
(2007) 02 AHC CK 0021
In the Allahabad High Court

Ram Chandra Jaiswal

APPELLANT

Vs

Rent Control and Eviction Officer/Addl. City Magistrate Vth
and Others

RESPONDENT

Date of Decision : 12-02-2007

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 14, 21(1)(i)

Citation : (2008) 2 AWC 1978

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the petitioner and perused the record.

2. This is tenant's petition. The case of the petitioner is that he is tenant of two rooms, common latrine/bathroom, courtyard and a verandah in House No. 8/100 Arya Nagar, district Kanpur Nagar. In support of his case that he is tenant of the premises, in dispute, the petitioner has relied upon rent receipts dated 14.1.1961 and from February, 1984 to July, 1984 as well as electricity bills, appended as Annexure-6 to the writ petition.

3. It appears that respondent No. 3 moved an application for allotment of the aforesaid house. In pursuance of the said application, the premises in dispute was inspected by the Rent Control Inspector, who submitted report dated 24.4.2006 against which, the petitioner-tenant filed objection dated 2.6.2006. The landlord moved application dated 10.6.2006 alongwith counter-affidavit that the application dated 9.6.2006 filed by the petitioner may be rejected with cost in absence of any evidence. The petitioner filed objection dated 20.8.2006 inter alia that the house is in the name of his mother Smt. Ram Kali wife of Sri Rameshwar and that he is living separately from his parents. The case of the petitioner is that despite evidence available on record, the Rent Control and Eviction Officer declared the vacancy vide impugned order.

4. The Rent Control and Eviction Officer declared the vacancy vide order dated 31.8.2006 in the accommodation in dispute and released it in favour of the landlord vide order dated 20.9.2006 which are impugned in the writ petition.

5. The petitioner has prayed for the following reliefs in the writ petition:

(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 31.8.2006 and 20.9.2006 (Annexures-7 and 8 to the writ petition) passed by respondent No. 1.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondent No. 1 to regularize the tenancy of the petitioner under the U.P. Act No. 13 of 1972.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondent for not evicting the petitioner from the disputed accommodation in pursuance of judgment and orders dated 31.8.2006 and 20.9.2006 passed by respondent No. 1 (Annexures-7 and 8 to the writ petition).

(iv) Issue any other suitable writ, order or direction which this Hon"ble Court may deem fit and proper under the facts and circumstances of the present case.

(v) Award the cost of the petition to the petitioner.

6. The contention of counsel for the petitioner is that there is evidence available on record to prove that at present the petitioner is residing and finding recorded by the Rent Control and Eviction Officer is illegal to the extent that he is not residing in the premises ; that the Rent Control and Eviction Officer has illegally released the disputed accommodation in favour of the respondent No. 3 ; that while order declaring the vacancy is illegal and the petitioner is residing in the premises in dispute, so it cannot be released in favour of the landlord and the tenancy of the petitioner is liable to be regularized u/s 14 of U.P. Act No. XIII of 1972 ; that the finding recorded by the Rent Control and Eviction Officer is wholly illegal, arbitrary as he has illegally recorded the finding that the petitioner is not residing in the disputed accommodation while there is series of evidence available on record establishing that the family of the petitioner is residing in the disputed accommodation; that house No. 128/1083 Kidwai Nagar, Kanpur Nagar has been purchased by mother of the petitioner and petitioner is not living with her; that petitioner is tenant in the disputed accommodation ever since 1960; that the accommodation in possession of the petitioner has wrongly been described in the impugned order as the petitioner is in occupation of only one room and that the question of declaration of vacancy and release of accommodation has been referred to a larger Bench for consideration.

7. The Rent Control and Eviction Officer on the basis of record, held that the tenant is in possession of alternate accommodation in the shape of house No. 128/1083 Kidwai Nagar, Kanpur Nagar where he is living and unnecessarily keeping the accommodation in dispute under lock and key. The Rent Control and

Eviction Officer has recorded a specific finding in this regard, while declaring the vacancy as under:

eSus i=koyh dk fof/kor voyksdu fd;k ,oa i=koyh ij izLrqr mHk; i{kksa dh fyf[kr cgl dk Hkh vuq"kyu fd;k A i=koyh ij miyC/k lk{;ks ds voyksdu ls ;g Li"V tkfgj gksrk gS fd iz"uxr Hkkx ds fdjk;snkj v;/klh jkepUnz tk;loky ds firk Jh jkes"oj n;ky Fks ftUgksus viuh ifRu Jherh jkedyh ds uke ea0 ua0 128@1083 okbZ Cykd fdnobZ uxj esa izkIr dj fy;k gS tSlk fd i=koyh ij miyC/k iap"kkkyk o"kZ 1987&92 ds voyksdu ls Li"V gksrk gS vkSj jkepUnz tk;loky Hkh fdnobZ uxj esa fuokl dj jgk gS vkSj iz"uxr Hkkx esa rkyk cUn fd;s gq, gS tSlk fd x`g fujh{kdh dh fjiksZV ds voyksdu ls Li"V gksrk gS A ;gh ugh foi{kh jkepUnz tk;loky }kjk U;k;ky; esa fnukad 27-5-06 dks tks izkFkZuk&i= izLrqr fd;k x;k gS mlesa Hkh mlus viuk irk 128@1083 okbZ Cykd fdnobZ uxj vafdr fd;k x;k gS ftlls ;g rF; Li"V :i ls izdV gksrk gS fd Jh jkepUnz tk;loky edku ua0 128@1083 okbZ Cykd fdnobZ uxj esa gh vius ifjokj lfgr fuokl dj jgk gS vkSj iz"uxr Hkkx es voS/kkfud rjhds ls rkyk cUn fd;s gq, gS A bl izdkj ;g Li"V gS fd foi{kh jkepUnz tk;loky dh ekWa ds uke vkokl la0 128@1083 okbZ Cykd fdnobZ uxj esa viuk futh edku miyC/k gS A ,slh fLFkr esa iz"uxr Hkkx /kkjk 12?3? ;w0 ih0 ,DV 13] 1972 ds vUrZxr~ oS/kkfud :i ls ftldh oS/kkfud fjDrk ?kksf"kr fd;s tkus esa dksbZ fof/kd =qfV ugh ikrk gwWa A vkns"k

vr% vkokl la[;k 8@100 vk;Zuxj dkuiqj uxj ds Hkwfe[k.M ij fLFkr ihNs ds Hkkx esa nks dejk doMZ cjenk] dkeu ySfV?u ckFk o vkaxu ?Jh jkepUnz tk;loky dh fdjk;snkj o v;/klu okyk Hkkx? dks oS/kkfud :i ls fjDr ?kksf"kr fd;k tkrk gS fjDrk dk fu;ekuqlkj izn"kZu dj;k tk; A fjDrk dk izdk"ku nSfud fgUnh o vaxzsth lekpkj&i= esa dj;k tk;sa A i=koyh fnukad 16-9-06 dks okLrs fjiht@vkoaVu ij dk;Zokgh gsrq is"k gks A

fnukad 31-8-06 g0 vLi"V ?jke lthou feJk? fd0fu0 ,oa fu0v0@v0 ua0e0 ?iape? dkuiqj uxj

8. From the above finding of fact, it is crystal clear that the tenant is not residing in the tenanted accommodation, which is kept locked and is residing with his family in house No. 128/1083 Kidwai Nagar, Kanpur Nagar, which has been purchased in the name of his mother.

9. The Rent Control and Eviction Officer while considering the release application in its order dated 29.9.2006 held that:

eSus i=koyh dk fof/kor voyksdu ,oa ifj"kyu fd;k ,oa fueqZfDr fcUnq ij Hkou Lokeh ds fo}ku vf/koDrk dh fueqZDr fcUnq ij cgl lquh A i=koyh ij miyC/k lk{;ks ds voyksdu ls ;g Li"V gS fd HkouLokeh "kadj flag ds ikl viuk Loa; dk iSr`d edku gksrs gq, og edku ua0 57@42 fnynkj [kkWa dk gkrk dkgw dksBh rfd;k okyh xyh esa ,d dejs o FkksM+h lh [kqyh txg esa fdjk;s ij fuokl djrk gS tks mlds o mlds ifjokj ds fjgk;"k gsrq cgqr gh NksVh txg gSA pwafd edku ua0 8@100 vk;Zuxj dkuiqj ds 9 lg&Hkou Lokeh gS vkSj LHkh us iz"uxr Hkkx dks Jh "kadj flag lg&Hkou Lokeh ds i{k esa fueqZDr fd;s tkus vius fueqZDr izkFkZuki= esa

izkFkZuk dh gS ,slh fLFkfr esa Hkou Lokeh Jh "kadj flag dh vko;"drk mfpr ,oa In~Hkkoh ikrs gq, iz"uxr Hkkx dks eS mlds i{k esa fueqZDr fd;k tkuk U;k;ksfpr le>rk gwWa A

vkns"k

vr% vkokl la[;k 8@100 vk;Zuxj] dkuiqj uxj ds Hkwfe[k.M ij fLFkr ihNs ds Hkkx esa nsk dejk doMZ cjenk ySfV?u ckFk o vkaxu ?Jh jkepUnz tk;loky dh fdjk;snkjh o v/;klu okyk Hkkx? dks lg&Hkou Lokeh Jh "kadj flag iq= Lo0 gjukFk flag ds i{k esa bl "krZ ds lkFk fueqZDr fd;k tkrk gS fd og iz"uxr Hkkx dks fdjk;s ij ugha mBk;sxs cfYd ges"kk vius o vius ifjokj ds fjgk;"kh iz;ksx o mi;ksx esa gh yk;saxs A okn vko;"d dk;Zokgh i=koyh nkf[ky nQ~rj gks A

fnukad 20-9-06 g0 vLi"V ?jke lthou feJk? fd0fu0 ,oa fu0v0@v0ua0e0 ?iape? dkuiqj uxj

10. It is also evident from record that there are four members in the family of the landlord who are living in a one room accommodation in house No. 57/42 Dildar Khan Hata Kahu Kothi, Takya Wall Gali, Kanpur Nagar even though he has his own house consisting of two rooms, verandah, latrine/bathroom and a courtyard which is in possession of the petitioner-tenant. The petitioner's mother has a house at 128/1083 Kidwai Nagar, Kanpur Nagar with whom he is living.

11. The vacancy has already been declared in favour of the landlord. The landlord has a legal and constitutional right to live with reasonable comfort in his own house particularly when tenant has an alternate accommodation of his father in the name of his mother with whom the petitioner-tenant is living.

12. Hon"ble the Apex Court in a catena of cases has held that Act No. XIII of 1972 applies with full force to residential as well as commercial buildings, hence, in view of acquisition of alternate accommodation by the tenant, Explanation (i) to Section 21(1) of Act No. XIII of 1972 automatically applies to the facts of the instant case, which is as under:

Explanation--In the case of a residential building-

(i) where the tenant or any member of his family who has been normally residing with him or is wholly dependent on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained.

13. The petitioner-tenant having acquired alternate accommodation, irrespective of the fact whether it was acquired prior to filing of the release application or thereafter, he has no legal right to continue in possession of the disputed accommodation and cannot take any objection regarding bona fide need and comparative hardship in the application filed for release of the accommodation in the facts and circumstances of this case.

14. The object of the U.P. Act No. XIII of 1972 is to regulate rent and letting to

the tenants and their eviction. Certain categories of tenants have been given no right to continue in the tenanted accommodation, one of which is that if a tenant or any member of his family acquires a residential accommodation in a vacant state. This is because after acquiring alternate accommodation, it is expected that the tenant will move to his own house and the tenanted accommodation vacated by him would be made available to the needy person(s).

15. U.P. Act No. XIII of 1972 is a beneficial piece of legislation. It is not in dispute that the petitioner had acquired a house of his own in vacant state in which he was living, which is apparent from the above quoted finding of fact recorded by the Rent Control and Eviction Officer. It appears that the petitioner was retaining the possession over the tenanted accommodation with ulterior motive. Strictly applying the provisions of Explanation (i) to Section 21(1) of the U.P. Act No. XIII of 1972 to achieve the aim and object of the U.P. Act No. XIII of 1972, the petitioner cannot be permitted to remain any further in the accommodation, in dispute. If this is permitted and a lenient view is taken, such tenants would be taking such advantage, which is not permissible in law. The need of others who are in que and to whom roof is not available in question of prime importance, particularly on the facts and in the circumstances of the case where a tenant or any member of his family has acquired a residential building, in vacant state, he cannot be permitted to retain the tenanted accommodation, which is lying locked.

16. Accordingly, the writ petition fails and is dismissed with the direction to the petitioner-tenant to hand over peaceful possession of the accommodation, in dispute, to the respondent-landlord within a period of one month from today failing which, he will be liable to be evicted by coercive process, in accordance with law, with the aid of local Police.

Costs:

17. So far as cost is concerned, Hon''ble the Apex Court in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , has held that:

So far as awarding of costs at the time of judgment is concerned, awarding of costs must be treated generally as mandatory inasmuch as the liberal attitude of the Courts in directing the parties to bear their own costs had led the parties to file a number of frivolous cases in the Courts or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on number of other issues or points, which were unnecessarily raised. Costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Costs should be assessed according to rule in force. If any of the parties has unreasonably protracted the proceedings, the Judge should consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates.

18. Thus, from the law laid down by the Hon''ble Apex Court in the aforesaid

case of Salem Advocate Bar Association (supra), it is apparent that non-payment of cost is an exception for which special reasons have to be given by the Court and that in normal circumstances cost has to be awarded on the party according to the issue decided in favour of the party which were unnecessarily raised. The cost so imposed should be in accordance with rules and if the proceedings are unnecessarily protracted or adjournments have been sought it is upon the discretion of the Judge to impose exemplary cost taking also into account the circumstances etc. for the purpose of adjournment.

19. Following the ratio laid down in Salem Advocate Bar Association (supra), this Court in Civil Misc. Writ Petition No. 48752 of 2006, Nizamuddin v. Shakoor Ahmad, after considering provisions of Rule 9 of Chapter XXII and Rule 11 of Chapter XXI of the High Court Rules, 1952 and provisions of Sections 34, 35A and 35B of the CPC has held that while awarding interest on a party by non-payment of principal amount or any dues should also be considered by the Court and not only interest but penal interest may also be awarded.

20. Since the petitioner has protracted the proceedings by filing unnecessary petitions and has retrained the accommodation in dispute unauthorizedly, which could have been allotted in favour of a needy person, as such cost is to be deterrent and exemplary.

21. In the facts and circumstances of the case, it is directed that apart from payment of arrears of rent, if any, the petitioner will also pay cost of Rs. 10,000 (Rupees five thousand) which shall be deposited by the petitioner before District Judge, Kanpur Nagar within two months from today. The arrears of rent as well as the cost so deposited can be withdrawn by the respondent-landlord without furnishing any security within two months from the date of deposit. In case the petitioner fails to make payment of the aforesaid amount, the same shall be recoverable as arrears of land revenue.