(2004) 11 AHC CK 0162

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35823 of 1994

Nagar Palika Parishad,Ghaziabad APPELLANT

Vs

District Judge,Ghaziabad & Ors. RESPONDENT

Date of Decision : 18-11-2004

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21(8), 9A

Citation : (2004) 11 AHC CK 0162

Hon'ble Judges : Vikram Nath, J

Final Decision : Dismissed

Judgement

Vikram Nath, J.—This writ petition by the tenant Nagar Palika Parishad Pilkhuwa, Ghaziabad has been filed for quashing the judgment and order dated 191994 passed in Rent Control Appeal No. 66 of 1994, Trust Dharmshala Lala Ganga Sahai Ji v. Nagar Palika Pilkhuwa, whereby the appeal was allowed and the rent of the shop in dispute was enhanced to Rs. 2083.30 w.e.f. 131986 under the provisions of Section 21(8) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short referred to as the Act).

2. The dispute relates to Shop No. 120 Gandhi Bazar Pilkhuwa, District Ghaziabad which is owned by Trust Dharamshala Ganga Sahai respondent No. 3. The shop had been let out to the petitioner for commercial purpose from before 1935 at a monthly rent of Rs. 20 per month. The landlord filed an application for enhancement of rent on 1021986 and claimed monthly rent at Rs. 2,083.30 on the basis of the market value of the shop which was claimed to be Rs. 2,50,000 relying upon a valuation report. This was registered as Case No. 8 in the Court of SubDivisional Officer, Hapur. The SubDivisional Officer vide order dated 1271993 held that the application for enhancement was not under Section 21(8) of the Act but was under Section 9(A) of the Act and it accordingly enhanced the rent from Rs. 20 to Rs. 40 per month. Aggrieved by the said order the landlord filed review application, which was an appeal under Section 22 of the Act, which was registered as Rent Control Appeal No. 66 of 1994. Vide order dated 191994 the

appellate Court held that the application was under Section 21(8) of the Act and the SubDivisional Officer has wrongly held that it was under Section 9 (A) of the Act. Further the appellate Court after considering the objections of the petitioner and the material on record came to the conclusion that the market value of the building in question was Rs. 2,50,000 and accordingly the monthly rent of Rs. 2,083.30. claimed by the landlord was just, proper and correct. It accordingly allowed the appeal and enhanced the rent to Rs. 2,083.03 per month, w.e.f 131986 in accordance with the provisions contained in Section 21(8) of the Act.

3. Aggrieved by the said order, the present petition was filed in the year 1994 whereupon this Court granted interim order, staying the operation of the order under challenged. Subsequently vide order dated 1451999 this Court admitted the writ petition and modified the interim order dated 10111994 to the extent that petitioner would deposit half of the arrears of the rent at the rate of Rs. 2,083.30 per month within a period of six months and shall further pay the current rent at the same rate.

4. The petitioner has enjoyed the interim order for the last more than ten years and the landlord has not been paid any rent till date as the petitioner has not complied with the interim orders of this Court.

5. I have heard Sri G.M. Tripathi, learned Counsel for the petitioner and Sri Manoj Kumar Gupta learned Counsel for the respondent Trust.

6. It has been contended by learned Counsel for the petitioner that firstly the appeal filed by the landlord, respondent against the order dated 1271993 taking help of the order passed on the review application on 1521994 was barred by time and therefore, was liable to be dismissed on the ground of limitation. The second contention is that the provisions of Section 9(A) of the Act were applicable as the landlord was public charitable trust; the appellate Court illegally held that the application for enhancement of rent was under Section 21(8) of the Act. Learned Counsel for the petitioner has relied upon the following cases :

(1) 1997 R.D. 562, Smt. Shiv Raji & Ors. v. Dy. Director of Consolidation, Allahabad.

(2) 2004 (102) FLR 805, Shikshan Prasarak Mandal, Akola & Ors. v. Laxmi Kant Balkrishna Joshi & Ors..

(3) 1983 ARC 29, Surya Narain Nigam v. Shamshed Ali & Anr.

(4) 1983 ARC 459, Maqbool Hussain v. Rent Control and Eviction Officer, Bareilly & Ors.

7. Learned Counsel for the respondent has submitted that the application filed by the landlordrespondent against the order dated 12793 before the SubDivisional Officer Hapur, District Ghaziabad was in fact not a review application but was in fact an application under the inherent power of the Court to treat the application for enhancement to be under provision of Section 21(8) of the Act. It is further

contended that even the Rent Control and Eviction Officer (S.D.O. Hapur) had recorded the finding that the rent of the shop in dispute considering the market value on account of inflation was very less and inadequate and therefore, it would be appropriate that the rent be enhanced. On this finding in case the provision under Section 21(8) are applied, the rent would be enhanced to Rs. 2,083 per month and in case the provision of Section 9(A) of the Act are applied, the rent would be enhanced only to a maximum of double the previous rent which would come to Rs. 40 per month. The application filed for recalling the order dated 1271993 was only to the extent that the wrong Section has been applied by the authority which may be corrected. The contention is that no factual controversy or any finding of fact recorded by the SubDivisional Officer Hapur was sought to be interfered with and it was only to correct the mistake of wrong application of section.

8. The SubDivisional Officer committed an error in not recording a finding regarding the applicability of Section 9 (A) or Section 21(8) of the Act. In such circumstances, there was no justification for the landlord respondent to file an appeal without first getting this question decided by the SubDivisional Officer Hapur. The application for reconsidering the order dated 1271993 having been rejected on the ground that no review was applicable, the landlord respondent rightly filed the appeal and which has been entertained by the appellate Court. There is thus no force in the submission of learned Counsel for the petitioner that the appeal could not have been heard on merits as it was time barred.

9. With regard to the next contention of the petitioner that Section 9(A)of the Act applies and not Section 21(8) of the Act it would be appropriate to first consider the two Sections itself which are being quoted hereinafter:

?9A. Revision of rent of commercial buildings let out by public religious institutions. (1) Where any building belonging to a public charitable or public religious institution has been let out to a tenant for the purposes of a shop or commercial establishment, then notwithstanding anything contained in this Chapter, or in any contract or lease, the landlord of such building may apply to the District Magistrate for revision of the monthly rent payable there for, and such rent shall be revised to a sum equivalent to onetwelfth of ten per centum of the market value of the building under tenancy :

Provided that the rent revised under this subsection shall not exceed double the rent payable on the date of the application by the landlord under this subsection.

(2) The rent revised under subsection (1) shall be payable by the tenant from the commencement of the month of tenancy next following the date of the application.

(3) Where the rent of any building had been revised in accordance with subsection (1), then the landlord shall not be entitled to move a fresh application under the said subsection within a period of five years from the date of the final order.

Explanation. In this Section, the expressions ?shop? and ?commercial establishment? shall have the meaning assigned to them in the Uttar Pradesh Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, as amended from time to time.

21(8) Nothing in clause(a) of subsection (1) shall apply to a building let out to the State Government or to a local authority or to a public sector corporation or to a recognized education institution unless the Prescribed Authority is satisfied that the landlord is a person to whom clause(ii) of clause(iv) of the Explanation to subsection (1) is applicable:

Provided that in the case of such a building the District Magistrate may, on the application of the landlord, enhance the monthly rent payable therefor to a sum equivalent to onetwelfth of ten per cent of the market value of the building under tenancy, and the rent so enhanced shall be payable from the commencement of the month of tenancy following the date of the application:

Provided further that a similar application for further enhancement may be made after the expiration of a period of five years from the date of the last order of enhancement.?

10. Section 9 of the Act provides for enhancement of the rent in respect of the building owned by public charitable trust, to the extent that the rent can be enhanced on the same principle as Section 21(8) of the Act but only to a maximum limit being twice the amount of the existing rent.

11. Section 21(8) provides that where tenant of a building is State Government or a local authority or public sector Corporation or recognized educational institution in that event; the right of landlord seeking eviction under Section 21(1)(a) of the Act on bona fide requirement will not be available. However, the proviso of Section 21(8) lays down that the landlord would be entitled to fair rent of such a building, which would be equivalent on one twelfth of 10 percent of the market value of building. The only difference between Section 9(A) of the Act and Section 21(8) of the Act is that enhancement under the former provision is limited to double the existing rent where as under the latter provision there is no such limit and the rent can be enhanced beyond double the existing rent.

12. In the present case, the provision of Section 9(A) of the Act are attracted as the landlord is alleged to be charitable trust and at the same time the provision of Section 21(8) of the Act are attracted as the tenant is a local authority being Nagar Palika Parishad. The question is which Section is to be applied. It has been contended by learned Counsel for the landlord respondent that as the right of the landlord to seek eviction on the ground of personal need has been taken away due to the bar contained in Section 21(8) of the Act, therefore, it would be appropriate that the enhancement application should be considered under the proviso of Section 21(8) of the Act. It is further contended that under Section 9(A) of the Act no such right of the landlord has been taken away and therefore, both the Sections cannot be substitute of each other. Both the provisions operate under different situations. It is contended that in case Section 9(A) of the Act is

applied, the landlord respondent would be put to double jeopardy in as much as the enhancement of rent would be limited only to double the existing rent and at the same time, the landlord would be deprived from seeking eviction of the tenant.

13. I have considered the submissions of the learned Counsel appearing for both the sides. The language used in Section 9(A) of the Act confines its application only to Chapter II of the Act with regard to the regulation of rent. It does not out class all the provisions contained in the Act. It confines to the said Chapter in the following words: ?Notwithstanding anything contained in this Chapter or in any contract or lease?. Further Section 21(8) of the Act is part of Chapter IV and therefore, the non obstante clause contained in Section 9(A) of the Act would not exclude the provisions of Section 21(8) of the Act in respect of a building irrespective of its ownership, occupied by the local authority as a tenant. Section 9A of the Act is an additional provision made for building owned by public charitable trust and a public religious trust for enhancement of rent let out for commercial purposes. In case the intention of the legislature was to limit the enhancement of rent from being more than double the existing rent in the provisions contained in Section 21(8) of the Act in that event the Section should have covered that aspect also, but it is not so as it is only made applicable with respect to building owned by charitable trust and let out to tenant not covered under the provisions of Section 21(8) of the Act where the landlord is deprived of particular right on account of the status of the tenant. Such landlord falls in different category and would be entitled to at least fair market rent as provided under Section 21(8) of the Act. On a conjoined reading of Section 9(A) of the Act and Section 21(8) of the Act and other related Section like Section 9 and Section 21(1)(a) of the Act, the result is that where the tenant is a local authority or State irrespective of whom the landlord in Section 21(8) of the Act would be applicable and the landlord cannot be deprived of the benefit of the proviso of Section 21(8) of the Act merely on account of the fact that it is a public charitable trust or public charitable institution on account of the provision of Section 9(A) of the Act. The provision of Section 9(A) of the Act would be applicable where the landlord is public charitable trust or public religious institution but the tenant is not a State, local authority, public sector Corporation, and recognized educational institution.

14. It therefore, follows that the application of the landlord respondent is to be treated for enhancement of the rent made under Section 21(8) of the Act and not under Section 9A of the Act.

15. The appellate authority has rightly held that the application of the landlord respondent was under the provision of Section 21(8) of the Act and has rightly fixed the rent to be Rs. 2083 per month from the date of the application.

16. Apart from the above discussion this petition deserves to be dismissed with costs on the ground that the petitioner having obtained an interim order which contained conditions has not complied with the same. The petitioner has only

taken advantage of the fact that this Court while passing the interim order, did not further bind the petitioner with the condition that in case it does not comply with the conditions imposed by this Court, the interim order would stand automatically vacated. Even at the time of hearing the Counsel for the petitioner was requested to make the deposit as directed by this Court but even that request was not accepted. Therefore, in the circumstances I feel that any litigant who abuses the process of law and disobeys the orders of the Court has to be dealt with strictly and should be put to terms. Noncompliance of conditional interim order clearly amounts to disrespect and disregard to the Court and also abuse of the Courts generosity in granting interim order. Such litigant who does not respect the orders of this Court must suffer.

17. The writ petition is therefore, dismissed for the reasons stated above with costs which is quantified at Rs. 5,000 to be deposited with the Registrar General of this Court within six months and to be transferred to the U.P. State Legal Aid Services Authority Committee.