
(1979) 11 AHC CK 0028
In the Allahabad High Court
Case No : Civil Misc. Writ No. 1779 of 1977

Mangi Lal

APPELLANT

Vs

V Addl. District and Sessions Judge and Others

RESPONDENT

Date of Decision : 28-11-1979

Acts Referred:

Constitution of India, 1950 — Article 14, 7
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(1), 12(2), 12(3), 12(4)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 10(6)

Citation : (1980) AWC 33

Hon'ble Judges : Satish Chandra, C.J.; T.S. Misra, J.; Prem Prakash, J.; K.N. Goyal, J.; Hari Swarup, J

Bench : Full Bench

Judgement

Satish Chandra, C.J.—Being of the opinion that a three Judge Full Bench decision of this Court in Ram Kumar v. First Additional District and Sessions Judge, Bareilly 1978 AWC 405 requires reconsideration in view of the Supreme Court judgment in Goppulal Vs. Thakurji Shriji Shriji Dwarakadheeshji and Another, a learned Single Judge has referred the writ petition for decision by a larger Bench.

2. At the hearing before this Full Bench, learned Counsel stated that apart from the question as to the correctness of the Full Bench decision in Ram Kumar the writ petition raises other points also. We made it clear that we shall confine ourselves to examining the correctness of the Full Bench decision leaving other points to be decided by the Single Judge.

3. The building in question had two portions, western and eastern. Both were owned by Kamta Prasad Gupta. The Petitioner Mangi Lal was the tenant of the eastern portion of the building. While he was the tenant, Mangi Lal purchased the western portion from Kamta Prasad Gupta by a deed of sale dated September 14, 1967.

4. Later on, on March 24, 1972 Kamta Prasad Gupta sold the eastern portion to Respondents 3 to 5. Respondents 3 to 5 made an application on April 3 1973 for release of the eastern portion by eviction of Mangi Lal, the Petitioner, u/s 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act No. 13 of 1972). The Petitioner contested the application. The Prescribed Authority upheld the defence and dismissed the release application.

5. Respondents 3 to 5 went up in appeal. The Additional District Judge held that the Petitioner was the tenant of Respondents 3 to 5 of the eastern portion in question. The landlord's need for residence in the eastern portion in dispute was genuine and pressing. In view of the Explanation appended to proviso to Sub-section (1) of Section 21 of the Rent Control Act, the objection filed by the tenant Mangi Lal was not entertainable. It was also held that in view of the proviso, Mangi Lal was not entitled to claim comparison of the likely hardship to him with that of the landlords. The landlord's appeal was allowed. The Prescribed Authority's order was set aside and the release application was accepted. Aggrieved, Mangi Lal, the tenant, filed the present writ petition.

6. At the hearing learned Counsel for the Petitioner Mangi Lal submitted that Explanation I to the proviso of Section 21(1) of the Act was not applicable to his case because he had acquired the western portion of the building in 1967 prior to the coming into force of the Act on July 15, 1972. In support, reliance was placed upon the Full Bench decision of the Court in Ram Kumar v. First Additional District and Sessions Judge, Bareilly (supra). In Ram Kumar, the Full Bench ruled that the first explanation was attracted to the acquisition of the building by the tenant after the coming into force of the Act of 1972. The Explanation uses the phrase "has built or has acquired" which signifies the transaction in the present time, that is to say, after the Act has come into force. An acquisition prior to July 15, 1972 is outside the purview of the Explanation.

7. Learned Counsel for the landlords relied upon the Supreme Court decision in Gappulal v. Thakurji Shriji Dwarkadheeshji (supra). In Gappulal's case, Section 13 (1) (e) of the Rajasthan Premises (Control of Rent and Eviction) Act (No. 17 of 1950) came up for consideration. Clause (e) aforesaid provided for eviction of a tenant in case he "has sublet" without the permission of the landlord. The Supreme Court observed:

The relevant words are "has sublet". The present perfect tense contemplates a completed even connected in some way with the present time. The words take within their sweep any sub-letting which has made in the past and has continued upto the present time. It does not matter that the subletting was either before or after the Act came into force. All such sub-lettings are within the purview of Clause (e).

8. The learned Single Judge felt that this Supreme Court decision has interpreted the term "has sublet" as meaning that the subletting may be either before or after the Act came into force. This was some what in conflict with the opinion of

the Full Bench in Ram Kumar's case where the phrase "has built or has acquired" was interpreted to signify building or acquiring to be after the coming into force of the Act of 1972.

9. The point which requires consideration by this Full Bench is whether the construction of a building or acquisition before the coming into force of the Act of 1972 on July 15, 1972 attracts the Explanation of the Fourth proviso to Sub-section (1) of Section 21.

10. Section 21 of the Act provides for eviction of a tenant at the application of the landlord. Proceedings u/s 21 are described as proceedings for release of building in occupation of tenant. Under Clause (e) of Sub-section (1), the ground for eviction, inter alia, is that the buildings bonafide required by the landlord for occupation by him self or any member of his family. There are four provisos to Sub-section (1).

The fourth proviso is relevant. It says:

Provided also that the Prescribed Authority shall, except in cases provided for in the Explanation, take into account, the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purposes shall have regard to such factors as may be prescribed.

11. The Prescribed Authority is under this proviso required to compare the hardships. The Prescribed Authority is, however, absolved from this task in cases provided for in the Explanation. Explanation I is material for our purposes. It reads:

Explanation--In the case of a residential building--(1) Where the tenant or any member of his family who has been normally residing with or is wholly dependent on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition, a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this Sub-section shall be entertained;

Note: For the purpose of this clause, a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee.

12. The Explanation is attracted:

Where the tenant (which includes any member of his family)-

(a) has built; or

(b) has otherwise acquired in a vacant state, or has got vacated after acquisition, a residential building in the same city, municipality, etc.

13. If these conditions are satisfied then "no objection by the tenant against an application under this Sub-section, shall be entertained." The tenant is entitled to

be heard on these aspects. He can say and prove that he has not built or otherwise acquired etc. If the finding is against the tenant on these aspects then the tenant is precluded from raising any objection to the release application.

14. The Explanation speaks of the tenant building or otherwise acquiring a residential building. The act of building or otherwise acquiring becomes offensive within meaning of the Explanation if they are done by a person while he has a tenancy of the accommodation which is the subject matter of proceedings for release. If the person constructs or otherwise acquires in a vacant state a residential building before he became a tenant of the accommodation in question he will not be barred from contesting the application for release.

15. The situation that the tenant (including any member of his family) has built or has otherwise acquired in a vacant state a residential building in the same city, municipality, etc. has been taken note of by the Act in three different provisions, viz., Sections 12, 20 and 21.

16. Section 12 of the Act deals with deemed vacancy of building in certain cases. Sub-section (3) of Section 12 provides:

(3). In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situated, he shall be deemed to have ceased to occupy the building under his tenancy;

Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act; then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.

Explanation: For the purposes of this Sub-section-(a) a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee:

(b) the expression "any member of family" in relation to a tenant, shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant.

17. Under this provision, the tenant is deemed to have ceased to occupy the building under his tenancy if he builds or otherwise acquires. The proviso, however, takes note of the building having been constructed before the commencement of this Act. It says had built. In such a case the tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the commencement of the Act. It is to be noticed that the proviso does not apply where the tenant "otherwise acquires", prior to the commencement of the Act.

18. Reading Sub-section (3) and the proviso together, the making of a building

before the Act causes vacancy but only after one year of the commencement of the Act. It is evident that "otherwise acquiring" before the commencement of the Act, does not cause vacancy. Section 12(3) is not applicable to this latter class.

19. Under Sub-section (4) of Section 12 where the tenant has ceased to occupy any building it shall for purposes of Chapter III be deemed to be vacant. Section 16 is in Chapter III. It provides for allotment and " release of vacant buildings. Under Sub-section (2), the landlord can apply for the release of such a building if it is bonafide required by him for his residence. It is important to note that Sub-section (5) of Section 12 confers on a tenant referred to in Sub-section (3), (that is one who is deemed to have ceased to occupy) a right to apply for release u/s 21(1) of the Act, of the residential building built or otherwise acquired by him and let out to somebody else, by eviction of his tenant.

20. Rule 10 (6) (c) of the Rules framed under the Act is also relevant and material. It reads as under:

10. Allotment Procedure--

(6) A person who is deemed to have ceased to occupy a building within the meaning of Section 12(1)(b), or who is evicted u/s 21 by virtue of being a tenant referred to in Explanation I of Section 21(1) shall not be allotted that or any other residential building and a person who is deemed to have ceased to occupy a building within the meaning of Section 12(2), shall not be allotted that or any other non-residential building for a period of two years from the date of such eviction or deemed cessation, as the case may be;

Provided that--

(c) In the case of a residential building under the tenancy of a person who shall be deemed by virtue of the proviso to Section 12(3) to have ceased to occupy it upon the expiration of a period of one year from the date of commencement of the Act by reason of his or any member of his family having built another residential building in the same local area, where that other building was let at the commencement of the Act and the tenant or the member of his family, as the case may be, has been unsuccessful inspite of his best efforts in securing vacant possession thereof the District Magistrate may postpone the making of allotment order in respect of the building deemed to be vacant u/s 12(4).

21. The scheme of Section 12 is that the construction of a residential building or otherwise acquiring in a vacant state or getting it vacated after acquisition by a tenant created a vacancy in-the accommodation held by the tenant. This happens if the tenant builds or otherwise acquires after the commencement of the Act.

22. If the tenant otherwise acquires a residential building before the commencement of the Act, vacancy does not arise. The tenant continues. If the tenant constructs a building prior to the commencement of Act he is protected for one year after the Act has come into force. In such a case the vacancy

accrues on the expiry of one year.

23. Sub-section (5) of Section 12 confers on a tenant in whose case a vacancy is deemed to accrue a right to apply for release of his own residential building u/s 21(1) of the Act in case such a building has been let out to someone else. Rule 10 (6) (c) makes a special provision for tenants who have built prior to the Act. In such cases, the District Magistrate is required to postpone the making of the allotment order in respect of the deemed vacant building, till the tenant is able to get vacant possession of his own building.

24. Rule 10 (6) (c) corroborates the interpretation that Section 12(3) does not create a vacancy where the tenant otherwise acquires in a vacant state or gets vacated a residential building prior to the commencement of the Act.

25. Section 20 of the Act provides for the ground upon which a suit for eviction of a tenancy may be filed. One of the grounds is that the tenant is in arrears of rent for not less than four months and has failed to pay the same to the landlord within one month from the date of service of a notice of demand. Sub-section (4) of Section 20 provides for relief from liability to eviction provided he deposits the entire amount of rent and damages due from him at the first hearing of the suit. The proviso to Sub-section (4) says:

Provided that nothing in this Sub-section shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

26. Under this provision, the tenant who has built or has otherwise acquired cannot apply for relief from eviction by depositing the due amount of rent or damages.

27. The Explanation to Section 21(1) as well as the proviso to Sub-section (4) of Section 20 uses the word "has built or has otherwise acquired". Section 12(3) says "builds" or "otherwise acquires". The proviso to Section 12(3) covers construction of a building before the commencement of the Act. It expressly says "had built before the commencement of the Act."

28. Before the present Act, the U.P. (Temporary) Control of Rent and Eviction Act, No, 3 of 1947. was in operation. Under that Act tenant's constructing a building or otherwise acquiring it in a vacant state did not result in withdrawal of protection from eviction. These activities have come to entail the consequence of eviction only under the present Act. The legislature did not enact the present Act generally as an ex post facto penal law. It is, like the old Act of 1947, an Act to prevent eviction of tenants.

29. Wherever the Legislature intended to cover an act or activity done before the commencement of the Act, it has specifically and expressly said so. For instance, see Sections 3(k), 5, 12(3) proviso, 14, 21(6), 29A(2), 29A(6), 29(3) and various clauses of Section 43(2). This is one reason why merely because of the

use of the word "has" the Legislature should not be imparted an intention to cover such activity done before the commencement of the present Act.

30. In the next place in the Hindi version of the Act, which alone was considered and passed by the Legislature, the language used in Explanation 1 to Section 21 is the same as in Section 12(3). For "otherwise acquiring" the present per fact tense has not been used, though it has been used for construction of another building. In both Section 12(3) and Explanation 1 to Section 21, the phrase is (hindi font)(irwi"rr fatffr r Tm FK f

The correct grammatical translation will "acquired to a vacant state or gets vacated" and not "has acquired" etc.

31. Any construction of Explanation 1 to Section 21 different from that of Section 12(3) will creat anomalies. Take the case of s tenant who constructs a building before the commencement of this Act. Under the proviso to Section 12(3) he is protected for one year. The accommodation under his tenancy will not be deemed vacant till July 15, 1973. He cannot be evicted till then. Till that date, no application for release or allotment will lie u/s 16.

32. But if the word "has" in Section 21(1) (Explanation) as well as the proviso to Section 20(4) includes building prior to the Act, he will have no protection even for the period of one year. He will have no right to object to the release application u/s 21(1) or to apply for relief from ejectment u/s 20.

33. A landlord can apply for release u/s 16 as well as u/s 21. In both the provisions the ground for release is couched in identical language. One of the grounds is that the landlord needs the accommodation for his personal residence. He cannot apply for release u/s 16 for the period of one year, namely, till July 15, 1973. But u/s 21 he can do so on July 15, 1972. He need not wait for one year.

34. The tenant can say that he is protected from ejectment on an application of release by the landlord for one year. Since in the same situation, Section 21(1) makes him liable to-eviction, this provision may be said to infringe the fundamental right of equality enshrined under Article 14 of the Constitution. The Explanation to Section 21(1) may hence become void. Giving the word "has" in the phrase "has built or has acquired" such a retrospective meaning may lead the provisions of Explanation to Section 21(1) as well as the proviso to Sub-section (4) of Section 20 to hit Article 14 of the Constitution. If possible, such an interpretation should be avoided.

35. Take another Instance. When a building is deemed vacant u/s 12(3), it becomes open for allotment or release u/s 16 read with Section 12(4). The necessary implication is that the tenancy extinguishes and the tenant goes out. In this background it is understandable that such a tenant should be debarred from raising any objection to the landlord's application for release u/s 21 as well as from applying for relief from ejectment under the proviso to Section 20(4).

36. But it does not stand to reason that a tenant in whose case the building is

not deemed vacant and whose tenancy continues, should not be able to contest the application of the landlord for release> u/s 21 or apply for relief by depositing the rent. Such a tenant is one who has otherwise acquired in a vacant state or got vacated a residential building before the commencement of the Act, as also a tenant who had constructed a building before the commencement of this Act and who has the protection of the Act for one year. In these cases the protection becomes illusory and meaningless.

37. These anomalies will not arise if the phrase "has built or has otherwise acquired" occurring in Sections 20 and 21 of the Act is interpreted to mean "has built or has otherwise acquired" not in the past but only after the commencement of the Act. This interpretation also satisfies the grammatical connotation of the verb "has".

38. In Gappulal's case, the Supreme Court observed that the relevant words are "has sublet". The present perfect tense contemplates a completed event connected in some way with the present time. The words take within their sweep any subletting which was made in the past and has continued upto the present time. It does not matter that the subletting was either before or after the Act came into force. All such sublettings are within the purview of Clause (e). The Supreme Court went on to draw heavily upon Sections 26 and 27 of the Act on the construction of the phrase "has sublet" occurring in Section 13(1). After reading those provisions, it held that Sections 26 and 27 clearly contemplate that the grounds of eviction mentioned in Section 13 may have arisen before the Act came into force.

39. The verb "has" in the phrase "has sublet" was not given retrospectivity merely because of the rules of grammar but because the Legislative intent as disclosed in the scheme of the Act required complete retrospectivity.

40. As already seen, the scheme of our Act is different.

41. The Supreme Court decision in Gappu Lal's case came up for consideration before it in Gajanan Dattatraya Vs. Sherbanu Hosang Patel and Others, . After commenting on Gappulal's case the Court came to the conclusion that the phrase "has sublet" does not mean that the subletting must continue till the date of the suit. If it was in existence on the date of the notice to quit it was sufficient. Extinguishment of the subtenancy after the service of notice but before the filing of the suit did not matter.

42. In State of Madhya Pradesh Vs. Peer Mohd. and Another, the word "has" in the phrase "who has, after the first day of March, 1947, migrated from the territory of India to the territory of Pakistan" occurring in Article 7 of the Constitution was construed in the light of the scheme of the Seventh Article in Part II of the Constitution to mean "migrated before, and not after, the commencement of the Constitution.

43. These decisions indicate that the present perfect tense "has" does not have a

rigid or fixed connotation. It takes its true meaning from the context of the scheme of the Act.

44. The resulting position is that by the use of the word "has", the legislature intends to indicate a complete event connected in some way with the present time. The word "has" by itself does not necessarily denote the extent of the retrospectivity. That will depend upon the legislative intent as indicated by the material and relevant provisions of the Act. As shown above, the use of the verb "has" in Section 20 as well as Section 21 was not intended to include the offensive activity done prior to the coming into force of the Act of 1972. In our opinion, the Full Bench decision of this Court in Ram Kumar's case holding that the Explanation to Section 21(1) is attracted to the acquisition of a building by the tenant after the coming into force of the Act lays down the correct rule of law.

45. The interpretation canvassed on behalf of the landlord is only grammatical and so ultra-legislative. It is what is called the literal approach. In *Kammins v. Zenith Investments Ltd.* (1971) AC 850 Lord Diplock drew a clear distinction between the "literal approach" and the "purposive approach", and used the purposive approach to solve the question.

46. Recently, the House of Lords considered the rules of interpretation of statutes in *Stock v. Frank Jones Tipton Ltd.* (1978) 1 SLR 231. In that case Viscount Dilhorne said:

It is now fashionable to talk of a purposive construction of a statute, but it has been recognised since the 17th century that it is the task of the judiciary in interpreting an Act to seek to interpret it "according to the intent of them that made it" (Coke 4 Inst 33).

The better approach is the purposive approach, namely, to seek the legislative intent and not be led away by a strict literal construction of the words.

47. Lord Denning put it very pithily in *Seaford Court Estates Ltd. v. Asher* (1949) 2 KB 281 as under:

We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. That is an easy thing to do, and it is a thing to which lawyers are too often prone. We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.

The court's function is to clarify the language so as to satisfy the legislative intent.

48. The word "has" has been used in the Act in many other provisions, e. g., Section 20 permits a suit for ejection where the tenant "has sublet". There the word "has" may have a different significance, because of, inter alia, its legislative history.

49. The next question canvassed before us was whether the building acquired by

the tenant should continue to remain in a vacant state. In the present case, the tenant purchased the western portion on September 14, 1967. He used it for his personal residence. This state of affairs is continuing. It is apparent that the tenant acquired the western portion in a vacant state. He then used it for his own residence. In our opinion, it will be deemed to continue in a vacant state.

50. The scheme of Sections 12, 20 and 21 is that the tenant has another residential accommodation available for his own residence. In that event he should vacate the accommodation in his tenancy. A residential building is acquired in a vacant state and used by the tenant for residential purposes. He has actually availed it for his residence. Holding that the actual physical vacant state must continue will torpedo the scheme of the Act, which broadly speaking frowns on a tenant having two accommodations for his residential purposes. Section 12(5) permits a tenant covered by Section 12(3) to apply for release u/s 12(1). Rule 10 (6) (c) requires a District Magistrate to postpone the making of an allotment order till the tenant is successful in his efforts in securing vacant possession of the accommodation built by him and let out to some other person.

51. These provisions suggest that even where the tenant has let out the building, he will be deemed to have ceased, to occupy the accommodation in his own tenancy. If letting out of the building makes no difference, to the accrual of vacancy, using that building for his own residential purpose should equally not.

52. In our opinion, the tenant Mangilal having purchased the western portion before the coming into force of the present Act was not barred from objecting to the release application. He was also entitled to claim comparison of the likely hardship.

53. Let the case be returned to the learned Single Judge with this opinion.