
(2015) 03 AHC CK 0196
In the Allahabad High Court
Case No : Rent Control (W.P.) No. 13 of 2015

Ramakant Vishwakarma

APPELLANT

Vs

District Judge (Incharge), Lucknow and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21-(1)(a), 22

Citation : (2015) 112 ALR 846

Hon'ble Judges : Mahendra Dayal, J.

Bench : Single Bench

Advocate : Prithish Kumar, for the Appellant; U.N. Misra and Vimal Kumar, for the Respondent

Final Decision : Disposed Off

Judgement

Mahendra Dayal, J.—The petitioner-tenant having suffered an order of release under section 21-(1)(a) of U.P. Act No. 13, 1972, preferred an appeal under section 22 of the aforesaid Act before the District Judge Lucknow. The learned Incharge District Judge while considering the application for interim relief, by the impugned order dated 9.12.2014 stayed the operation of the eviction order passed by the Prescribed Authority subject to the condition that the tenant-petitioner shall deposit monthly rent in respect of the disputed premises to be calculated in accordance with the circle rate of the area fixed by the Collector, Lucknow. The tenant-petitioner feeling aggrieved by the aforesaid order has preferred this writ petition on the ground that the learned Appellant Authority while passing orders on his application for interim relief has not clarified as to what amount of monthly rent is to be deposited by the tenant-petitioner. He has further submitted that the circle rate fixed by the District Collector has never been treated as a criteria for ascertaining the market value of the property. The circle rate is fixed only for the purposes of payment of stamp duty where the deed of transfer is registered. The accommodation in occupation of the tenant-petitioner is an open piece of land and if calculated as per the circle rate of the

area, the value of the property would come out to be about Rs. 1,80,000/- per month which is highly excessive and beyond the reach of the tenant-petitioner.

2. Since the contesting opposite parties No. 2 to 14 have filed a short counter-affidavit and the petitioner does not want to file any rejoinder-affidavit, the writ petition is being finally disposed of at the admission stage with the consent of the learned Counsel for the parties.

3. I have heard Sri Prithish Kumar, learned Counsel for the petitioner and Sri Vimal Kumar, who has appeared on behalf of the contesting opposite parties No. 2 to 14.

4. Learned Counsel for the petitioner relied upon a decision of the Hon''ble Apex Court in *The State of Maharashtra and Another Vs. Super Max International Pvt. Ltd. and Others*, and has submitted that although the Appellate Court while passing order on the application for interim relief, has power to impose condition, but the condition to be imposed should not be penal in nature. The Hon''ble Apex Court in the decision referred to above has held that in an appeal or revision against the decree for eviction it is open to the Appellate or the Revisional Court to stay the execution of decree on terms, including direction to pay monthly rent at a rate higher than the contractual rent, but in fixing the amount, the Court has to exercise restraint and not fix any excessive, fanciful or punitive amount.

5. The submission of the learned Counsel for the petitioner is that the premises in his occupation consists of four rooms with an appurtenant land measuring about 75 x 55 sq.ft. and two rooms with on a plot measuring 30 x 25 sq.ft. The premises was let out to the petitioner-tenant in the year 1971 on a monthly rent of Rs. 400/- and since then the tenant-petitioner has been regularly paying the rent. However, on an application being filed by the opposite parties for release, the same has been allowed by the Prescribed Authority, against which the tenant-petitioner has preferred statutory appeal as provided under section 22 of the Rent Control Act and the same is under consideration before the District Judge, Lucknow. The grievance of the tenant-petitioner is that the order passed by the learned Incharge District Judge on 9.12.2014, does not disclose a specific amount of rent which is to be deposited by the tenant-petitioner. The learned Appellate Court has simply passed an order that the tenant-petitioner should deposit the rent to be calculated at the circle rate of the area fixed by the District Magistrate. He has further submitted that the circle rate of a particular area cannot be made basis for ascertaining the market value of the property. The circle rate is fixed only for the purposes of payment of stamp duty at the time of registration of the document. The learned Counsel has pointed out that in para-7 of the short counter-affidavit filed by the opposite parties, it has been specifically stated that Nagar Nigam Lucknow in the year 2010 has assessed the premises in occupation of tenant-petitioner on a monthly rent of Rs. 10,207.50. He has submitted that he is ready to deposit the rent at the aforesaid rate.

6. Sri Vimal Kumar, who has put in appearance on behalf of the contesting

opposite parties No. 2 to 14 - landlord, has submitted that the rate of rent which is being paid by the tenant-petitioner was the rate agreed at the time when the premises was let out to him in the year 1971. Since then the market value of the property has increased several times and the opposite parties - landlord have not been able even to pay the house tax demanded by the Nagar Nigam. The premises in dispute is a commercial building and is situated on the main Lucknow-Kanpur Highway and as such if the said accommodation is let out, the same would fetch much more rent than the annual rent assessed by the Nagar Nigam. He has further submitted that the circle rate fixed by the District Magistrate is always less than the actual market value of the property. In the case relied upon by the petitioner, the Hon"ble Apex Court has found the amount fixed with reference to Stamp Duty Ready Reckoner as reasonable amount. Thus, there is no illegality in the orders passed by the learned Court below, whereby the tenant-petitioner has been directed to deposit the monthly rent to be calculated at the circle rate fixed by the District Collector.

7. In the instant case, the tenant-petitioner has already suffered an order of release and after an order of release is passed against the tenant, his status becomes that of an unauthorized person. After the release order is passed, the landlord is entitled to get the damages from the person in occupation upto the date he delivers peaceful possession to the landlord. The tenant-petitioner is an unauthorized occupant after the release order is passed against him and as such he is liable to pay damages till the date of handing over possession of the disputed premises. The purpose of asking a tenant to deposit higher rent than the contractual rent and imposing certain conditions is that the tenant should not prolong the disposal of appeal and after dismissal of appeal, the landlord may get some amount as damages. He has further submitted that considering the area in occupation of the tenant-petitioner which is about five thousand square feet and the location of the premises, the monthly rent which the premises can fetch at the current rent is around Rupees two lacs. Thus, the tenant-petitioner should be asked to deposit at least a sum of Rupees two lacs per month before the Court below and men his appeal be heard on merit.

8. On perusal of the provisions of the Rent Control Act and the law laid down by the Hon"ble Apex Court, it is clear that the Appellate Court or Revisional Court as the case may be while staying execution of the decree or order, may impose certain conditions and one of such conditions may be a direction to the tenant to deposit monthly rent at higher rate. At the same time, the Hon"ble Apex Court has further clarified that in fixing the amount, the Court should keep in mind that the amount so fixed should not be excessive, fanciful or punitive. In the present case, it is not disputed that the petitioner-tenant has been a tenant of the premises in question on monthly rent of Rs. 400/- only and his appeal against the order of release is pending before the Appellate Court. The proceedings of appeal are treated as continuation of the proceedings of release and the tenant-petitioner has a right to get the execution order stayed during the pendency of me appeal, but certainly on certain conditions. Keeping in view the area in

occupation of the tenant-petitioner and its location and also considering various facts and circumstances of the case, I am of the view that the direction of the learned Court below to deposit monthly rent at the rate fixed by the District Collector as circle rate would be punitive and excessive. The purpose of imposing condition for early disposal of the appeal would be fulfilled in case the tenant-petitioner is asked to deposit monthly rent at the rate of Rs. 20,000/- per month before the Court below and a direction is issued to the Appellate Court to decide the appeal within a time frame.

9. In view of the above, the impugned order dated 9.12.2014 passed by the Incharge District Judge, Lucknow in Rent Appeal No. 72 of 2014 is modified to the extent that the tenant-petitioner shall deposit Rs. 20,000/- as monthly rent with effect from the date of passing of the release order till the final disposal of appeal, but the same shall not be paid to the landlord-opposite parties. The learned Appellate Court is directed to decide the rent appeal expeditiously without giving unnecessary adjournment to any of the parties and the amount so deposited by the tenant-petitioner alongwith interest should be paid after final the disposal of the appeal to either side depending upon the result of the appeal. With the aforesaid observations, the writ petition is disposed of.