

(1975) 07 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3595 of 1973

Rameshwar Prasad Agarwal

APPELLANT

Vs

The 1st Addl. Dist. Judge, Allahabad and Others

RESPONDENT

Date of Decision : 25-07-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 17, 18, 43

Citation : AIR 1976 All 323

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : Gyan Prakash, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

C.S.P. Singh, J.—The petitioner is owner of premises No. 98, K P. Kakkar Road, Allahabad. In the ground floor portion of this accommodation, there are two shops. One shop is in the possession of Pur-shottam Dass respondent No. 3. On the 1st April, 1972, Purshottam Dass moved an application for regularization of his tenancy over the disputed shop, alleging that he had been in possession of it as a tenant for the last thirteen years under the name and style of "Agarwal Paper Stores" and paying a monthly rent of Rs. 150/- per month. The monthly rent, according to respondent No. 3, was initially Rs. 80/- per month which was increased to Rs. 100/- per month, and then to Rs. 120/- per month and thereafter to Rs. 150/- per month. The landlord was now asking him to enhance the rent to Rs. 200/- per month. As no rent receipt was being issued by the landlord, a prayer was made that his possession be regularized by issuing an allotment order in his favour. The Chief Inspector inspected the premises and found the tenant in possession and made a report to the Rent Control and Eviction Officer, The respondent No. 3 in support of his allegation filed an affidavit before the Rent Control and Eviction Officer on 20-4-1972. The Rent

Control and Eviction Officer passed an allotment order in favour of the respondent No. 3 on 24-4-1972. Subsequently, the petitioner filed an objection against the aforesaid order on 15-5-1972, and prayed that the allotment be cancelled. The Rent Control and Eviction Officer after hearing the parties, dismissed the objection on 7-8-1972, The petitioner preferred an appeal against this order to the Additional District Judge. This appeal has been dismissed by order dated 21-2-1973. The present petition has been filed against this order as well as the order passed by the Rent Control and Eviction Officer.

2. Before coming to the contention raised on behalf of the petitioner, it is necessary to set out the case of the parties and the findings recorded by the subordinate authorities. The petitioner alleged in his application for cancellation of the allotment order that the petitioner and the allotted were close relations and the allottee's wife and his minor son started a partnership business in the premises. The partnership was dissolved on the 17th February, 1952. It is agreed that the allottee would vacate the premises within a month, or in default will pay compensation and penalty. It was averred that the allottee had failed to vacate the premises and obtained an allotment order by fraud, misrepresentation and concealment of material facts. The allottee in his affidavit denied the partnership, and alleged that he was tenant of the disputed accommodation, to begin with, on a monthly rent of Rs. 50/- per month, and was paying the rent regularly which had been shown in his Income Tax return. This amount was enhanced to Rs. 100/- In April, 1964, the allottee had agreed to enhancement of rent at Rupees 120/- per month. This amount was also shown in the Income Tax return. On request for further enhancement of rent to Rs. 150/-, the allottee agreed to pay Rs. 150/- from 1-6-1966 onwards, and this rent was also shown in the Income Tax. On the 11th November, 1971, the landlord sent a letter demanding rent at Rs. 200/-per month, which was not acceptable to the allottee, and he thereafter applied for allotment. The landlord, had accepted rent subsequent to the allotment order, at the rate of Rs. 150/- per month. The case of the petitioner landlord that the allottee was a licensee was specifically denied, as also the allegations that the allotment order had been obtained on misrepresentation of facts and by practising fraud. The Rent Control and Eviction Officer found that there was no evidence on record to show that there was any partnership, except the dissolution deed which had no evidentiary value without the partnership deed. He also found that the letter dated 11th November, 1971, established that the landlord was receiving rent of the premises. In view of these findings, he dismissed the application of the petitioner landlord. An appeal was thereafter filed by the petitioner landlord. One of the points that arose for decision was as regards the maintainability of the appeal. The Additional District Judge held that inasmuch as the application for setting aside the allotment order and the allotment order itself had been passed under the old Act, the order was not appealable. He, however, also went into the merits of the case. He held that no partnership deed in proof of the existence of partnership business had been filed, and that the dissolution deed which had been filed was only a purported copy of

the original, and no reason had been given for not filing the original dissolution deed. In the absence of the original dissolution deed, he upheld the finding of the Rent Control and Eviction Officer that no reliance could be placed upon the copy of the dissolution deed for proof of the fact that there had been any partnership. He next referred to two notices dated 2-3-1951 and 14-3-1956 given by the Rent Control and Eviction Officer to Purshot-tam Das, the allottee. The first notice was u/s 7-A of the old rent Act, and directed the allottee to show cause as to why eviction proceedings should not be taken. In reply to this, the allottee had taken up the stand that Rameshwar Frasad Agarwal the landlord was himself doing business in the premises with Sri Kant, the son of the allottee. This notice was vacated on 10-9-1951, The second notice was issued u/s 8 of the old Act, and discharged on the 24th April, 1956. In view of these notices, he held that it was the allottee who was in occupation of the premises, for had it been otherwise, no notice could have been issued to him. As regards the contention of the petitioner based on the objection filed by Purshottam Dass that a partnership business was being carried on in the premises by the landlord along with the wife of the allottee and Sri Kant the son, he held that the objection did not establish that both the wife and the son of the allottee were partners. He accepted an argument of the respondent allottee that the objection had been filed to avoid prosecution, and eviction from the premises, as the allottee at that time was in occupation of the premises without a valid allotment order. He also relied on the Income Tax returns filed by Purshottam Dass, the allottee, wherein he had shown the rent being paid by him for the premises. Reliance was also placed by him on the letter of the 11th November, 1971, sent by the petitioner to Purshotam Dass Agarwal for enhancement of rent from Rs, 150/- to Rs. 200/- per month. On a consideration of the above evidence, he came to the conclusion that Purshottam Dass Agarwal, the allottee had been in occupation of the premises as a tenant, and had been paying rent regularly. He, as such, held that his possession was not on the basis of any partnership. On these findings, the appeal of the petitioner has been dismissed.

3. Counsel for the petitioner has urged that the view of the lower appellate Court that the appeal was not maintainable is incorrect. There appears to be force in this contention. The order of allotment in favour of Purshottam Dass Agarwal was u/s 7 of the old Act. The application for setting it aside was in respect of the allotment order. u/s 43 of the new Act, all proceedings u/s 7 of the old Act, which were pending, are to be treated as proceedings u/s 16 or 17 of the new Act, as the case may be. An application for setting aside an allotment order is nothing but a proceeding u/s 7 of the old Act as it is inherently connected with the allotment order and allotment proceedings. The use of the word "proceedings" in Section 43 of the new Act, is significant, and denotes not only specific orders passed u/s of the old Act but also applications and other miscellaneous proceedings connected with the final orders passed thereunder. This being so, the application for setting aside the allotment order would be one which would fall within Section 16 of the new Act. The Rent Control and Eviction Officer

dismissed the application for setting aside the allotment order after the enforcement of the new Act, and, as such an appeal, against this order lay u/s 18 of the new Act. The appeal, as such, was competent.

4. On merits, however, the petitioner does not have any case for interference under Article 226 of the Constitution, as the conclusions arrived at by the Additional District Judge are conclusions of facts and are not vitiated in law.

5. Counsel for the petitioner urged that the finding that the respondents were tenants of the accommodation is based upon an unwarranted assumption and on a mis-conception of the law. It has been urged in the first place that inasmuch as the provisions of the Evidence Act do not apply to the proceedings under the Rent Control and Eviction Act, the appellate authority committed an error in not considering the dissolution deed filed by the petitioner. In the first place even if it were erroneous on the part of the appellate authority not to have taken the dissolution deed into account as has been noticed in the earlier part of the judgment, the finding that the respondent was a tenant of the premises and was not a licensee, is not based solely on this consideration. The appellate authority has relied on a large number of other circumstances for holding that the petitioner had let out the premises to the respondent. It was then urged that the fact that respondent was a licensee of the premises was established by the admission made by the petitioner himself in his objection filed on having received notice u/s 8 of the U. P. Rent Control and Eviction Act. The appellate authority has on a consideration of the evidence on record come to the conclusion that the objections filed by the respondent tenant were made in order to avoid eviction from the premises. This conclusion is not an impossible or an improbable conclusion to reach, on the case set up by the tenant-respondent, and as such this too does not vitiate the finding of the appellate authority.

6. Counsel then tried to assail the appellate order as if the jurisdiction that this Court exercises under Article 226 of the Constitution is an appellate jurisdiction. It is settled that courts exercising jurisdiction under Article 226 of the Constitution do not sit as courts on appeal, and can interfere only in case the decision is based either on irrelevant consideration, or there is no material for the conclusion reached. In the present case, the orders passed do not suffer from such infirmities.

7. The petition fails and is dismissed.