
(1994) 03 AHC CK 0042

In the Allahabad High Court

Case No : Writ Petition No. 7939 of 1994 (with connected CM W. P. Nos. 1921 and 22378 of 1991)

R.C.Bajpai and co.

APPELLANT

Vs

7th Addl, District Judge, Kanpur and others

RESPONDENT

Date of Decision : 30-03-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141
Constitution of India, 1950 — Article 226

Citation : (1994) 03 AHC CK 0042

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

Final Decision : Dismissed

Judgement

1. Feeling aggrieved by an order passed by Rent Control and Eviction Officer, holding the premises in dispute to be vacant and available for allotment/release in the proceedings under Section 16 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act") and releasing the same in favour of the landlord, the petitioner has approached this Court by means of writ petition No. 1921 of 1991 filed on 23/11/1991 seeking redress praying for the quashing of the said order. Pending admission of this writ petition notices were issued to the respondent landlord who thereafter put in appearance and filed a counter affidavit. The petitioner then filed a rejoinder affidavit in reply thereto.

2. It appears that before filing the writ petition No. 1921 of 1991 in this Court, the petitioner had challenged the order dated 28/12/1990 impugned in the aforesaid writ petition by means of a revision under Section 18 of the Act. Since the hearing of the aforesaid revision was being delayed, the landlord respondent filed Civil Misc. Writ Petition No. 22378 of 1991 on 13/8/1991, praying for a direction requiring the Revising Authority to finally decide the revision expeditiously. This writ petition was connected with Civil Misc. Writ Petition No. 1921 of 1991. During the pendency of this writ petition, the revision was decided on 3/3/1994 whereunder it was dismissed as not maintainable. It was there?after

that writ petition No. 7939 of 1994 was filed challenging the revisional order as well as the order dated 21121990 whereunder the vacancy in respect of the accomodation in dispute was notified and the order dated 28121990, whereby holding the premises in dispute to be vacant the Rent Control and Eviction Officer proceeded to consider the application filed by the landlord seeking release of the accomedation in dispute in his favour and granted this relief.

3. On 931994, this Court taking into consideration the controversy raised by the petitioner found it appropriate to connect writ petition No. 7939 of 1994 with writ petition No. 1921 of 1991 and it was directed that both the writ petitions be heard and disposed of together.

4. As has already been indicated above, the Rent Control and Eviction Officer had passed the order holding the premises in dispute to be vacant on 28121990 and under the same order, the premises in dispute has been released in favour of the landlord. It is not disputed that before filing the writ petition indicated above, the petitioner had filed a revision under Section 18 of the Act, challenging the order dated 28121990. In the writ petition No. 7939 of 1994 besides challenging the order passed by the Revising Authority dated 331994, the petitioner challenged the orders passed by Rent Control and Eviction Officer dated 21121990 and 28121990 also and thus, the second writ petition filed by the petitioner was also for the same relief which had been claimed in the first writ petition filed by him viz. Civil Misc. Writ Petition No. 1921 of 1991.

5. In the facts and circumstances indicated above all the three writ petitions were heard together and are being disposed of by a common order.

6. I have heard Sri A. N. Srivastava, learned Counsel for the petitioner and Sri K. L. Grover, learned Counsel representing the land?lord respondent and have carefully perused the record.

7. The facts, shorn of details and necessary for the disposal of these writ petitions lie in a narrow compass. The petitioner claims that he is running a Firm in the name and style of M/s R. C. Bajpai and Company from the year 1985 and the premises in dispute is continuing to be in his tenancy for running the said business since the year 1987. As a matter of fact during the course of hearing of the writ petitions, the learned Counsel for the petitioner categorically stated that the petitioner's tenancy in the premises in dispute commenced in the year 1987 and he had on concern with the same prior to that year. It appears that on the basis of an application filed by Sri O. P. Sharma seeking allotment of the premises in dispute, proceedings for ascertainment of vacancy in respect of the premises in question were initiated, wherein the Rent Control Inspector is said to have inspected the premises in dispute and submitted his report dated 21121990 expressing the view that the premises in dispute can be taken as vacant under Section 12 of the Act, The Rent Control and Eviction Officer, thereafter appears to have notified the vacancy and after holding the premises to be vacant proceeded to consider the release application and released the premises in dispute in favour

of the landlord on 28121990,

8 It also appears from the record that Misc. case No. 342/70/90 was filed by the petitioner seeking to deposit the rent in respect of the premises in dispute in the proceedings under Section 30 of the Act and filed an affidavit on 451990 in those proceedings in support of his application. Further as has already been noticed above, the petitioner filed a revision under Section 18 of the Act challenging the order passed by the Rent Control and Eviction Officer dated 28121990. These proceedings indicate in unmistakable terms that the petitioner himself was never in doubt about the premises in dispute being governed by the provisions of the Act. Infact there is nothing in the memo of revision filed by the petitioner, referred to above, which could lead to an inference to the contrary,

9. The learned Counsel for the petitioner has strenuously contended that the entire proceedings culminating in the order of release are without jurisdiction as before holding the premises in dispute as vacant, the Rent Control and Eviction Officer had not afforded any opportunity to the petitioner the occupant of the premises in dispute, to establish that his occupancy was not unauthorised and that none of the requisite conditions, contemplated under Section 12 of the Act having been satisfied, the premises in dispute could not be deemed to be available for either allotment or release. It has further been contended that the building in dispute did not fall within the purview of the Act and therefore, the Rent" Control and Eviction Officer could not be deemed to have any jurisdiction, to pass the impugned order.

10. The learned Counsel for the respondent landlord on the other hand asserted that the petitioner had been afforded full opportunity of being heard in the matter and having failed to avail the opportunity, he cannot now be heard to raise a grievance on this account. It has further been contended that on the own showing of the petitioner, his status could not be higher than that of an unauthorised occupant and in the circumstances, therefore, the Rent Control and Eviction Officer did not commit any illegality in proceeding on the basis that the premises in dispute was available for allotment or release. The learned Counsel has further asserted that in the matter of release, the petitioner being an unauthorised occupant has no locusstandi of being heard and has no right to oppose the application for release filed by the petitioner. It is further pointed out that the petitioner himself having sought for the benefits available under the provisions of the Act cannot be heard to say that the building in question is out of the purview of the Act. In any case, it is pointed out, that the petitioner on account of his conduct is not entitled, to any relief in the present proceedings, while exercising the discretionary jurisdiction under Article 226 of the Constiution of India.

11. It may be noticed that in his report dated 21121990, the Rent Control Inspector had specifically noticed that the occupant Rajesh Chandra Bajpai was present and the inspection was done in his presence. In paragraph 12 of the counter affidavit filed in writ petition No. 1921 of 1991, it has been specifically

asserted by Dileep Kumar Sen that the petitioner had avoided to receive the notice sent by the Rent Control and Eviction Officer. It has been clearly asserted in the aforesaid paragraph that the Rent Control and Eviction Inspector made a spot inspection on 20121990 in the presence of R. C. Bajpai and that R.C. Bajpai himself informed the Rent Control Inspector in the presence of the deponent that he has nothing to say in reply to the notice. The reply to the allegations made in paragraph 12 of the counter affidavit are contained in paragraph no. 13 of the rejoinder affidavit filed "by the petitioner. In paragraph 13 of the rejoinder affidavit, only this much has been stated "that the contents of paragraph 12 of the counter affidavit are not admitted and contents of paragraphs no. 7, 8 and of the writ petition are reiterated."

12. As observed by this "Court in its decision in the case of L. Kashinath Seth v. Collector, Central Excise, Allahabad and others, decided by a Division Bench and reported in AIR 1979 Allahabad, 128, inspite of explanation inserted in Section 141 by the Civil Procedure Code (Amendment) Act, 1976, the salutary principles enshrined in the Code of Civil Procedure governing the trial of civil suits may be applied to the proceedings excepting the case of Habeas Corpus petition under Article 226 of the Constitution of India. This decision was followed in a later Division Bench decision of this Court in the case of Regional Manager v. Pradeep Gael, reported in 1992 ACJ 274, Under the provisions of Order VIII Rule 5(1) of the Civil Procedure Code, it is provided that every allegation of fact in the plaint if not denied specifically or by necessary implication or stated to be not admitted in the pleadings of the defendant shall be taken to be admitted except as against a person under disability. It is however, provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission. In its decision in the case of Lohia Properties (P) Ltd. Tinsukiya, Dibrugarh, Assam v. Atmaram Ram Kumar reported in JT 1993(3) SC 223, the Apex Court after considering the implications arising under Order VIII Rule 3 and 5(1) of the Civil Procedure Code had observed that nontraverse would constitute an implied admission. The Apex Court however, in the facts and circumstances of that case found it unnecessary to examine the question as to whether a judicial admission can be permitted to be withdrawn or retracted.

13. I am of the considered opinion that on the reasonings on which various other salutary principles enshrined in the Civil Procedure Code governing the trial of the Civil suit had been applied to the proceedings excepting the case of Habeas Corpus Petition under Article 226 of the Constitution of India as indicated in the decision of L. Kashinath Sethi (supra) and Regional Manager (supra) and Latha and Company Kanpur v. IIInd Additional District Judge, Kanpur and another, reported in 1993 ARC (1)498, the principle underlying the provisions contained in Order VIII of the Civil Procedure Code can safely be applied to the proceedings under Article 226 of the Constitution of India. In the circumstances, therefore, considering the nontraverse in question as apparent from a perusal of paragraph 13 of the rejoinder affidavit would clearly constitute an implied admission of the petitioner amply demonstrating the falsity of the claim that he has absolutely no

notice of the proceedings culminating in the order declaring the vacancy.

14. There is another aspect which cannot be lost sight of. According to the own showing of the petitioner he had entered into possession of the disputed premises as a tenant in the year 1987. It is not disputed that the premises had never been allotted to him.

15. In the case of Geep Industrial Syndicate Ltd., Allahabad v. Rent Control and Eviction Officer, Allahabad 1982(1) ARC 585 (D.B.) Hon. K. C. Agarwala, J. (as he then was) was speaking for the Bench had held as under :

"Section 11 of the Act imposes a prohibition or restriction against letting without an allotment order. Section 12 contemplates certain contingencies in which a landlord or tenant of a building would be deemed to have ceased to occupy it. Section 13 provides for restriction on occupation of building without allotment order. A conjoined reading of Section 11 imposes prohibition on letting without allotment order. Section 13 places restriction on occupation without an allotment or release. These two sections are required to be read together. Reading these two sections, it would appear that neither could a landlord let out a premises without an allotment order nor can anyone occupy it. These two provisions were enacted to undo the effect of a Full Bench decision of this Court in *Udho Das v. Prem Prakash*. The learned Judge further observed as below :

"From the above admission it would appear that in case of an illegal letting or subletting, the view taken was that the contract may be binding on the parties to it, but not on the authorities which would mean that the possession of a person who has been illegally let in would be unauthorised. Sections 11 and 13 of the present Act make that position very clear. No one can either let out any premises without an allotment order nor can anyone occupy the same. If any one occupies the premises without an allotment order, he would not only be an unauthorised occupant but also liable to prosecution under Section 31 of the said Act. His possession being unauthorised cannot be recognised in the eye of law and if it cannot be recognised in the eye of law there would be a vacancy."

16. As noticed above, the Division Bench in its aforesaid decision in the case of Geep Industrial Syndicate Ltd. (supra) had observed that no one either can let out any premises without an allotment order nor can anyone occupy the same and if anyone occupies the premises without an allotment order, he would not only be an unauthorised occupant but also liable to prosecution under Section 31 of the said Act. The Division Bench of this Court was quite emphatic when it observed that the possession of such a person being unauthorised cannot be recognised in the eye of law and if it cannot be recognised in the eye of law there would be a vacancy. It was further clarified that it would entitle the Rent Control and Eviction Officer to pass an order under Section 16 of the Act.

17. The aforesaid decision in the case of Geep Industrial Syndicate Ltd. (supra) now stands affirmed by the decision of the Full Bench of this Court in the case of *Nutan Kumar and others v. IInd Additional District Judge, Banda and others*

reported in 1993 All CJ 721. The controversy of an identical nature as is involved in the present case had come up for consideration before this Court in the case of Sarvendra Pal Jaggi v. Additional District Magistrate (Civil Supplies) Meerut reported in 1993(1) All CJ 383, wherein it was held that the vacancy in such circumstance, will come into existence by operation of law. This Court observed that when a person enters into possession without an allotment order, under law his possession cannot be better than that of an unauthorised occupant and it could also not improve on account of length of period he occupied it as such. This Court further observed that from the very inception, the possession of such person can be only unauthorised and if on the admitted facts, the effect of the law is that the premises shall be treated as vacant and open for allotment or release it could not be ignored on account of conduct of the respondent landlord. In the aforesaid decision, this Court while considering the implications arising under the provisions contained in Rule 8 of the Rules framed under the Act observed that even assuming that there was some non compliance of Rule 8 the same could be of no consequence as it was not in dispute between the parties that the building was occupied without any allotment order the possession commencing in the year 1984. Similar view was expressed by this Court in its decision in another Case Imamuddin v. 1st Additional Sessions Judge, Meerut and others, reported in 1992(1) ARC 270 wherein it was observed that the Rent Control and Eviction Officer can lawfully ignore the possession of a person in respect of an accommodation in dispute governed by the Act if the possession of the accommodation was without any allotment order.

18. In the circumstances indicated above, the question about failure to observe the principle of natural justice or noncompliance of Rule 8 of the Rules framed under the U. P, Act No. 13 of 1972 is not of much consequence. In this connection it should not be lost sight of that in matters where observance of the principles of natural justice would have made no difference and the admitted or indisputable or irrefutable facts speaking for themselves lead to a situation where only one conclusion is possible under law, the court may not issue its writ to compel the observance of natural justice as Courts do not issue futile writs.

19. As pointed out by the Apex Court in its decision in the case of S. L. Kapoor v. Jagmohan reported in 1980 (4) SCC 379, while nonobservance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary yet where on the admitted or undisputable facts only one conclusion is possible the Court may not issue its writ to compel the observance of natural justice not because it is not necessary to observe natural justice but because the Courts do not issue futile writs.

20. In the circumstances as brought on record in the present case, the petitioner having himself sought prosecution provided under the provisions contained under the Act without disputing the fact that the building in question fell within its purview cannot be permitted to take a somersault and heard to say now that the Act did not apply to the building specially when inspite of opportunity no such

plea was ever raised. In view of the settled legal position indicated hereinbefore, the Rent Control and Eviction Officer does not appear to have committed any illegality in proceeding to treat the premises in dispute as vacant. The submissions made by the learned Counsel for the petitioner are clearly without any merit and are not at all acceptable.

21. So far as the writ petition No. 7939 of 1994 is concerned, suffice it to say that this Court has repeatedly held that a revision against an order declaring vacancy is not maintainable. I have perused the impugned order passed by the Revising Authority dated 33/1994 and finding recorded therein that the revision was not maintainable at the instance of the petitioner does not appear to suffer from any legal infirmity.

22. So far as writ petition No. 22378 of 1991 is concerned, the learned Counsel for the petitioner in that case has stated that this writ petition has outlived its utility and in fact with the disposal of the revision it has been rendered infructuous.

23. In the result, in view of my conclusions indicated hereinbefore, I do not find any justification for interference in the impugned orders dated 21/12/1990, 28/12/1990 and 39/1994, while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India.

24. Accordingly writ petition No. 1921 of 1991 and 7939 of 1994 are dismissed.

25. Writ Petition No. 22378 of 1991 is however, dismissed as having become infructuous.

26. There shall however, be no order as to cost.

(Petition dismissed)