
(2008) 07 AHC CK 0142

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34182 of 2000

Rajeev Maurya

APPELLANT

Vs

Rent control and eviction officer/addl.District magistrate
(city) delegated authorities, Meerut and others

RESPONDENT

Date of Decision : 16-07-2008

Acts Referred:

Citation : (2008) 07 AHC CK 0142

Hon'ble Judges : S.U.Khan, J

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Herd learned Counsel for the parties.

2. This writ petition is directed against vacancy declaration order dated 26.7.2000 passed by Rent Control and Eviction Officer/Additional District Magistrate (City), Meerut in case No. 110/21 of 2000 Smt. Kaihishwati and another v. Rajiv Maurya. Though the said order vacancy of the house in dispute in which petitioner is tenant has been declared on the ground that petitioner's possession since 1982 as tenant is without allotment order. Reliance has been placed by R.C. & E.O. upon Full Bench authority of this Court reported in Nootan Kumar v. A.D.J., 1993 (22) ALR 437 (FB). The said Full Bench authority of this Court has been overruled by the Supreme Court in Nootan Kumar v. A.D.J., 2002 (49) ALR 251 (SC). However, the Supreme Court has also held that agreement of tenancy without allotment order is binding upon landlord and tenant but not upon R.C. & E.O.

3. Placing reliance upon authority of the Supreme Court reported in Mansaram v. S.P. Pathak, AIR 1983 SC 1239. I have held in Anil Kumar Dixit v. Smt. Maya Tripathi and another, 2006 (62) ALR 383 that proceedings for allotment of release on the ground of deemed vacancy may be initiated within 12 years from the date of occurrence of vacancy. In this case since very inception of tenancy i.e. in the year 1982 vacancy was there. Release application filed after 18 years was therefore clearly barred by time.

4. Landladies respondents Nos. 2 and 3 Smt. Kailashwat and Smt. Saroj Sharma purchased the property in the year 1993.

5. Accordingly, writ petition is allowed. Impugned order is set aside.

6. I have held in *Khursheeda v. A.D.J.*, 2004 (515) ALR 586 and *H.M. Kichlu v. A.D.J.*, 2004 (2) ARC 652 that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act or while maintaining the said relief already granted" by the Courts below, Writ Court is empowered to enhance the rent to a reasonable extent.

7. In the aforesaid authority of *Khursheeda* (supra), I placed reliance upon the Supreme Court authority of *M,V, Acharya v, State of Maharashtra*, AIR 1998 SC 602 where it was held that it was essential to provide for periodical enhancement of rent under the Rent Control Acts. The Supreme Court has further held that frozen rents are giving rise to lawlessness and landlords out of frustration are approaching muscle man to get the premises vacated and Courts of law are becoming redundant in this sphere. This authority has recently been followed by the Supreme Court in *Satyawati Sharma (dead) by L.Rs. v. Union of India and another*, (2008) 5 SCC 287=2008 (71) ALR 499 (SC), part of Para 29 & para 34 of which are quoted below :

"29. It is trite to say that legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/ or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become nonexistent.

34. In *Malpe Vishwanath Acharya and others v. State of Maharashtra and another* (supra), the Court found that the criteria for determination and fixation of rent by freezing or by pegging down of rent as on 1.9.1940 or as on first date of letting, had, with the passage of time become irrational and arbitrary but did not strike down the same on the ground that extended period of Bombay Rent Act was coming to an end on 31.3.1998."

8. Under Rent Control Act, there is no provision of enhancement of rent after October, 1972 [Except where landlord is public charitable or public religious institution (section 9A) or Government is tenant (section 21 (8))]. In the aforesaid authority of *Khursheeda*, I have also placed reliance upon the authority of Supreme Court reported in *Shangrila Food Products Ltd. v. Life Insurance Corporation of India*, AIR 1996 SC 2410 paragraph 11 of which is quoted below :

"It is wellsettled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of

the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief.

Thereafter in Para8 of the aforesaid authority of Khursheeda, I held as under:

"Rent Control Act confers a reasonable advantage upon the tenant of protection against arbitrary eviction. Tenant under the Rent Control Act cannot be evicted except on specific grounds like bonafide need of the landlord, arrears of rent, subletting and material alteration etc. This advantage is also coupled with the advantage of immunity from enhancement of rent. The latter advantage cannot be said to be either reasonable or, equitable. The Supreme Court in the aforesaid authority of S.F.P. Ltd. v. L.I.C., AIR 1996 SC 2410 has laid down that while granting relief to a party the Writ Court can very well ask the said party to shed the unfair advantage which it gained under the impugned order. By slightly extending the said doctrine it may safely be held that while granting the reasonable advantage to the tenant conferred upon him by the Rent Control Act the tenant may be asked to shed the unreasonable arbitrary advantage conferred upon him by the said Rent Control Act. The Writ Court therefore while granting or maintaining the relief against arbitrary ejection to the tenant can very well ask the tenant to shed the unreasonable benefit of the Rent Control Act granted to him in the form of immunity against enhancement of rent, however inadequate the rent might be. Tenant will have to shed the undue advantage of immunity from enhancement of rent under the Rent Control Act to barter his protection from arbitrary eviction provided for by the said Act."

9. Thereafter in H.M. Kitchlu v. A.D.J., 2004 (2) ARC 652. I have held that the same principle of enhancement of rent to a reasonable extent may be made applicable while dismissing the writ petition of the landlord for the reason that by doing so Writ Court approves the protection of Rent Control Act granted to the tenant by the Courts below.

10. According to the learned Counsel for the petitioner property in dispute contains two rooms and according to learned Counsel for landlordsrespondents three rooms alongwith other amenities and is situate in Meerut Cantt., Meerut is very near to New Delhi. Accordingly, rent is enhanced to Rs. 1,000/ per month payable from July, 2008 onwards. Arrears of rent at the old rate of Rs. 225/ per month shall positively be paid to the landladies within four months.