

(1980) 12 AHC CK 0046
In the Allahabad High Court
Case No : S.A. No. 1570 of 1973

Parashram

APPELLANT

Vs

Nagar Mahapalika

RESPONDENT

Date of Decision : 12-12-1980

Acts Referred:

Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 21, 22, 293, 296
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 23, 23(1)

Citation : (1981) AWC 151

Hon'ble Judges : K.M. Dayal, J

Bench : Single Bench

Advocate : B.D. Agarwala and Ratnakar Bhart, for the Appellant;

Final Decision : Partly Allowed

Judgement

K.M. Dayal, J.—The present Second Appeal has been filed by the Plaintiff. A suit for injunction has been dismissed by the lower appellate Court.

2. The Plaintiff filed a suit for injunction against Nagar Mahapalika Kanpur claiming that he was lessee of the disputed land and Nagar Mahapalika, Kanpur was trying to evict him by force. The defence was that the Plaintiff was not a lessee but was a licensee of the land in dispute and his licence having been revoked, he was liable to be evicted by force. The trial Court decreed the suit for limited injunction that the Plaintiff would not be evicted from the disputed place except in accordance with law. The lower appellate Court has, however, set aside that decree and dismissed the suit.

3. The concurrent finding of both the courts below is that the Plaintiff was occupying the place under permit issued in his favour from time to time. It has also been found that this permit expired in 1966 and therefore, he was liable to be evicted from the said place. Both the courts below have concurrently held that the Plaintiff was a licensee and not a lessee and had no interest in the land. learned Counsel for the Appellant has tried to argue that the Plaintiff was a

lessee of the land and unless his lease was terminated, he would not be liable to be evicted. His second argument is that even if he was licensee, he can only be evicted in accordance with law and only by the procedure prescribed by law and not by force. So far as the first contention of the learned Counsel is concerned, I have looked to the finding of both the courts below and I find that the Plaintiff has miserably failed to prove any lease in his favour. I have also examined Ex. 1 which gives conditions on which the Plaintiff was permitted to occupy the land initially and there is no room for doubt that the Plaintiff had a licence in his favour and not a lease. The contention of the appellant's counsel that he was a lessee of the land fails.

4. The other contention of the learned Counsel for the Appellant, however, seems to have some force. It is true that under Sections 293 and 296 of the Nagar Mahapalika Adhiniyam the Plaintiff was liable to be evicted without notice by Mukhya Nagar Adhikari of the Nagar Mahapalika. That, however, does not authorise the Mukhya Nagar Adhikari to evict the Plaintiff by force. Even if he is to be evicted, he can be evicted only in accordance with law and not by force. In our country law is supreme. No person can take law in his own hand. The Plaintiff can be evicted either by way of filing a suit or under the provisions of U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 or any other law. learned Counsel for the Respondent argued that section 296 permits the Mukhya Nagar Adhikari to evict the Plaintiff without notice. There is no doubt about the same. But there is no procedure prescribed. Obviously he can be dispossessed only by due process of law. By way of illustration, section 23 of the U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972 may be examined. It permits use of necessary force for evicting a tenant. Sub- Section (1) of Section 23 of the said Act reads as under:

The prescribed Authority may use or cause to be used such force as may be necessary for evicting any tenant against whom an order is made u/s 21 or on appeal u/s 22, as the case may be, or against any other person found in actual occupation, and for putting the landlord into possession." There is no such provision in U.P. Nagar Mahapalika Adhiniyam.

5. learned Counsel for the Appellant, however, argued that section 296 of the Nagar Mahapalika Adhiniyam was not applicable in the present case.

According to him this section applies only to the possession which was taken after the commencement of the Act. As I have held that no force can be used for eviction except due process of law, I need not go in that question.

6. In the result, the appeal is partly allowed. The Nagar Mahapalika Kanpur is restrained by an injunction not to evict the Plaintiff without adopting due process of law. Parties are directed to bear their own costs.