

(2008) 07 AHC CK 0116

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16476 of 2000

Malika Khatoon

APPELLANT

Vs

R.C.& E.G./Additional City Magistrate, III, Kanpur Nagar and
others

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Citation : (2008) 07 AHC CK 0116

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. This writ petition is directed against vacancy declaration order dated 1.11.1999 passed by Rent Control and Eviction Officer/A.C.M. (III), Kanpur in Case No. 48 of 1998 Mohd. Naseer v. Smt. Malika Khatoon. Property in dispute consists of one room, veranda, aangan and latrine situate on the ground floor.

3. Initially Mehmood Khan father of petitioner Smt. Malika Khatoon was tenant in the accommodation in dispute who died in the year 1975 leaving behind only two daughters i.e. the petitioner and Smt. Shahina. Petitioner stated that Smt. Shahina was residing alongwith her husband in another house and petitioner alongwith her husband was residing in the house in dispute. It was further stated that mother of the petitioner had also died in the year 1996. Rent of the accommodation in dispute is Rs. 10/ per month. R.C.&E.O. has given a very strange reason for declaring the vacancy. R.C.&E.O. accepted the version of the petitioner that petitioner was married in the year 1978. However, R.C.&E.O. held that as she did not file any written evidence to show that she was in possession since before 1976 and from electoral list filed by the petitioner it was clear that her name was entered since 1988 hence it was proved that she was not residing in the said house before 1988.

4. Petitioner is daughter of the original tenant. She was unmarried when original

tenant died. There is absolutely no question of her residing anywhere else to file any written evidence. It was for the landlord or the applicant for allotment to show that she was not residing with her father when he died. The impugned order declaring vacancy is utterly erroneous in law and cannot be sustained.

5. Writ petition is accordingly, allowed. Impugned order is set aside and it is declared that there is no vacancy and petitioner is valid tenant of the accommodation in dispute.

6. I have held in *Khursheeda v. A.D.J.*, 2004 (55) ALR 586 and *H.M. Kitchlu v. A.D.J.*, 2004 (2) ARC 652 that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act or while maintaining the said relief already granted by the Courts below, Writ Court is empowered to enhance the rent to a reasonable extent.

7. In the aforesaid authority of *Khursheeda (supra)*, I placed reliance upon the Supreme Court authority of *M. V. Acharya v. State of Maharashtra*, AIR 1998 SC 602 where it was held that it was essential to provide for periodical enhancement of rent under the Rent Control Acts. The Supreme Court has further held that frozen rents are giving rise to lawlessness and, landlords out of frustration are approaching muscle man to get the premises vacated and Courts of law are becoming redundant in this sphere. This authority has recently been followed by the Supreme Court in *Satyawati Sharma (dead) by LRs. v. Union of India and another*, 2008 (65) AIC 1=2008 (71) ALR 499 part of Para29 and Para34 of which are quoted below :

"29. It is trite to say that legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become nonexistent.

34. In *Malpe Vishwanath Acharya and others v. State of Maharashtra and another (supra)*, the Court found that the criteria for determination and fixation of rent by freezing or by pegging down of rent as on 1.9.1940 or as on first date of letting, had, with the passage of time become irrational and arbitrary but did not strike down the same on the ground that extended period of Bombay Rent Act was coming to an end on 31.3.1998."

8. Under U.P. Rent Control Act, there is no provision of enhancement of rent after October, 1972 [Except where landlord is public charitable or public religious institution (section 9A) or Government is tenant (section 21 (8))]. In the aforesaid authority of *Khursheeda*, I have also placed reliance upon the authority of Supreme Court in *Shangrila Food Products Ltd. v. Life Insurance Corporation of India*, AIR 1996 SC 2410 paragraph11 of which is quoted below :

"It is wellsettled that the High Court in exercise of its jurisdiction under Article

226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief."

Thereafter in Para8 of the aforesaid authority of Khursheeda, I held as under :

"Rent Control Act confers a reasonable advantage upon the tenant of protection against arbitrary eviction. Tenant under the Rent Control Act cannot be evicted except on specific grounds like bonafide need of the landlord, arrears of rent, subletting and material alteration etc. This advantage is also coupled with the advantage of immunity from enhancement of rent. The latter advantage cannot be said to be either reasonable or equitable. The Supreme Court in the aforesaid authority of S.F.P. v. L.I.C, AIR 1996 SC 2410 has laid down that while granting relief to a party the Writ Court can very well ask the said party to shed the unfair advantage which it gained under the impugned order. By slightly extending the said doctrine it may safely be held that while granting the reasonable advantage to the tenant conferred upon him by the Rent Control Act the tenant may be asked to shed the unreasonable arbitrary advantage conferred upon him by the said Rent Control Act. The Writ Court therefore while granting or maintaining the relief against arbitrary ejection to the tenant can very well ask the tenant to shed the unreasonable benefit of the Rent Control Act granted to him in the form of immunity against enhancement of rent, however inadequate the rent might be. Tenant will have to shed the undue advantage of immunity from enhancement of rent under the Rent Control Act to barter his protection from arbitrary eviction provided for by the said Act."

9. Thereafter in H.M. Kitchlu v. A.D.J., 2004 (2) ARC 652. I have held that the same principle of enhancement of rent to a reasonable extent may be made applicable while dismissing the writ petition of the landlord for the reason that by doing so Writ Court approves the protection of Rent Control Act granted to the tenant by the Courts below.

10. Existing rent of Rs. 10/ per month for a house containing one room, one veranda and other amenities situate in Kanpur city which is most expensive city of Uttar Pradesh is virtually as well as actually no rent. It is rather ridiculous.

11. Accordingly, it is directed that with effect from August, 2008 onward petitioner shall pay rent to the landlord respondent Nos. 2 and 3 Mohammad Nasir and Mohammad Islam at the rate of Rs. 500/ per month. No further amount as water tax etc. over and above Rs. 500/ per month shall be payable.