(2013) 05 AHC CK 0148

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No''s. 26804 of 2001, 21696 and 6591 of 2003

M/s. Kamrup Industrial Gases Limited and Others APPELLANT

Vs

IVth Additional District Judge and Others RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Citation : (2013) 6 ADJ 617 : (2013) 99 ALR 303 : (2013) 120 RD 379

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

Bench : Single Bench

Advocate : Ravi Kant and C.K. Parekh, for the Appellant; J.J. Munir, Kashif Zaidi, Lalji Sinha and Tarun Verma, for the Respondent

Judgement

S.U. Khan, J.—Heard Sri Ravi Kant, learned senior counsel assisted by Sri C.K. Parekh, learned counsel for petitioner, Sri Tarun Verma and Sri J.J. Muneer, learned counsel for respondents. Petitioner was lessee on behalf of respondent Nos. 3, 4 and 5, Union of India, General Manager, Diesel Loco Works (DLW), Varanasi and Assistant Engineer, DLW, Varanasi. After expiry of period of lease, respondent Nos. 3 and 5 initiated proceedings of eviction and recovery of damages against the petitioner under Public Premises Eviction of Unauthorised Occupants Act, 1972 in the form of Eviction Case No. 70 of 1995, Union of India v. Kamrup Industrial Gases Ltd. The Prescribed Authority/Deputy Chief Mechanical Engineer, DLW, Varanasi on 3.5.1996 passed the order of eviction, copy of which is Annexure-2 to the writ petition. Through the said order, the petitioners were also directed to pay rent at the rate of Rs. 12.8 lacs per year from 21.4.1995 till date of vacation of the premises alongwith 12% per annum interest. Against the said order, petitioners filed P.P. Appeal No. 42 of 1996. IV A.D.J., Varanasi dismissed the appeal on 30.5.2011. Copy of the said judgment is Annexure-1 to the writ petition. Order of eviction was maintained, however four months'' time to vacate was granted. Order of recovery of rent was varied and it was directed that ten times of the earlier rent i.e. Rs. 48,000/- per month shall be paid as rent/damages for use and occupation by the petitioners in the first instance starting from 21.4.1995. Estate Officer/Prescribed Authority, who passed the first order (Annexure-2 dated 3.5.1996) was directed to reconsider the damages. Hence the first writ petition.

2. The main point argued by learned counsel for petitioners is that DLW had sent a letter to the petitioners on 19.5.1993 for renewal of lease at the rent of Rs. 12.8 lacs per year, hence it amounted to renewal of lease.

3. Initially lease deed was executed on 21.4.1965 for 30 years. The area is about 2.5 acre. The rent was fixed at Rs. 400/- per month. There was no renewal clause in the lease deed. The lease was executed for establishing factory to manufacture certain items, which were to be supplied to the DLW.

4. After receiving the letter dated 19.5.1993, the petitioners gave reply on 1.6.1993 giving its assent for renewal of the lease conditionally. It stated that it was ready for renewal but not at the rent of Rs. 12.8 lacs per year, which in its opinion was highly exorbitant. The letter dated 19.5.1993 is Annexure-7 to the writ petition and its reply by the petitioners dated 1.6.1993 is Annexure-8 to the writ petition.

5. In Annexure-7, it was mentioned that rental charges of 2.5 acres of land will be Rs. 12.8 lacs per year as per the then directive of the Railway Board. Through reply, Annexure-8, request was made for sending the copy of the Railway Board directive.

6. Even if it is assumed that the amount of rent demanded to be paid alongwith offer of renewal was exorbitant still tenant cannot take any advantage of the same. There was no provision of renewal in the original lease of 1965. If landlord Union of India offered to renew the lease at a rent which according to the tenant was exorbitant, it could merely refuse to get the lease renewed, however it could not compel the landlord/Union of India to renew the lease on much lesser rent. Secondly, the petitioners in their letter dated 1.6.1993 did not make any counter offer regarding rate of rent. Accordingly, the doctrine of estoppel does not come into picture at all. Learned counsel for petitioners has also made reference to minutes of the meeting of petitioners'' representative with DLW dated 6.5.2000, Annexure-11 to the writ petition. Relevant portion of the minutes is as follows:

However, it was agreed that land price fixed by revenue authorities based on adequate documentation and facts shall be acceptable to both the parties.

Representatives of M/s. Kamrup Industrial Gases Ltd. were shown the calculations of working out of licence fee and a copy of the same was handed over.

7. Petitioners did not intimate the landlord Union of India/DLW regarding rate of rent of the property in dispute as per land prices fixed by revenue authorities (probably circle rate prepared under Rules framed under Stamp Act).

8. Therefore, no tenancy by holding over came into existence.

9. Accordingly, I do not find any error in the order of eviction.

10. The other two writ petitions are directed against orders passed by Estate Officer/Prescribed Authority and Appellate Court determining the damages pursuant to the order of the appellate Court dated 30.5.2011 challenged through the first writ petition. The Estate Officer passed the order on 8.10.2002 directing payment of Rs. 1,78,18,646/- alongwith 12% interest from 1995 when lease expired till 30.9.2002. Damages and interest till then came to about Rs. 2.31 crores. The damages were detrimental on basis of circle rates after granting slight relaxation. In my opinion, the damages awarded are highly unreasonable and exorbitant. While awarding damages market value is to be kept in mind but simultaneously existing rent will also have to be kept in mind. Accordingly, total damages payable till 31.12.2013 are determined to be Rs. 75 lacs in total without any interest. The amount of Rs. 25/- lacs deposited before Registrar General of this Court under my order dated 21.11.2012 shall at once be handed over to the respondents.

11. Petitioner is granted time to vacate till 31.12.2013 on the following conditions:

(i) An undertaking is filed before the Estate Officer/Prescribed Authority within a month to the effect that the property in dispute after removing superstructure would be handed over to the respondents by 31.12.2013.

(ii) The remaining amount of Rs. 50/- lacs is paid to the respondents by 30.9.2013

12. In case of failure to comply any of these conditions, petitioner shall be evicted immediately after default and since June, 2013 onwards damages of Rs. 12.8 lacs per year shall also be recovered.

13. The amount of Rs. 1 lac recovered, by the Tehsildar from the petitioner shall be returned to the petitioner. Writ Petitions are accordingly disposed of.