

(2002) 11 AHC CK 0049
In the Allahabad High Court
Case No : C.M.W.P. No. 45502 of 2002

Randhir Singh Khokhar

APPELLANT

Vs

Shri Vidya Mandir Inter College and Others

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Article 4, 15

Citation : (2003) 2 AWC 952

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Advocate : Arun Tandon, for the Appellant; V.K. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—This writ petition has been filed by the petitioner under Article 226 of the Constitution of India, inter alia, challenging the judgment and order dated 23.4.2002 (Annexure-10 to the writ petition) passed by the learned Judge, Small Causes Court, Meerut and the judgment and order dated 26.9.2002 (Annexure-14 to the writ petition) passed by the learned Additional District Judge (Court No. 18), Meerut.

2. The dispute relates to a quarter situate opposite Police Station Chhaprauli, the details whereof have been given in the suit referred to hereinafter. The said quarter has hereinafter, been referred to as "the disputed quarter".

3. From the allegations made in the writ petition, it appears that a suit was filed by the respondent Nos, 1, 2, 3 and 4 (plaintiffs) against the petitioner for ejectment and arrears of rent, etc. in respect of the disputed quarter. It was, inter alia, alleged by the plaintiffs in the said suit that the petitioner was the Principal of Shri Vidya Mandir Inter College, Chhaprauli, Meerut, and that the petitioner was given the disputed quarter for his residence free of charge on account of being Principal of the said institution ; and that the petitioner retired on 30th June. 1990 and he continued to occupy the disputed quarter even after

his retirement ; and that the plaintiffs served a notice dated 16th October, 1995 requiring the petitioner to pay all the arrears of rent due against him with regard to the disputed quarter within 30 days of the receipt of the said notice ; and that in the said notice, the plaintiffs claimed Rs. 1,500 per month as rent from the petitioner for the period after his retirement till the date of actual delivery of possession by him ; and that in reply to the said notice given by the plaintiffs, the petitioner claimed himself to be the tenant in the disputed quarter at the rate of Rs. 150 per month ; and that even according to his own version, the petitioner failed to make payment of rent, namely, Rs. 150 per month from the date of his retirement ; and that the tenancy of the petitioner stood terminated through the said notice dated 16th October, 1995. The said suit was filed in the Court of Additional Judge, Small Cause Court, Meerut and was registered as S.C.C. Suit No. 12 of 1996. A copy of the plaint has been filed as Annexure-6 to the writ petition.

4. The petitioner contested the said suit and filed the written statement, a copy whereof has been filed as Annexure-7 to the writ petition. It was, inter alia alleged by the petitioner that there was no relationship of landlord and tenant between the plaintiffs and the petitioner (defendant) ; and that according to the own case of the plaintiffs, the petitioner (defendant) was licensee in the disputed quarter ; and that in the circumstances, the Judge, Small Cause Court had no jurisdiction to entertain the said suit, and the civil court of original jurisdiction only had jurisdiction to entertain the suit.

5. The learned Judge Small Cause Court, Meerut by the judgment and order dated 23.4.2002 decreed the said suit filed by the plaintiffs (respondent Nos. 1, 2, 3 and 4). It was, inter alia, held that there was relationship of landlord and tenant between the plaintiffs and the petitioner (defendant), and that the Authorized Controller was entitled to file suit* for ejectment, arrears of rent etc. on behalf of the plaintiffs ; and that the notice given by the Authorized Controller was not invalid.

6. The petitioner filed a revision u/s 25 of the Provincial Small Cause Courts Act which was registered as S.C.C. Revision No. 84 of 2002.

By the judgment and order dated 26.9.2002, the said revision filed by the petitioner was dismissed.

Thereafter, the petitioner has filed the present writ petition.

I have heard Sri Arun Tandon, learned counsel for the petitioner and Sri V. K. Shukla, learned counsel for the caveator.

7. Sri Arun Tandon submits that as the owner of the disputed quarter was the society, the suit at the instance of the Authorized Controller or the Committee of Management of the institution in question was not maintainable. It is further, submitted by Sri Tandon that as the petitioner was licensee of the disputed quarter, the suit was not maintainable in the Court of Judge, Small Cause,

Meerut, The Judge Small Cause Court could not entertain the said suit.

8. In reply, Sri V. K. Shukla, learned counsel for the caveator submits that as per the own showing of the petitioner in the reply notice dated 6.1.1995 (Annexure-5 to the writ petition), the petitioner admitted himself to be the tenant of the disputed quarter at the rate of Rs. 150 per month with effect from 30th October, 1990.

9. Sri Shukla further submits that in view of the said admission made by the petitioner himself, it was not open to the petitioner to take a contrary stand that he was a licensee of the disputed quarter. It is further submitted that the petitioner could not approbate and reprobate at the same time.

10. It is further submitted by Sri Shukla that In any view of the matter, it is not a fit case for interference under Article 226 of the Constitution of India, as admittedly, the disputed quarter was given to the petitioner during his service on the post of Principal in the said institution and he continued to remain in occupation of the disputed quarter even after his retirement.

11. Having heard learned counsel for the parties, I am of the opinion that the writ petition lacks merit and the same is liable to be dismissed.

12. The learned Judge, Small Cause Court, Meerut in his judgment and order dated 23.4.2002, inter alia, held that the relationship of landlord and tenant between the Authorized Controller/Committee of Management of the institution in question and the petitioner was established, and as such, the said suit was maintainable on the basis of relationship of landlord and tenant in the Court of Judge, Small Cause, Meerut.

13. In view of the said finding recorded by the learned Judge, Small Cause Court, Meerut which was affirmed by the learned Additional District Judge, (Court No. 18), Meerut In the said judgment and order dated 26th September, 2002, it is evident that the said suit filed by the respondent Nos. 1, 2, 3 and 4 (plaintiffs) against the petitioner being a suit for eviction, etc. by the lessor against the lessee in respect of the disputed quarter after determination of lease, was maintainable in the Court of Judge, Small Cause, Meerut in view of Section 15 of the Provincial Small Cause Courts Act read with Article 4 of the Second Schedule to the said Act as amended in the State of Uttar Pradesh.

14. From the facts and circumstances of the case, it is also evident that the petitioner is trying to take inconsistent stand. He cannot be permitted to take inconsistent stand, or approbate and reprobate at the same time.

15. Having admitted himself to be the tenant of the disputed quarter at the rate of Rs. 150 per month with effect from 30th October, 1990, it was not open to the petitioner to allege that he was licensee of the disputed quarter.

16. Coming to the submission of Sri Tandon, learned counsel for the petitioner that as the owner of the disputed quarter was the society, the suit at the

instance of the Authorized Controller or the Committee of Management of the institution in question was not maintainable, I am of the opinion that cogent and valid reasons have been given by the courts below for rejecting the said submissions raised on behalf of the petitioner. The relevant question to be examined in the present case was relationship of landlord and tenant in regard to the disputed quarter, and not the question of title to the disputed quarter. Once the relationship of landlord and tenant between the plaintiffs and the petitioner (defendant) was established, the suit was maintainable.

17. In any view of the matter, having regard to the facts and circumstances, this is not a fit case for interference under Article 226 of the Constitution of India.

18. In view of the aforesaid discussion, this writ petition is liable to be dismissed, and the same is accordingly dismissed.