is Annexure 8 to the petition. In paragraph 6 of the petition, it is stated that a premium was required by the Respondent to the tune of Rs. 362.50 on account of the conversion of the lease from agricultural to residential purposes which is charged six times of the normal land revenue. The house tax was also taken from the Petitioner and all this was completed in the year 1966-67.

5. In paragraph 7 of the petition, it is stated that in order to harass the lease holders, a drive was initiated to oust the lease holders from the lease hold premises and consequently a notice under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act was issued to the Petitioner and on 9.11.1992, the lease of the Petitioner was cancelled. It is stated in this paragraph that this order was passed without hearing the Petitioner. True copy of the order dated 9.11.1992 is Annexure 9 to the petition.

6. A perusal of Annexure 9 to the petition shows that the ground given for cancelling the lease is that the Petitioner had made construction on an area more than that which had been sanctioned. In paragraph 14 of the writ petition, it is alleged that in the notices dated 14.3.1986 (Annexure 10), dated 26.4.1987 (Annexure 13) and 28.8.1992 (Annexure 15), it was not the allegation of the Respondent that the Petitioner had made any construction in excess of the sanctioned plan. Hence, the impugned order is based on a reasoning for which no opportunity of hearing was given to the Petitioner. The notices were given on the sole ground that the Petitioner had allegedly converted agricultural land for building purposes. But there was no allegation in the notices that she made any construction in excess of the sanctioned plan. I have perused the notices mentioned above. The notice dated 14.3.1986 (Annexure 10 to the petition) only states that the Petitioner had made construction without permission of the District Magistrate. As regards the notice dated 26.4.1987, Annexure 13 to the petition, this also makes the same allegation, and the same is the content of the notice dated 28.8.1992, Annexure 16 to the petition.

7. None of these notices mention that the Petitioner had made construction in excess of the sanctioned plan. Thus, the contention of the Petitioner appears to be correct that she was not given any opportunity of hearing with regard to the

allegation that she made construction in excess of the sanctioned plan. Hence there is violation of natural justice.

8. In the circumstances, this petition is allowed. The impugned order dated 9.11.1992 is quashed, and the consequential proceeding before the Respondent No. 3 being case No. 101 of 1992 is also quashed. No order as to costs.