

(2006) 10 AHC CK 0107

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28196 of 2005

Ramesh Kumar and Anr.

APPELLANT

Vs

Addl. District Magistrate (Civil Supplies)/R.C.& E.O., Varanasi
& Ors.

RESPONDENT

Date of Decision : 28-10-2006

Acts Referred:

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

Citation : (2006) 10 AHC CK 0107

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Counsels for the parties and perused the record.

2. This is tenants' petition. Premises No. B31/32 situated at Mohalla Lanka in District Varanasi (renumbered as B31/321) was admittedly given on rent to petitioner No. 1 vide rent deed dated 1121975 by its care taker Sri Shreenath Khandelwal on a monthly rent of Rs. 40 as per averments made in paragraph 3 of the writ petition. The petitioner No. 1 was recorded as tenant in the record of the Nagar Nigam on the basis of the aforesaid agreement of tenancy executed by Sri Shreenath Khandelwal.

3. After lapse of earlier agreement deed dated 1121975, an agreement was again entered into on 2531979 (signed on 283 1979) between the aforesaid parties extending the tenancy.

4. The respondent Nos. 2 and 3 claiming themselves to be landlords/owners of the aforesaid premises in pursuance of a will dated 2561993 executed by late Sri Dwarika Nath Khandelwal who was the sole owner preferred a release application under Section 16 (1) (b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act"). It was alleged in the release application that a portion of the said building was owned by late Sri Vishwa Nath Khandelwas, father of respondent Nos. 2 and 3 and after his death

on 14/3/1983, they alongwith their mother Smt. Nirmala Khandelwal became owners of the whole property.

5. It was further alleged by the respondents in the release application that before the release application, they were residing at Sekunderabad (Andhra Pradesh) but due to unavoidable circumstances, respondent No. 2 shifted to Varanasi and the respondent No. 3 would also be following suit after winding up the affairs at Sekunderabad. They averred that since they had no place to carry on business in Varanasi for the livelihood of the family consisting of 8 members, the aforesaid application for release was being filed.

6. It was also averred in the release application that during the life time of late Sri Dwarika Nath Khandelwal, the property was being managed by Sri Sri Nath Khandelwal, care taker on behalf of Sri Dwarika Nath Khandelwal which had been given on rent to the petitioners by him allegedly with the consent of late Sri Dwarika Nath Khandelwal on a monthly rent of Rs. 100 w.e.f. 14/1/79 vide a written agreement dated 28/3/1979 and that the said shop was given on rent without following the procedure prescribed under the Act and without any allotment by the authority, hence there is deemed vacancy as it was not given on rent in violation of the provisions of Act No. XIII of 1972.

7. The petitioner No. 1 filed his objection to the release application, inter alia that they were inducted as tenants by Sri Shreenath Khandelwal as owner of the property and that the respondent Nos. 2 and 3 had any need of the disputed premises for their personal need as a number of other accommodations are available to them nor the premises was ever sublet to any person.

8. It appears from record that the case of the respondents before the Courts below was that the petitioner No. 1 had also sublet shop No. 10 alongwith Godown and latrine/bathroom to his brother Sri Dinesh Kumarpetitioner No. 2, who is utilizing the said shop for sale of Homoeopathic medicines in the name and style of M/s. Bharat Homoeo Research Centre. Sri Dinesh Kumar also inducted Sri Devasheesh Guha in the aforesaid business. It was also averred that both Sri Dinesh Kumar and Sri Devasheesh Guha do not fall within the meaning of "family" as defined in the Act, hence the disputed premises is liable to be declared vacant on this ground as well.

9. The Rent Control Inspector inspected the disputed premises and submitted report on 23/12/2000.

10. After considering rival submissions of the parties, vacancy was declared vide order dated 4/3/2005 against which Civil Misc. Writ No. 20138 of 2005 was filed by the petitioner before High Court, which according to the Counsel for the petitioner, was dismissed in default vide judgment and order dated 21/3/2005.

11. The contention of Counsel for the petitioners is that in his affidavit dated 17/11/2001, the petitioner No. 1 categorically stated that the respondents have given a part of shop No. 15 to Sri Govind Kejariwal and Sri Ashok Kejariwal which

clearly demolished their case of bona fide need. Case of advance payment of rent w.e.f. 1121995 to Sri Shreenath Khandelwal amounting to Rs. 1,440 was also set up by the petitioners. It is urged that the impugned order having been passed without considering the fact that the landlord and tenant are bound by the contract entered into between them hence, release application is not maintainable and the impugned order is vitiated in the eyes of law.

12. He has also vehemently urged that there being no finding about the bona fide need of the respondents, the impugned order is cryptic and has been passed without application of mind. He urged that the Court below has committed manifest error of law in passing the impugned order being contrary to provisions of Section 16(1)(b) of the Act which is liable to be quashed in the facts and circumstances of this case.

13. Counsel for the petitioner in support of his contention that in absence of reason, an order has to be treated as void, relied upon the decision of Hon''ble the Apex Court in *M.S. Travancore Rayon Ltd. v. Union of India*, 1969 (3) SCC 868.

14. In support of his contention that once the landlord entered into an agreement with the tenant and gave the building to the tenant on rent without intimating the District Magistrate, release application is not maintainable, he placed implicit reliance on a decision of this Court in *Jagdish v. District Judge, Kanpur Nagar & Ors.*, 2002 (1) ARC 327.

15. Thus, the Counsel for the petitioner assailed the impugned order on four grounds (i) it being admitted between the landlord and tenant that the agreement to occupy the premises was executed by the landlord and the tenant, the release application filed by the landlord was not maintainable; (ii) no reason having been recorded by the authority to arrive at its conclusion that the premises is bona fide required by the landlord, the impugned judgment suffers from manifest illegality; (iii) the petitioner has locus to object to the release application of the landlord and is a person aggrieved to invoke writ jurisdiction and (iv) the landlord having waived his right for seeking release by entering into an agreement with the tenant, release application is not maintainable.

16. On ground No. (i), he submits that there is no dispute that the premises, in dispute, has throughout been in actual physical occupation of the petitioner, which has been admitted and proved by evidence on record. In support of this contention, he relied upon the decisions in *M/s. Travancore Rayon Ltd.* (supra), *Jagdish* (supra) *Ram Shankar Yadav v. XVth Additional District Judge*, 2002 ARC (1) 227; *Munna Lal Agarwal v. Rent Control and Eviction Officer*, 2005(1) JCLR 397 (All) : 2005 (1) ARC 144; *Nanak Ram v. Kundalrai*, 1986 (3) SCC 8; *Nutan Kumar v. IInd Addl. District Judge*, 2002 (8) SCC 31; *Ashok Kumar v. Sana Ullah (dead) & Ors.*, 1996 (6) SCC 342, and rent deed dated 1121975.

17. On ground No. (ii), he submits that no reasons having been recorded by the authority to arrive at the conclusions that the premises is bona fide required by

the landlord, the impugned judgment suffers from manifest illegality. In support of this contention, he placed reliance upon the decisions in Jagdish (supra); Union of India v. Mohan Lal Capoor & Ors., 1973 (2) SCC 836 and Ram Kumar v. VIIth Addl. District Judge, Meerut, 1993 ARC (1) 309.

18. On ground No. (iii), he submits that the petitioner has locus to object if to the release application of the landlord and is a person aggrieved to invoke writ jurisdiction. In support of this contention, he placed reliance on the decisions in Bar Council of Maharashtra v. M.V. Dabholkar & Ors., 1975 (2) SCC 702; Maharaj Singh v. State of U.P. & Ors., 1977 (1) SCC 155; Ram Krishna v. Union of India, AIR 1969 Calcutta 18; M.S. Jayaraj v. Commissioner of Excise Kerala & Ors., 2000 (7) SCC 552; Jai Mangal Oraon v. Mira Nayak (Smt.) & Ors., 2000 (5) SCC 141; K. Ramadas Shenoy v. The Chief Officers Town Municipal Council UDIPI & Ors., 1974 (2) SCC 506; Bangalore Medical Trust v. B.S. Muddappas & Ors., 1991 (4) SCC 54; Ram Narayan Sharma v. Shakuntala Gaur, 2002 (5) SCC 184; Ganesh Trivedi v. Sundar Devi & Ors., 2002 (2) SCC 329; B.K. Parasher v. Dinesh Kumar & Anr., 2000 (3) SCC 739; Ramesh Chandra Misra v. Shri Mahendra Tripathi & Ors., 1977 (1) SCC 25; Harbans Lal v. Jagmohan Sharan, 1985 (4) SCC 333 and Talib Husain v. 1st Addl. District Judge, Nainital, 1986 (1) ALJ 845.

19. On ground No. (iv), he placed reliance on the decisions in Martin & Harris Ltd. v. VIth Addl. District Judge & Ors., 1998(1) JCLR 158 (SC) : 1998 (1) SCC 732; Shri Lachoo Mal v. Shri Radhey Shyam, 1971 (1) SCC 619 and Laxmi Das Bapudas Darbar v. Smt. Rudravva, 2002 ACJ 136.

20. Contention of Counsel for the respondents is that admittedly as per paragraph 3 of the writ petition, Sri Sri Nath Khandelwal was care taker of the building as is also mentioned in the release application filed by the landlords and not its owner or landlord. The property, in fact was owned by late Sri Dwarika Nath Khandelwal who never gave any consent for letting it out on rent to petitioner or any other person. He drew the attention of the Court to Annexures 1 and 2 to the writ petition, which are agreements dated 1121975 and 2531979 (signed on 2831979) executed between petitioner No. 1 and Sri Shreenath Khandelwal and relied upon by the petitioners. A perusal of the aforesaid agreements shows that Sri Shreenath Khandelwal in the interest of their case had impersonated himself to be landlord in both the agreements aforesaid. He urged that the impugned order is just and proper and no interference in the writ jurisdiction is warranted as a caretaker cannot induct any person as a tenant in any property either without the express consent by the landlord in this regard or by impersonating himself as landlord. Any tenancy said to have been created is neither legal nor such tenants have any legal rights to claim themselves as bona fide tenants.

21. Having considered, the respective arguments of Counsels for the parties and after perusal of record, I find that the petitioners have placed heavy reliance on agreements dated 112 1975 and 2531979 (executed on 2831979), contained in Annexures 1 and 2 to the writ petition. The relevant extract of the agreement

dated 1121975 is as under:

22. The relevant extract of agreement dated 2531979, executed on 2831979 regarding extension of tenancy and showing the allegation of Sri Shreenath Khandelwal as owner of the property is as under:

23. The admitted fact which appears from the pleadings in writ petition is that both the parties have stated that Sri Sri Nath Khandelwas was caretaker. It is also apparent from the record that he had entered into an agreement with the petitioners claiming himself to be landlord though the real owner/landlord was Sri Dwarika Nath Khandelwal. It further appears that the caretaker Sri Shreenath Khandelwal entered into this agreement with the petitioners, impersonating himself as owner of the property, as late Sri Dwarika Nath Khandelwal along with his family was living in Sekunderabad (Andhra Pradesh) and fraud was played upon the respondents by the petitioners and Sri Sri Nath Khandelwal.

24. Admittedly also, petitioner No. 1 inducted his brother Sri Dinesh Kumar into the shop who inducted Sri Devasheesh Guha as subtenant, which they could not have done as this act of the petitioners amounts to subletting. Sri Dinesh Kumar does not fall within the meaning of "family" as defined in the Act and Sri Devasheesh Guha was an outsider. It is apparent from the order dated 1872006 that Civil Misc. Writ Petition No. 20138 of 2005 also filed by the petitioners against order dated 432005 was dismissed by this Court and the review application was also dismissed by the following order dated 1872006:

?Hon"ble Anjani Kumar, J.

The case is called upon in the revised list. Sri K.K. Shukla holding brief of Sri Arvind Srivastava, learned Counsel appearing on behalf of the petitioners prays for adjournment of the case. A similar prayer was made and adjournment was granted yesterday and now he is not prepared to argue the case. Since nobody is ready to argue the case, this review petition is, therefore, dismissed for want of prosecution.

Dated 1872006.

Sd Anjani Kumar, J.?

25. The contention of the Counsel for the petitioner is that the case was dismissed in default is incorrect as is apparent from above order. The aforesaid order clearly shows that even the review petition was dismissed as Counsel for the petitioner was not ready to argue the case.

26. So far as contention of Counsel for the petitioner that in the absence of reason, an order has to be treated as void is concerned, there is no conflict about the law laid down in Rayon M.S. Travancore Ltd. (supra) but the order impugned being reasoned one, hence this argument has no force.

27. In so far as the contention of Counsel for the petitioner that once the landlord entered into an agreement with the tenant and gave the building to the

tenant on rent without intimating the District Magistrate, release application is not maintainable as has been held by this Court in Jagdish v. District Judge Kanpur Nagar & Ors. (supra) is concerned, there is also no dispute about this proposition of law. However, in the instant case it appears from record that fraud has been played on the landlord by Sri Shreenath Khandelwal and the petitioner. Neither any express consent nor any material evidence was brought before the Courts below that the shop in dispute had been given on rent by Sri Dwarika Nath Khandelwal, rather it is apparent that it was given on rent by the caretaker Sri Shreenath Khandelwal without the consent of the actual landlord and owner of the property. Thus, in the circumstances the decision cited by the petitioner, aforesaid, is not applicable to the facts and circumstances of the instant case.

28. As regards advance of Rs. 1,440 under agreement dated 112 1975, it was paid by the petitioner to Sri Shreenath Khandelwal, the caretaker of the property of Sri Dwarika Nath Khandelwal. The petitioners cannot be said to be legal tenants as they were neither inducted as tenants by the true owners and landlords of the property no rent was ever paid to them by the petitioners.

29. Though subletting is very hard to prove but the facts and circumstances of each case have to be considered. Petitioner No. 1 has not been able to prove before the Courts below in which capacity his brother petitioner No. 2 and Sri Devasheesh Guha have been doing business in aforesaid shop No. 10 with Godown, toilet etc. It may be mentioned that the business of Sri Guha is also different that the petitioners and in the facts and circumstances of this case, subletting is proved.

30. The petitioner having also been inducted by an unauthorized person are unauthorized occupants. The time period under the alleged agreements entered into between the petitioner No. 1 and Sri Shreenath Khandelwal can neither be enforced against the actual landlord nor can vest the petitioners with any legal right.

31. I have also given thoughtful consideration to the case laws cited by Counsel for the petitioner in support of his contentions on ground Nos. (i) to (iv) mentioned in the body of the judgment. As there was no contract between actual landlord and the petitioner, the case laws cited in support of ground No. (i) are not applicable to the facts and circumstances of the instant case. There is no dispute about the proposition of law that reasons must be recorded while arriving at a conclusion. As discussed above, the Courts below have recorded specific reasons for arriving at the conclusion that the petitioner is unauthorized occupant, as such, the case laws cited in support of this contention do not support the case of the petitioner. So far as ground No. (iii) is concerned, petitioner being an unauthorized occupant, has no locus to invoke writ jurisdiction and for the same reason, case laws cited in support of ground No. (iv) are not applicable to the facts and circumstances of the present case.

32. Civil Misc. Writ Petition No. 20138 of 2005 has already been dismissed. The impugned orders of the Courts below do not suffer from any illegality or infirmity.

33. For all the reasons stated above, the writ petition is dismissed. It is directed that the petitioner will vacate the disputed accommodation within two months from today and will also make payment of arrears of rent from the date of occupation till the date of eviction to the respondent No. 2 landlord within the same period. In case, petitioner fails to vacate the premises, in dispute, within the stipulated period, she will be evicted by coercive process with the aid of local Police and in case of non payment of arrears of rent, as directed above, the same shall be recovered from her by the authority as arrears of land revenue. No order as to costs.