
(2010) 02 AHC CK 0234
In the Allahabad High Court

Ramesh Chandra Mishra and Others

APPELLANT

Vs

Prescribed Authority/Civil Judge (Senior Division), Court No.
10 and Another

RESPONDENT

Date of Decision : 26-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Transfer of Property Act, 1882 — Section 108, 111
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21

Citation : (2010) 02 AHC CK 0234

Hon'ble Judges : S.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.S. Chauhan, J.—The present petition has been filed for quashing of the proceedings of P.A. Execution Case No. 21 of 2005 including the judgment dated 24.8.2009 passed by the opposite party No. 1 and further a writ of mandamus to the opposite party No. 1 not to proceed with P.A. Execution Case No. 21 of 2005 and not to evict the petitioners from the premises in dispute.

2. The facts in brief, which give rise to the present petition are that a shop situate at Station Road, Raibareli on nazul plots No. 1488, 1491 and 1492 of which Ram Swaroop, grandfather of the petitioners was tenant and after his death, the tenancy was inherited by their father late Krishna Nand Mishra. Plot Nos. 1489, 1490, 1493, 1494 and 1495 are nazul plots and lease in respect of all these plots were given to Gauri Shanker and Laxmi Narain with effect from 1.9.1919 to 31.3.1949. Subsequently, Laxmi Narain sold his lease hold rights in the aforesaid plot Nos. 1488, 1491 and 1492 under a registered sale deed with the permission of the Collector in favour of Mangali Prasad, which was granted for a period of 30 years with effect from 1.4.1949 to 31.3.1979, but Mangali Prasad did not apply for renewal of lease after expiry of the term. In the meantime, Mangali Prasad on 18.4.1956 with the permission of the Collector,

Raibareli executed a registered gift deed in favour of Smt. Ram Janki (daughter-in-law) and Ramesh Kumar (minor grandson). Later on Smt. Kailasha, widow of Mangali Prasad got a registered gift deed executed on 5.6.1956 from Smt. Ram Janki and Ramesh Kumar and after obtaining the aforesaid gift deed, Smt. Kailasha sold three shops, including the shop in dispute under a registered sale deed dated 1.2.1969 to Smt. Om Shakti, opposite party No. 2. Opposite party No. 2 after becoming the owner of the structure standing on the plots in question i.e. double story and single story, including the shop in dispute, made an application on 3.7.1982 u/s 21(1)(a) of U.P. Urban Buildings (Regulation of Letting , Rent & Eviction) Act, 1972 (for short the "Act") against the father of the petitioners for release on the ground of bona fide need for establishing her son, Rajendra Kumar in business. The application was contested by late Krishna Nand Mishra, father of the petitioners, denying the relationship of landlord and tenant on the ground that after purchase of the shop by opposite party No. 2 when he came to know about the transfer, he remitted the rent to her through money order, which was refused, whereupon he made an application u/s 7-C(2) of U.P. Act No. III of 1947, in which opposite party No. 2 filed her objections denying Krishna Nand Mishra to be her tenant. He also denied the bona fide need of opposite party No. 2. The Prescribed Authority after considering the entire facts on record allowed the application holding therein that the need of opposite party No. 2 was bona fide and on a comparison of the respective hardship of the parties, it was held that in case the application is rejected, the opposite party No. 2 would suffer great hardship than that of the father of the petitioners vide order dated 17.9.1983. Aggrieved with the aforesaid order, father of the petitioners filed an appeal before the District Judge, Raibareli, which was dismissed by the Special/Additional District Judge, Raibareli vide judgment dated 9.7.1985. The father of the petitioners feeling aggrieved with the aforesaid order, filed Writ Petition No. 3787 (R.C.) of 1985 before this Court and during the pendency of the writ petition, Krishna Nand Mishra, father of the petitioners, died and the petitioners were substituted as his heirs and legal representatives. The aforesaid writ petition was dismissed by this Court vide judgment and order dated 24.10.2005. Thereafter, petitioners filed Review Petition No. 351 (R.C.) of 2005 before this Court, which too was dismissed vide order dated 26.3.2007. This Court while dismissing the review petition enhanced the rent from Rs. 5/- per month to Rs. 500/- per month and directed the petitioners to pay the same with effect from 9.7.1985, the date when the appeal against the release order was dismissed by the appellate authority and thereafter with effect from 20.7.1999 they were required to pay the rent @ Rs. 1000/- per month, besides to pay a sum of Rs. 2 lakhs to the opposite party No. 2. The petitioners again filed Review Petition No. 113 of 2007 for recall/setting aside the order dated 26.3.2007. During the pendency of the aforesaid review petition, the petitioners moved an application u/s 151 C.P.C. praying for setting aside the order dated 26.3.2007. They also made an application for stay of the orders dated 26.3.2007 and 24.10.2005. Thereafter, the petitioners have also made an application for impleadment of the State of U.P. through Secretary, Urban Department, Lucknow

stating therein that they have got the nazul plots in dispute, i.e. plot Nos. 1488, 1491 and 1492 converted into freehold and a sale deed had already been executed in their favour on 29.12.1997. The review petition came up for hearing and was dismissed vide order dated 25.5.2007 and a portion of the judgment dated 26.3.2007 was set aside so far it directed the petitioners to pay sum of Rs. 2 lakhs to the opposite party No. 2 towards rent and damages with effect from 1985. During the pendency of Review Petition No. 351 of 2005, petitioners filed Regular Suit No. 258 of 2006 on 3.4.2006 against the opposite party No. 2 and her sons for permanent and mandatory injunction restraining them not to evict the petitioners forcibly as well as not to interfere with the peaceful possession and further they may be directed through mandatory injunction to remove the construction standing on their plots, which they have got converted from nazul plots to freehold, on which an order was passed on 3.4.2006 directing the parties to maintain status-quo. It is stated that the said order is still in operation and has not been vacated or modified. Opposite party No. 2 after the decision of the writ petition, made an application u/s 23 of the Act for enforcement of the order dated 17.9.1983 passed by the Prescribed Authority in P.A. Case No. 9 of 1982 for getting the possession of the shop in dispute. The said application was registered as P.A. Execution Case No. 21 of 2005. Against the said application, objections were filed by the petitioners stating therein that they are in possession since 1945 over an area of 31.62 sq. mtrs. comprising of plot Nos. 1488, 1491 and 1492 and they had deposited a sum of Rs. 16,442/- through Treasury Challan No. 9 dated 5.8.1996 and after completion of all the formalities, a registered deed has been executed by the Collector on behalf of His Excellency the Governor of U.P. on 29.12.1997 and they became absolute owner of the plots in dispute. They also stated that their names have also been recorded in nazul property register as well as in the assessment register of Nagar Palika Parishad, Raibareli and, therefore, they prayed that the execution proceedings may not be proceeded against them. The petitioners have also stated that they had already filed Regular Suit No. 258 of 2006 and opposite party No. 2 had put in appearance in the aforesaid Suit. Thereafter, petitioners moved an application for recall of the order dated 17.9.1983 on the ground that they became the owner of the shop in dispute vide freehold deed dated 29.12.1997 and, therefore, the order of release dated 17.9.1983 should not be enforced against them and the said order is liable to be recalled in the changed circumstances. After inviting the objections and considering the arguments of the parties, opposite party No. 1 dismissed the said application on 24.8.2009 on the ground that the execution proceedings were pending against the petitioners in pursuance to the order dated 17.9.1983 and during the pendency of the said proceedings, the petitioners after a lapse of about 14 years got the freehold deed executed in their favour and the objections have been raised against the execution proceedings, which were not maintainable and as such the petitioners are not entitled to get the relief and it is beyond the jurisdiction of the executing court to go behind the decree. It was also held that the application was in the nature of review, which the execution court was having no right. Aggrieved with the said order, the present petition has

been filed.

3. Submission of learned Counsel for the petitioners is that petitioners have acquired larger interest as compared to their lesser interest by virtue of execution of freehold deed on 29.12.1997 in view of the provisions contained u/s 111(d) of the Transfer of Property Act. He further submits that no freehold deed could have been executed in favour of opposite party No. 2 on 17.9.1999 as the freehold deed has already been executed in favour of the petitioners on 29.12.1997. It is further submitted that opposite party No. 2 has played fraud upon the State Government and while moving the application for freehold she did not disclose before the State Government that a freehold deed has already been executed in favour of the petitioners on 29.12.1997. It is also submitted that once the petitioners acquired the status of the landlord, the subsequent events ought to have been taken into consideration by the trial court while rejecting the application of the petitioners in the changed circumstances and the petitioners could not have been evicted at the instance of the judgment of this Court. In support of his contention he has placed reliance upon the following decisions:

Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji Devi (Dead) by LRs. and Another, Pramod Kumar Jaiswal and Others Vs. Bibi Husn Bano and Others, Siddh Gopal and Anr. v. Dilip Kumar and Ors. (2007) 2 ARC 32.

4. Learned Counsel for the opposite party No. 2, on the other hand, has submitted that lease of the father of the petitioners had already expired on 31.3.1949, which was granted on 1.9.1919 and thereafter there was a fresh settlement in favour of Mangali Prasad on 1.4.1949 for a period of 30 years i.e. upto 31.3.1979. Opposite party No. 2 became the owner through Smt. Kailasha, who executed a registered sale deed on 1.2.1969 and the lease was subsisting on the said date and had not come to an end. The right of opposite party No. 2 crystallised and matured on 1.2.1969 and as such she was rightly treated to be landlord by this Court and thereafter she has got every right to apply for freehold rights in view of the Government Order dated 3.10.1994 and the petitioners were having no right to apply for declaration of freehold right as their lease had already come to an end on 31.3.1949 and thereafter a fresh settlement has been entered into with the petitioners. It is also submitted that opposite party No. 2 was not supposed to declare the freehold deed executed in favour of the petitioners as it was not in her knowledge and neither the State Government was having any right to settle the freehold rights in favour of the petitioners when they were only the tenants and the opposite party No. 2 continued in the capacity of the landlord and she was all along duly recognised as landlord by the petitioners and she has instituted the proceedings for eviction on the ground of personal need and objection was never raised at any point of time, so the opposite party No. 2 was having a right to hold over the property unless evicted by the State Government. The State Government also evolved a policy to declare the freehold of such category of nazul land vide Government Order dated 3.10.1994 and according to the nazul policy, the consent of landlord, i.e.

opposite party No. 2 ought to have been taken before granting freehold right to the petitioners, who were tenants. Opposite party No. 2 was never informed nor it was brought to her knowledge nor any consent was taken from her to confirm freehold right in favour of the petitioners, which could materialise only after the consent of the landlord.

5. Counsel for the opposite party No. 2 has placed reliance upon the decision of the apex Court in the case of Sardar Estates Vs. Atma Ram Properties (P) Ltd., to stress that it is a gross abuse of process of the court and the opposite party No. 2 has been litigating since 1982 for release of the premises in dispute and, therefore, this petition is liable to be thrown in view of the aforesaid judgment.

6. I have heard learned Counsel for the parties at length and has also perused the record minutely.

7. The petitioners never disclosed in their application that they had got consent from the landlord, who was having right to hold over the property as contemplated u/s 108 of the Transfer of Property Act although the lease of the landlord has expired on 31.3.1979, but the right of the landlord was never questioned or cancelled by the State Government and neither the opposite party No. 2 was ever evicted. The right of the landlord to initiate the proceedings was also not questioned nor raised before courts below or this Court and rather petitioners admitted the status of opposite party No. 2 as landlord and they continued to contest the proceedings with the aforesaid assumption. Hence, opposite party No. 2 cannot be said to be the unlawful owner qua the petitioners. The status of the petitioners remained that of tenant. The policy of the State Government contemplated that if a tenant wanted to get the nazul land converted into freehold, then it was incumbent upon him to get the consent of the landlord in view of the Government Order dated 3.10.1994. In this case no such consent was ever obtained from the landlord and it is apparent that the petitioners played fraud upon the State Government in getting themselves declared as landlord and obtained an order of freehold and also got freehold deed executed in their favour on 29.12.1997. They contested the proceedings after 1991 in this Court upto the year 2007 and they did not bring it to the notice of the Court at any point of time that they have acquired larger interest by virtue of being tenant and they have been declared landlord by the State Government, but at a belated stage in the execution proceedings by way of objection it has been disclosed that the petitioners have acquired larger interest and, therefore, the order dated 17.9.1983 passed by the Prescribed Authority was liable to be recalled. The application has been moved at a very belated stage to thwart the execution proceedings, which have attained finality from this Court vide judgment and order dated 24.10.2005 and thereafter the review application also having been dismissed on 26.3.2007 with partial modification of deletion of Rs. 2 lakhs as costs towards rent and damages. The matter attained finality by this Court. The petitioners sought a novel device by filing a Suit for mandatory injunction and on the date of filing of the Suit i.e. 3.4.2006 an order for

maintaining status-quo was passed by the trial court. The trial court was not apprised properly in regard to the finality of the litigation by this Court and the order, which was obtained by playing fraud upon the court could not have been acted upon. The petitioners are trying to nullify the judgment passed by this Court and by the trial court after a long litigation i.e. from the year 1982 upto the year 2007. One or the other method has been adopted and the petitioners have not cared to obey the judgment of the trial court, appellate court as well as by this Court and after such a long drawn litigation the institution of the Suit for mandatory injunction is sheer abuse of process of the court and the application moved by the petitioners for reviewing the order dated 17.9.1983 can also be not said to be an objection tenable under law on account of the fact that such objection cannot be taken in the execution proceedings and if the petitioners were declared freehold owners on 29.12.1997, then they ought to have contested their claim and place the changed circumstances in the writ petition pending in this Court. What has prompted the petitioners to withhold the aforesaid document and evidence is better known to the petitioners. The petitioners cannot be permitted to raise such a plea at such a belated stage by stating that they have acquired freehold right. The petitioners could not have acquired any such right unless and until they have obtained consent from the continuing landlord against whom they were contesting. The apex Court has rightly held in the case of Sardar Estates (supra) that such type of litigations should be dealt with iron hand by the court and looking to the frivolous objection filed in the execution case, the apex Court came to the conclusion that it was a flagrant violation of the eviction decree against the landlords. For perusal paragraphs 8 and 9 of the aforesaid judgment are quoted below:

8. It is evident that frivolous objections have been filed in the execution case which is an abuse of the process of the court and a flagrant violation of the eviction decree against the appellant against which appeals had been rejected and even SLP in this Court was dismissed.

9. It is evident that after the first round of litigation was over the tenant started a second round of litigation on frivolous grounds which was a flagrant abuse of the process of the court. This is a practice which has become widespread, and which the Court cannot approve of, otherwise no judgment will even attain finality. Hence, we dismiss this appeal and impose a cost of Rs. 10,000 (Rupees ten thousand only) on the appellant which shall be paid to the respondent within two months from today. The appellant shall also hand over the premises in question, which is in his possession, to the landlord within three months from today failing which he will be evicted by police force.

8. Thus, the argument of counsel for the petitioners that petitioners acquired larger interest does not stand to reason nor can be accepted as the acquisition of right was based on fraud and, therefore, fraud vitiates every decision in view of the law laid down in the case of A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, . The freehold deed, which was obtained surreptitiously was

withheld by the petitioners for such a long time, so that the validity of the same cannot be questioned by the petitioners and such objection being raised in the execution proceedings is not maintainable and has rightly been rejected by the trial court.

9. It has been informed by learned Counsel for the opposite party No. 2 that petitioners have been evicted and so in these circumstances the question of staying eviction of the petitioners also does not arise. The case laws relied upon by the learned Counsel for the petitioners do not come to the rescue of the petitioners in view of the findings recorded hereinabove.

10. Petition is devoid of merit. It is accordingly dismissed.