
(2013) 04 AHC CK 0191
In the Allahabad High Court
Case No : Special Appeal No. 600 of 2013

Narendra Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 04 AHC CK 0191

Hon'ble Judges : Rakesh Tiwari, J and K.N.Bajpayee, J

Final Decision : Disposed Of

Judgement

Sudhir Agarwal, J.—This writ petition has arisen from the order dated 10.11.2003 (Anenxure11 to the writ petition) of Rent Control and Eviction Officer, Kanpur Nagar (hereinafter referred to as "RCEO"), declaring vacancy in the building in dispute and directing for notifying vacancy for allotment; and, the order dated 05.08.2004, passed by Additional District Judge, Court No.5, Kanpur Nagar (hereinafter referred to as "Revisional Court"), dismissing petitioner's Rent Revision No. 3 of 2004.

2. The dispute relates to shop no.3, which is a part of House No. 108/153, P. Road, P.S. Bajaraia, Kanpur Nagar. The house in dispute was initially owned by Sri Santeshwar Nath Nigam, Krishna Murari Nigam and Govind Murari Nigam, all sons of Dwarka Nath Nigam,. A lease deed was executed by Sri Santeshwar Nath Nigam on 27.09.1949 in favour of one Jagdish Hajela, letting out entire building and premises no.108/153, P. Road, Kanpur. Pursuant to the lease rights conferred upon Sri Hajela, shop in question was sublet by Sri Hajela to Sri Peshumal, father of the petitioner. It is said that initially, the business in the shop was carried out jointly by Sri Peshumal and his other son Ram Chandra, brother of the petitioner. Later on business was carried out as joint Hindu family business. The rent was paid to Sri Hajela till 1986 and after his death, the same was paid to his son Gyan Chand Hajela. On 05.04.2002 the owners of the premises no. 108/153 sold a part of the house, which included the shop in

dispute, through a registered sale deed dated 05.04.2002 to Prakhar Rastogi, respondent no.2. The petitioner Daulat Ram was alleged to be in occupation of the shop in dispute, since 1987, unauthorisedly and hence, there is a vacancy.

3. The Rent Control Inspector (for short "RCI"), made a spot inspection and submitted his report dated 31.03.2003. He found petitioner, in occupation of the shop in dispute, but said, that, neither the earlier owner accepted petitioner as tenant nor the present owner, and therefore, his possession of the shop in dispute was unauthorised. He also said that upto 198082, the earlier tenant Jagdish Chandra was occupying the shop in dispute but the present occupation by the petitioner is not only unauthorised but illegal.

4. The petitioner submitted his objection dated 19.05.2003 to which respondent no.2 also filed his objection. Both the parties filed their affidavits and, thereafter, RCEO passed order dated 10.11.2003, declaring possession of petitioner in the shop in dispute, unauthorised and illegal and, further declared vacancy in the shop in dispute. Aggrieved thereto, the petitioner preferred Rent Revision No. 3 of 2004, which has been dismissed by revisional court vide order dated 05.08.2004.

5. Sri M.D. Singh, "Shekhar" contended that various receipts filed before RCEO included receipts of period of 1975 also, which were in the name of Ram Chandra and Peshumal. He drew my attention to page 53 of paper book which contains two receipts dated 06.11.1975 and 05.12.1975. He contended that once the shop in dispute was in the tenancy of petitioner's father, whether he continued in business with his son Ram Chandra, or the shop thereafter came in possession of petitioner, both being members of family, by no logic, it could have been said that he was an unauthorised occupant in the shop in dispute. He also urged that the shop has continued to be in tenancy of Sri Peshumal and, thereafter, in the occupation of members of the family of Peshumal, hence, there is no occasion to allege that the petitioner was occupying the shop unauthorisedly. He pointed out that RCI was supposed to prepare a report with respect to disputed site, but in the report dated 31.03.2002, the RCI has said that receipts produced by the petitioner before him were all forged, though, he had no occasion to make any adjudication on correctness of receipts. Also there was nothing to show as to how he can term receipts, produced by petitioner, as forged or fictitious. It shows that RCI was already prejudiced, predetermined and in collusion with respondent no.2, He submitted report with a predetermined mind so as to get the shop declared vacant. He argued that after the death of his father, tenancy had to devolve upon deceased's heirs and legal representatives, and, that is how, the petitioner was a valid tenant and occupant of the shop in dispute. Even revisional court, having miserably failed to look into all these aspects, has committed patent error, causing grave injustice, hence, the revisional order is vitiated in law, he lastly contended.

6. Sri Ashok Srivastava, learned counsel appearing for respondent no.2 on the contrary, pleaded that the shop in dispute was, in fact, occupied by Sri Hajela

and he vacated the same, sometime in 1981⁸², whereafter it was unauthorisedly occupied by petitioner.

FINDINGS

7. From the record, it is evident that the shop in dispute is a part of a very large premises. The entire premises, including the building, existing thereon, was let out to Sri Jagdish Chandra Hajela by Sri Santeshwar Nath Nigam, in the capacity of self and also as guardian of his two minor brothers, Krishna Murari and Govind Murari, sons of Late Dwarika Nath Nigam. Lease deed states that disputed premises, at that time, was commonly known as "Dwarika Palace" and "Dwarika Theatres" and comprised of a cinema hall, some residential flats, buildings and shops. The lease deed, initially, was executed for a period of five years commencing from 01.10.1949. There was a restriction of subletting of cinema hall or any part thereof, for the purpose of hotel, restaurant or other allied purpose, except the ground floor and also not to sublet flat no.7, without permission of lessor. There was no other restriction for letting of remaining part of the leased out building. The shop in dispute was let out to petitioner's father, by Sri Hajela, sometime in 1950. Since then, he was occupying the shop, paying rent to Sri Jagdish Chandra Hajela, and after his death, to his son Gyan Chandra Hajela. The judgment of revisional court also shows that initially, lease deed, which was for the period of five years, but neither revoked nor right of reentry was exercised by the lessor as late as upto 1991, which fact, is evident from a copy of order dated 18.08.2001, passed by Civil Judge (Senior Division) Kanpur Nagar, in Misc. case No. 351/70/2000 which was between Gyan Chand Hajela and Santeshwar Nath Nigam and his brothers and other family members. Copy of the aforesaid order dated 18.08.2001 has been placed on record by respondent no.2 himself along with his counter affidavit as Annexure CA2. This order also has taken note of the fact that a part of disputed building/premises was let out to certain persons called "subtenants".

8. The then lessor/owners of the premises in dispute has never treated or found sub tenants to be unauthorised or illegal or having been inducted without consent or permission of owners. Respondent no.2 having purchased disputed premises through sale deed dated 05.04.2002, the subsequent arrival of respondent no.2 as owner of disputed property, shall not undo transactions of the past, which had already taken place. Respondent no.2 would have entered into the shoes of erstwhile owner, having the same legal consequences in respect of other occupants, wholly or partly, in the property, subject of conveyance, vide sale deed dated 05.04.2002. He cannot claim any new or better right, or take away legal status or rights of existing occupants as tenant or sub tenants, in the property, which he had purchased.

9. A perusal of sale deed dated 05.04.2002 also shows that the vendor had initially executed an agreement for sale on 11.01.1991 with Sri Abha Hajela, wife of Sri Gyan Chandra Hajela, but the said agreement was cancelled by notice dated 20.01.2000. It also mentions that Sri Gyan Chand Hajela was handed

down a power of attorney on 11.01.1991 for the purpose of sale of the property/ premises no.108/153, P. Road, Kanpur Nagar, but subsequently the said power of attorney was also revoked vide registered deed dated 19.11.1999. Thereafter, Sri Shashi Kumar Nigam son of Santeshwar Nigam was appointed attorney vide registered power of attorney dated 19.11.1999.

10. Respondent no.2, in fact, was sold only shop no.3 which was part of house no. 108/153 P, Road, Kanpur having an area of about 185.5 Sq. ft. Condition no.3 at page 8 of the sale deed also recognizes the fact that the shop is already in possession of tenant and rent from January 2001 at the rate of Rs. 350/ per month is outstanding. Hence, the vendee i.e., respondent no.2 has a right to recover rent from the said tenant. It would be appropriate to notice para 3 of sale deed dated 05.04.2002 which reads as under:

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"(3) That there is a tenant occupying the property being sold, against whom, rent is in arrears since the month of January 2001 @ Rs. 350/ per month. The aforesaid vendee shall have right to recover the aforesaid arrears of rent." (English translation by Court)

11. This fact clearly recognizes the status of the petitioner as a tenant in the shop in dispute since long period and more known by the vendor to the subsequent purchaser. Receipts of the last 25 years and more adduced before RCEO also fortify the stand of petitioner that the shop was in tenancy of his father and, thereafter, came to possession of his brother and after death of both of them, to the petitioner.

12. RCEO in a very strange but casual and cryptic manner has observed that earlier receipts are of November 1975 which is subsequent to 05.04.1975 and therefore, the petitioner is not entitled to benefit of regularisation of occupation, under section under Section 14 of U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act 1972"). The approach of RCEO appears to be more inclined to somehow or the other, to hold petitioner unauthorised occupant, instead of looking into the matter, dispassionately, impartially and fairly. Firstly, It would be extremely cruel and wholly unfair to expect from a person to keep record of rent receipts of several decades, particularly when there was no such dispute in the past. Secondly, application in question was filed by respondent no.2 in 2004, i.e., after almost thirty years and yet rent receipts were produced by the petitioner to fortify his case of more than two decades to prove that he is occupying the shop in dispute since very long time as a tenant. When subtenancy was permitted by erstwhile owner, and he never took any action, knowing it well that certain part of premises leased out to Sri Hajella, was sublet by him. It justifies the inference that subletting was with the consent of landlord.

13. It thus cannot be said that the aforesaid subletting was illegal since its inception. Once that is so, and the petitioner's father was a sub tenant, tenancy

rights would devolve on the petitioners in their own rights after his death. It would be wholly illegal to hold, in such circumstances, that the petitioner's possession/occupation of the shop in dispute was unauthorised and illegal and, that too, under Act 1972, which was obviously not available when the shop in dispute was let out by the principal lessee, i.e. Sri Hajela to the petitioner's father Sri Peshumal, as alleged by the petitioner, sometime in 1950. The petitioner having shown his tenancy rights continued for such a long time, in law, shifted onus on the respondents, to show that the possession was illegal and unauthorised. In the present case, in a very peculiar and strange manner, RCEO has proceeded with predetermined mind to hold the petitioner an unauthorised occupant without looking into several relevant aspects. In this erroneous approach of the RCEO, he has been helped and supported by his subordinate i.e, RCI by stating in his report dated 31.03.2003, that various rent receipts, produced by petitioner, are forged and fictitious, though at the time of inspection, he had neither any occasion nor any material wherefrom, he could have declared those rent receipts, forged and fictitious, then and there. All this shows a predetermined and biased approach and attitude on the part of RCEO. It is really unfortunate that even revisional court failed to consider relevant aspects in the matter and thereby has committed patent illegality in affirming the order of RCEO which is ex facie illegal and bad in law.

14. The above discussion leaves no hesitation in holding that occupation and possession of shop in dispute by petitioner was neither illegal nor unauthorised. Hence there was no occasion for RCEO to declare vacancy in the shop in dispute.

15. In the result the writ petition succeeds and is allowed. Impugned orders passed by the RCEO as well as revisional court, are hereby quashed.

16. The petitioner is entitled to cost which I quantify to Rs. five thousand against respondents no. 1 and 2, who shall bear it equally.