

(1986) 02 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 8543 of 1979 and 10948 of 1980

Perm Shanker Tripathi

APPELLANT

Vs

The First Additional District Judge and Others

RESPONDENT

Date of Decision : 19-02-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Constitution of India, 1950 — Article 227

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 12, 16(1), 18

Citation : (1986) 02 AHC CK 0055

Hon'ble Judges : S.K. Dhaon, J

Bench : Single Bench

Advocate : Agdish Prasad, G.D. Srivastava and A.R.B. Kher, for the Appellant; E. Mohan, S.C. and G.N. Varma, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dhaon, J.—This and the companion Writ Petition No. 10948 of 1980 have their genesis in the same suit No. 139 of 1977. Both of them relate to premises No. 12 Clive Road Allahabad (hereinafter referred to as the accommodation in dispute). Therefore, the two petitions can be conveniently disposed of by a common judgment.

2. The accommodation in dispute was in the tenancy of Sri Krishna Chandra, the Respondent No. 9 in this petition. He built his own house at Allahabad and shifted there. The Respondents No. 3 to 5 were the sub-tenants of Sri Krishna Chandra. The application made by the Petitioner on 18.10.1978 before the Rent Control and Eviction Officer for the allotment of the accommodation in dispute was rejected on 9th June, 1975. On 8th July, 1975, the Petitioner made an application for declaring the accommodation in dispute as vacant keeping in view the provisions of Section 12 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) act, 1972 (hereinafter referred to as the Act). The Petitioner

made Anr. application on 21st January, 1976 for the allotment of the accommodation in dispute to him The Rent Control and eviction Officer passed an order whereby it declared the accommodation in dispute as vacant.

3. The Respondents No. 3 to 5, the alleged sub-tenants preferred a Writ Petition No. 302 of 1976 in this Court challenging the order dated 25th February, 1976, passed by the Rent Control and Eviction Officer declaring the accommodation in dispute as vacant. A Division Bench of this Court on 7th April, 1977, dismissed the said writ petition summarily.

4. Sri Krishna Chandra, the original tenant, preferred a Writ Petition No. 852 A of 1976 in this Court challenging the order dated 25th February, 1976, declaring the accommodation in dispute as vacant. This petition was also dismissed summarily on 20th May, 1977.

5. The Respondents No. 3 to 5 instituted a Suit No. 139 of 1977 in the court of the Massif, Allahabad seeking the reliefs, inter alia, a declaration that the order dated 25th February, 1976, was a nullity and a permanent injunction restraining the Rent Control and Eviction Officer and the District Magistrate from allotting the accommodation in dispute. The Petitioner was not imp led as one of the Defendants in the suit. The Massif on 10th May, 1977, rejected the application for ad interim injunction made by the Plaintiffs in the suit. The 1st Additional District Judge, Allahabad, in an appeal preferred by the Plaintiff (Respondents No. 3 to 5) set aside the order of the trial court on 20th September, 1978 and granted the interim injunction as prayed for by the Respondents No. 3 to 5. The instant petition is directed against the said order passed by the 1st Additional District judge.

6. The Petitioner made an application in the trial court in Suit No. 139 of 1977 for being imp led as one of the Defendants. The trial court, on 28th March, 1978, accepted the said application. The District Judge, Allahabad, on 30th September, 1980, in a revision preferred by the Respondents no 3 to 5, set aside the order of the trial court directing impalement of the Petitioner as one of the Defendants to the suit and rejected the application made by the Petitioner for being imp led as one of the Defendants. Writ Petition No. 10948 of 1980 is directed against the said order passed by the District Judge.

7. In Writ Petition No. 302 of 1976 preferred by the Respondents No. 3 to 5 this Court upheld the preliminary objection raised by the Respondents therein that the petition was pre-mature as the Petitioners therein had a right to challenge the order declaring the vacancy during the course of allotment proceedings or, in case, the house was allotted, by an appeal u/s 18 of the Act. On behalf of the Respondents in that writ petition reliance was placed on the decision of the Supreme Court in Trilok Singh and Company v. District Magistrate, Lucknow 1976 AWC 610. This Court observed :

But the conclusion of the Supreme Court in Trilok Singh's case was not based solely on the consideration that the vacancy in that case had been notified

without any notice to any of the parties, and as such the parties could object to the order later on, but one of the reasons that weighed with their Lordships of the Supreme Court for holding that the petition was premature was that the aggrieved person can challenge the order declaring the vacancy in an appeal u/s 18 of the Act. That consideration applied in the present case too for if an order of allotment is made, the Petitioner can challenge that order by way of an appeal u/s 18 of the Act and raise appropriate grounds challenging the order of the Rent Control and Eviction Officer declaring the vacancy.

Counsel for the Petitioner also contended that in as much as the order passed by the Rent Control and Eviction Officer was without jurisdiction and hence the principles laid down in Trilok Singh's case cannot be appropriately applied to the present one. Adumbrating his contention, it was urged that the earlier order of the Rent Control and Eviction Officer was passed after hearing both the parties, and operated as resjudicata and further that the Act did not give any power of review to the present Rent control and Eviction Officer over the earlier order passed by his predecessor in interest. These contentions are not without lore, but we do not wish to express any opinion on them for the Petitioner can take up these pleas in appeal in case an adverse order is passed by the Rent Control and Eviction Officer in the allotment proceedings.

Keeping in view the allegations of the Respondents No. 3 to 5 in the said writ petition that the Rent Control and Eviction Officer, who passed the order declaring the vacancy, was biased, this Court directed that the proceedings for the allotment of the accommodation in dispute should be disposed of either by the District Magistrate himself or any other officer authorized by him in that behalf. This Court made it clear that it was open to the Petitioners (Respondents No. 3 to 5) to raise all such objections, as were open to them under the law, to the allotment of the accommodation in dispute, including those relating to the vacancy of the same.

8. This Court dismissed the Writ Petition No. 852A of 1976 preferred by Sri Krishna Chandra, the tenant, keeping in view the decision given in Writ Petition No. 302 of 1976. However, this Court reserved the right of Sri Krishnan Chandra to raise all objections, including that contemplated by Section 16(1) proviso of the Act, as may be open to him under the law.

9. The order of the 1st Additional District Judge dated 20th September, 1978 is in substance based on the finding that the order dated 25th February, 1976, passed by the Rent Control and Eviction Officer, reviewing his previous order dated 5th June, 1975, was without jurisdiction and it could not be treated as an order valid in law. It will be seen that this precise submission was noted by a Division Bench of this Court in Writ Petition No. 302 of 1976 preferred by the Respondents No. 3 to 5 and, in spite of it, this Court felt that the proper remedy of the Respondents No. 3 to 5 was to challenge the legality of the order dated 25th February, 1976, in the allotment proceedings. It is, therefore, apparent that the Respondents No. 3 to 5 have achieved an order from the 1st Additional District

Judge which they failed to get from this Court. They have, therefore, achieved an object indirectly having failed to do so directly.

10. It is apparent that by obtaining the impugned order of temporary injunction from the 1st Additional District Judge the Respondents No. 3 to D have succeeded in circumventing the order passed by this Court in Writ Petition No. 302 of 1976 filed by them. There fore, a matter concerning the administration of the law immediately arises. The issue sought to be raised in the suit instituted by the Respondents No. 3 to 5 has been rightly or wrongly determined by this Court in the said writ petition. This Court has clearly ruled that the remedy, if any, of the Respondents No. 3 to 5 is in the proceedings for the allotment of the accommodation in dispute and if need be in the appeal against the order of allotment. Principles of resjudicata apart, the step taken by the Respondents No. 3 to 5 in instituting the suit amounts to an abuse of the process of the Court.

11. The filing of the suit was a frivolous and vexatious act. The issue sought to be raised in the suit was the subject matter of the writ petition of the Respondents No. 3 to 5 and this Court had declined to go into that question tad had relegated the Plaintiffs in the suit to the proceedings under the Act. The course adopted by the Respondents No. 3 to 5 in instituting the suit is destructive of one of the basic principles of the administration of justice based as it is in this country on a hierarchy of Courts. Such an attempt, it not nabbed in the bud, will lead to chaos in the administration of justice. In Rev. Oswald Joseph Rachel v. Rev. John Richard McGrath 14(1889) AC 665, it was observed :

...it would be a scandal to the administration of justice if, the same question having been disposed of by one case, the litigant were to be permitted by changing the form of the proceedings to set up the same case again....

12. A clear effort has been made to get over the order passed by this Court in the Writ Petition by taking recourse to the subterfuge of a suit. Such a step is a direct attack on the status of this Court as the highest in the hierarchy of the judicial administration in this State. Public policy dictates that cognizance of such a suit should not be taken. The suit is impliedly barred within the meaning of Section 9 of the Code of Civil Procedure. If the suit itself is not maintainable, it is obvious that an order of the interim injunction issued by the Additional District Judge is without jurisdiction.

13. The suit is impliedly barred on the ground of public policy. The trial court acted without jurisdiction in entertaining the same in the teeth of the order passed by this Court in the writ petition. The court below has thrown the fundamental principles of judicial administration to the winds by entertaining the suit. The Plaintiffs in the suit are before me. The learned Music is also arrayed as one of the Respondents to the writ petition. This, in my opinion, is eminently a fit case for the exercise of powers u/s 227 of the Constitution by me soot for quashing the plaint of the suit.

14. This petition succeeds and is allowed. The plaint of Suit No. 139 of 1977

pending in the court of the Music West, Allahabad is quashed. The order passed by the 1st Additional District Judge on 20th September, 1978 is also quashed

15. In this view of the matter Writ Petition No. 10948 of 1980 is dismissed as having become in fructuous.

16. The parties are directed to bear their own costs.