
(2011) 08 AHC CK 0158
In the Allahabad High Court
Case No : Writ A. No. 30580 of 2011

Parwati Gupta (Smt.)

APPELLANT

Vs

Additional District Magistrate City Kanpur Nagar and others

RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16(1)(b), 16(4), 20

Citation : (2011) 08 AHC CK 0158

Hon'ble Judges : Shashi Kant Gupta, J

Final Decision : Dismissed

Judgement

Shashi Kant Gupta, J.—Heard learned counsel for the parties and perused the record.

2. From perusal of the record, it transpires that the vacancy of the disputed premises under Section 16(1)(b) of the U.P. Act No. 13 of 1972 (in short the Act) was declared on 03.08.2010 and thereafter the premises was released by order dated 30.08.2010 in favour of the petitioner. Being aggrieved and dissatisfied with the said orders, the respondents filed a Revision under Section 18 of the Act, which was registered as Rent Revision No. 59 of 2010. No interim order was granted by the Revisional Court in favour of the respondent no. 2.

3. In the meantime, the petitioner filed an execution application under Section 16(4) of the Act for evicting the respondent no. 2 before the respondent no. 1. Besides this, the petitioner had also filed a suit for arrears of rent and ejectment under Section 20 of the Act against the respondent no. 2, which was decreed in favour of the petitioner and thereafter the decree was confirmed by the lower revisional court by judgment and order dated 20.03.2009. Being aggrieved with the said judgment and order, the respondent no. 2 preferred a Writ Petition No. 35085 of 2009 before this Court and in the said writ petition, the petitioner gave an undertaking that he will not take any steps to evict the respondent no. 2 in pursuant to the decree passed by the Court below in a suit filed by the petitioner

for arrears of rent and ejectment. The said writ petition is still pending before this Court.

4. The respondent no. 2 filed his objection against the application filed by the petitioner under Section 16(4) of the Act stated that the Rent Revision filed against the order declaring vacancy and release is pending. It was prayed that since the learned counsel for the petitioner has given his undertaking in writ petition no. 35085 of 2009 that he will not take any step to evict the Respondent No. 2 during the pendency of the aforesaid writ petition, the application filed under Section 16(4) of the Act is not maintainable and is liable to be dismissed. Thereupon, the respondent no. 1 stayed the execution proceedings initiated by the petitioner under Section 16(4) of the Act mainly on the ground that the undertaking was given by the learned counsel for the petitioner in the writ petition no. 35085 of 2009.

5. Learned Counsel for the petitioner has submitted that the Revision under Section 18 of the Act has already been dismissed by the Court below and till date no writ petition has been filed by the respondent no. 2. It is further submitted that any undertaking given by the petitioner in the writ petition no. 35085 of 2009 arising out of the decree passed by the court below in the suit filed by the petitioner for arrears of rent and ejectment can not in any manner operate as an obstacle to the execution proceedings initiated by the petitioner under Section 16(4) of the Act.

6. Learned counsel for the respondent has submitted that now since the revision filed by the respondent no. 2 has been dismissed by the lower revisional Court, the present writ petition itself has been rendered infructuous.

7. Heard learned counsel for the parties and perused the record.

8. It is suffice to say that the proceedings under Section 16(4) of the Act initiated by the petitioner pursuant to the vacancy/release order passed in favour of the petitioner under Section 12 and 16(1)(b) of the Act is a separate and independent proceeding from that of the proceedings initiated in pursuant to the suit filed for arrears of rent and ejectment resulting in the eviction decree against which the writ petition no. 35085 of 2009 was preferred by the respondent. Thus any undertaking given by the petitioner in the writ petition no. 35085 of 2009 arising out of a decree passed by the Court below in a suit for arrears of rent and ejectment can not operate as an obstacle to the execution proceedings initiated by the petitioner under Section 16(4) of the Act pursuant to the release order passed by the Court below under Section 16(1)(b) of the Act. Besides this, the revision filed under Section 18 of the Act itself has been dismissed by the lower revisional Court.

9. In this connection, it is useful to refer to the decision of this Court in the case of MunniLal Vs. Prescribed Authority, Agra and other, A.R.C. 1992, Vol. 2, page 86, wherein this Court inter alia in paragraph 4 has held as follows:

"There are three provisions in the Act under which a landlord can recover possession of his building is in occupation of a tenant. SubSection (2) of Section 20 provides that a suit for eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more grounds enumerated in clauses (a) to (g). This suit has to be instituted in the Court of Judge, Small Causes. Section 21 of the Act provides that the Prescribed Authority may on an application of the landlord order eviction of a tenant from a building under his tenancy on the grounds enumerated in clauses (a) and (b) of subsection (1) thereof. Clause (a) provides that the building will be released on the bonafide requirement of the landlord and clause (b) provides that the building will be released if it is in dilapidated condition and is required for purpose of demolition and new construction. An application under section 21 of the Act has to be moved before the Prescribed Authority. Section 16(1)(b) provides that the District Magistrate may release the whole or nay part of a building in favour of the landlord. However, this power can be exercised by the District Magistrate only with regard to those buildings which are either vacant or are deemed to be vacant under Section 12(4) of the Act. The Scheme of the Act, therefore, contemplates three different kind of proceedings which may be taken by the landlord for recovery of possession of the building which is covered by the provisions of the Act and the proceedings have to be taken before three different authorities. There is no inter se conflict between the nature of the proceedings which may be initiated under the aforesaid provisions of the Act".

10. The impugned order passed by the Court below is based on complete misreading of the case and misconception of the legal position relevant to the matter. The court below has been swayed by totally irrelevant consideration and the views of the Court below can not be subscribed in the facts of the case.

11. Thus, in view of the above, the order dated 10.05.2011 passed by the respondent no. 1 staying the execution proceedings initiated by the petitioner under Section 16(4) of the Act is set aside and the writ petition is accordingly allowed.

12. It is needless to say that the petitioner is at liberty to challenge the order dated 30.08.2010 (passed by the Lower Revisional Court dismissing the Revision filed under Section 18 of the Act) in accordance with law before the appropriate forum.