

(1977) 12 AHC CK 0040

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1991 of 1976

Mrs. Nirmal Kapoor and Others

APPELLANT

Vs

First Additional District Judge and Others

RESPONDENT

Date of Decision : 21-12-1977

Acts Referred:

Contract Act, 1872 — Section 23A

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7(2)

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 34

Citation : (1978) AWC 20

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : G.P. Gupta, for the Appellant; Swami Daya and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—The question that arises for consideration in this petition, primarily, is the efficacy of a compromise entered between landlord and tenant in proceedings under U.P. Urban Buildings (Regulation & Letting) Act XIII of 1972.

2. In proceedings for eviction an application duly signed by counsel for both parties, admitting bona fide need of the landlord and volunteering to give up possession on 30th June 1973 was directed to be filed by the Prescribed Authority on the same day as parties had come to terms. The accommodation having not been vacated in the stipulated time an application for delivery of possession with police help was filed. It was allowed on 18-7-1974. The appeal was dismissed as not maintainable. The impugned orders are the orders for delivery of possession and dismissal of appeal.

3. The factum of compromise cannot and has not been disputed. In Krishna Khanna Vs. Additional District Magistrate, Kanpur and Others, it has been held by the Supreme Court that a compromise contrary to the provisions of Section 23-A

Contract Act is void. The compromise for consideration before the Supreme Court was u/s 7(2) of the U.P. Temporary Control of Rent and Eviction Act. This provision dealt with allotment of a building. The compromise in this case was filed in eviction proceedings. Section 21 of the Act authorises the landlord to file an application for eviction of a tenant if the building was bona fide required for personal use or was in a dilapidated condition and was required for reconstruction. If the conditions are satisfied the Prescribed Authority is under an obligation to direct release and eviction. The admission by the tenant of bona fide need is not an agreement to the statement of law but acceptance of a factual state of affairs which may furnish material that may be accepted as sufficient by the Prescribed Authority. The principle of public policy as laid down in *Shri Krishna's* case may apply to proceedings for release or allotment as they are primarily concerned with the control of letting and permitting landlord and tenant to enter into compromise in such proceedings may be "Hazardous". But these considerations are inapplicable in proceedings for eviction based on comparative hardship of the landlord and tenant.

4. Moreover Section 34 of the Act empowers District Magistrate and Prescribed Authority to record compromise. It may be that a compromise contrary to the provisions of the Act or public policy may be invalid as held in *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others*, :

Construing the provisions of Sections 12, 13 and 28 of the Bombay Rent Act in the light of the public policy which permeates the entire scheme and structure of the Act, there is no escape from the conclusion that the Rent Court under this Act is not competent to pass a decree for possession either in invitum or with the consent of the parties on a ground which is de hors the Act or ultra vires the Act.

5. But where the compromise is neither contrary to the provisions of law nor it is inconsistent with public policy an order for eviction based on it will not be nullity. It was held in *Nagindra's* case:

From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the court was so satisfied and the decree for eviction apparently passed on the basis of a compromise, would be valid.

6. The compromise application read as under:

Sir,

In the above noted case the opposite parties having been convinced of the personal need of the landlady for the accommodation in question have agreed to vacate the accommodation by 30th June 1973 by which date the opposite parties shall deliver possession to the applicant.

It is, therefore, respectfully prayed that the above compromise be verified

deciding the case in terms thereof. Applicant Sd/- M.U. Ahmad, Sd/- M.L. Shaht, Advocate 22-2-1973 Advocate 22-2-1973.

It consisted of two parts - one an admission that the need of the landlady was bona fide and the other that Petitioner agreed to vacate by 30th June 73. In view of this the Prescribed Authority passed the following order:

The parties have come to terms. The case is accordingly filed.

7. It is argued that this is not an "order of eviction" within the meaning of Section 21 of the Act. An order is a mandate or a command. The Act or rules do not prescribe any form or manner in which an order has to be issued. The question is whether this order has to be understood only as an order passed on an application for compromise with no consequences or it can be construed as an order of eviction. The Prescribed Authority in directing filing of the application as the parties had come to terms was obviously satisfied of the bona fide need, on the admission of the tenant. The Landlady did not give up her claim of getting the premises vacated rather the tenant accepted the claim. In the circumstances an "order for eviction" was not" necessary. The statement in the compromise coupled with its acceptance by the Prescribed Authority was in substitution of the order u/s 21 of the Act. The argument, therefore, that there was no order as contemplated u/s 21 or that the executing court in absence of an order had no jurisdiction to pass the order for delivery of possession has no merit.

8. In view of what has been stated above it is unnecessary to consider the Respondent's argument that the Petitioner having approached this Court with unclean hands was not entitled to any relief. Nor is it necessary to consider the argument that the conduct of the Petitioner was unbecoming and in any case he having remained in possession for more than four years even after the date when he undertook to hand over possession substantial justice has been done between the parties.

9. The petition fails and is dismissed with costs. The interim order dated 19-12-77 is discharged.