
(2007) 07 AHC CK 0252
In the Allahabad High Court

New Bank of India

APPELLANT

Vs

Sangat Singh Panwar

RESPONDENT

Date of Decision : 26-07-2007

Acts Referred:

Transfer of Property Act, 1882 — Section 116

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 30

Citation : (2007) 4 AWC 4064

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Janardan Sahai, J.—A suit for rent and ejectment was filed by the respondent against the applicant New Bank of India, which later on merged with Punjab National Bank the present revisionist. It is not disputed that originally the premises were let out at a rent of Rs. 2,100 on a lease of 5 years commencing from 2.8.1974 renewable on a fresh settlement of terms for a further period of 5 years. This period had expired on 2.8.1984. The case of the plaintiff-respondent is that although the plaintiff wanted to evict the tenant but in view of the U.P. Act No. 13 of 1972 being applicable no suit for eviction was then filed. It was also alleged that defendant is a habitual defaulter in payment of rent and that water tax was also not paid for the period from August, 1984 to 21.9.1999 and the tenancy of the applicant was terminated by notice dated 6.9.1989. The suit was contested by the bank. According to the bank it continued to be the tenant of the disputed premises even after the lease came to an end on the same terms and conditions. It was also alleged that there was no default and the rent had been deposited u/s 30 of U.P. Act No. 13 of 1972 and in the Court after filing of the suit on the date of first hearing. As regards water tax it was alleged that it is not part of the rent in view of the terms of the agreement. The Judge, Small Causes Court has recorded a finding that after the expiry of the lease in 1984, the applicant became a statutory tenant. Reliance was placed upon Section 7 of U.P.

Act No. 13 of 1972 which provides that water tax and 25% of the enhanced house tax shall be paid by the tenant as part of the rent and as water tax was not paid, the tenant is a defaulter. The suit for eviction and recovery of arrears of rent was decreed.

I have heard Sri K.L. Grover learned senior counsel for the applicant and Sri N.C. Rajvanshi and Sri Siddharth Verma for the respondents.

2. Two submissions were made by the counsel for the applicant. The first submission is that the applicant is not a statutory tenant but a tenant holding over. In support of his contention he relied upon the fact that an application u/s 21(8) of U.P. Act No. 13 of 1972 was filed by the respondent in which an order dated 13.3.1989 was passed enhancing the rent to Rs. 3,235.43 per month. The second contention is that in view of the lease agreement the water tax was not payable by the tenant and as Section 7 of U.P. Act No. 13 of 1972 is applicable subject to any contract to the contrary water tax could not be treated to be a part of the rent. In my opinion neither of these submissions has any merit.

3. In Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, it has been held that on the expiry of lease by efflux of time the tenant ceases to have interest in the demised premises. He becomes a statutory tenant which is a personal right of not being evicted in view of the protection provided by the statute to him if he continues to pay the rent. He however cannot enforce the terms of the contractual agreement unless he is a tenant holding over. A tenant would be holding over u/s 116 of the Transfer of Property Act if the landlord accepts rent or assents to his continuance. The mere fact that an application u/s 21(8) of U.P. Act No. 13 of 1972 was filed by the landlord would not necessarily mean that the landlord had assented to the continuance of the tenant within the meaning of Section 116 of Transfer of Property Act. By filing an application u/s 21(8), the landlord is invoking the machinery of the statute to increase the rent. He is not settling or enforcing any contract. He can maintain the application u/s 21(8) treating the tenant as a statutory tenant. No question of holding over would then arise. From the averment made in the plaint as well as from the notice determining tenancy it is clear that respondent landlord wanted to evict the tenant but he did not file the suit for ejectment on account of applicability of U.P. Act No. 13 of 1972. Learned Counsel has referred to no evidence that may have been led by the tenant to prove that the landlord accepted any rent or assented to the continuance of the applicant as a tenant of the premises after the lease had come to an end by efflux of time. As the applicant had become a statutory tenant the application u/s 21(8) of Act XIII of 1972 was maintainable. The filing of that application however does not by itself demonstrate that the applicant was a tenant holding over. In view of these facts, the contention of Sri Grover that the applicant continued as a tenant holding over cannot be accepted. The result therefore, is that the applicant continued only as a statutory tenant. As a statutory tenant he was subject to all the provisions of the Act including Section 7 thereof. u/s 7 of U.P. Act 13 of 1972 water tax is a part of rent unless

there be a contract to the contrary. In this case the contract had already come to an end by efflux of time and the status of the applicant therefore, was not contractual but under the statute and he was not entitled to enforce the terms of the contractual agreement. It would therefore, be deemed that there was no contract to the contrary as regards the payment of water tax after the contractual tenancy had come to end, and the tenant was liable to pay water tax as part of the rent.

4. The trial court has recorded a finding that the entire rent was not deposited by the applicant on the first date of hearing. Rather the applicant adjusted the deposit made u/s 30 of the Act which could not have been adjusted as it was not a valid deposit for two reasons. The defendant's case was that a pay order was sent to the plaintiff after the defendant was served with the notice terminating his tenancy but the pay order was refused. The trial court found that the pay order was short of the amount demanded in the notice. The water tax was not paid. The pay order was therefore, justifiably refused and the deposit u/s 30 was therefore also invalid as the tenant had not tendered to the landlord the entire amount payable. It has also been found that the deposit u/s 30 was not made within a month from the date of receipt of notice and was therefore, invalid for this reason too. The tenant was therefore, a defaulter. The view taken by the court below appears to be correct and the order passed by the court below does not suffer from any illegality.

5. Sri Grover then submitted that some time may be granted to the applicant-tenant to vacate the premises. S/Sri N.C. Rajvanshi and Siddharth Verma counsel for respondent very fairly accepted this request of the tenant but only prayed that the interest of the landlord be protected by obtaining suitable undertaking from the tenant-applicant that it will vacate the premises on the expiry of one year from today.

6. In the circumstances the applicant-tenant is permitted to occupy the premises in question for a period of one year from today subject to the following condition:

(i) The applicant-tenant shall give an undertaking within a period of six weeks from today before the trial court that it will vacate the premises in question within a period of one year from today and handover peaceful possession to the landlord;

(ii) The applicant-tenant shall deposit advance rent and damages as awarded by the trial court for the period of one year before the trial court within one month from today.

7. In case of default, this order shall stand vacated and it will be open to the landlord-respondent to execute the decree.

8. Subject to the aforesaid observations and directions, this revision is dismissed.