

(1982) 07 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10177 of 1979

Roshan Islam

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 15-07-1982

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 111, 113
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21

Citation : (1982) AWC 655

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : Haider Husain, for the Appellant; Shyam Narain, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—In this petition by a tenant the only point urged in support thereof was that in view of the filing of an application by the Plaintiff-Respondent u/s 21 of U.P. Act No. 13 of 1972 for an order of eviction against the Petitioner, the said Plaintiff must be deemed to have waived his notice given to the Petitioner u/s 106 of the Transfer of Property Act.

2. In order to appreciate the contention I may set out such facts as are in my opinion are relevant for the disposal of the point. The Respondent No. 3 herein filed a suit for the ejectment of the Petitioner after determining his tenancy by means of a notice u/s 106 of the Transfer of Property Act. The suit was filed on the ground of default. Both the courts below have upon a careful consideration of the evidence on the record concurrently arrived at the conclusion that the Petitioner was in default and that he had rendered himself liable to be evicted on that ground. The said finding is a finding of facts and not being vitiated by any error of law cannot be reviewed. Indeed, the learned Counsel for the Petitioner made no attempt to challenge the correctness of that finding.

3. After giving the notice u/s 106 of the Transfer of Property Act, the landlord

filed an application u/s 21 of the U.P. Act No. 13 of 1972 on the ground that he bonafide needed the accommodation in dispute for his personal occupation. This fact gave rise to the plea that the landlord must as a result of his having filed the application u/s 21 be deemed to have waived his earlier notice given to the Petitioner u/s 106 of the Transfer of Property Act.

4. Learned Counsel for the Petitioner contended that an application u/s 21 of U.P. Act No. 13 of 1972 is maintainable only against a tenant. That being so, it was urged, the landlord must be deemed to have consented to the continuance of the Petitioner as a tenant, i. e., the landlord must be treated to have shown an intention to treat the lease as subsisting.

5. Having given the matter a careful consideration I find no merit in the above contention. Whether the filing of the application by the landlord u/s 21 resulted in the waiver of his notice u/s 106 of the Transfer of Property Act, would depend on whether there was any act on the part of the landlord showing an intention to treat the lease as subsisting. Section 113 of the Transfer of Property Act states that a notice given u/s 111(h) will be deemed to have been waived with the express or implied consent of a person to whom it has been given by an act on the part of the person giving it showing an intention to treat the lease as subsisting. It would thus be found that the question whether a notice to quit has been waived would in the ultimate analysis depend on whether there was any intention on the part of the lessor to treat the lease as alive. Such a question undoubtedly is one of fact depending on the quantum and quality of evidence led by the parties.

6. Learned Counsel, however, submitted that the filing of an application u/s 21 per se leads to the inevitable conclusion that the intention of the landlord was to treat the lease as subsisting. I am unable to accept the contention. In my opinion, the mere filing of an application u/s 21 does not lead to any such inference. It does not by any stretch suggests that the intention of the landlord is to treat the lease as subsisting. If anything it points to the opposite conclusion namely that the landlord does not desire the continuance of the lease. A proceeding u/s 21 is launched avowedly to get rid of the tenant so that the landlord may himself occupy the accommodation. There is, therefore, nothing inherent in the nature of proceedings u/s 21 which might support the contention of the learned Counsel for the Petitioner, in deed, as noted above, the launching of proceedings by a landlord u/s 21 indicates an unmistakable intention that the landlord does not desire the lease to continue.

7. Learned Counsel for the Petitioner, however, laid considerable stress on the circumstance that an application u/s 21 can be filed only against a tenant. The decision of this Court in the case of Sri Dinesh Chandra Misra v. Additional District Judge, Kanpur reported in 1981 AllRC 116 provides a complete answer to this argument. In this case a similar argument was advanced but repelled by Murlidhar, J. who observed thus:

Thus it was contended that the application u/s 21 of the Act which is an application of the landlord for eviction of a tenant was not maintainable against a tenant whose tenancy had been terminated by a notice u/s 106, Transfer of Property Act. Considering the scheme of the Act it seems that mere termination of tenancy by a notice u/s 106 where the tenant continues to enjoy the protection of the Act against eviction under the provisions of the Act does not end his status of a tenant except in a formal way and the word "tenant" in Section 21 must be interpreted so as to include a person whose tenancy had been terminated but who was continuing as a tenant.

It is thus apparent that an application u/s 21 does not per se result in the waiver of a notice u/s 106 of the Transfer of Property Act. The view taken by the court below on this controversy is correct.

8. No other point was urged.

9. In the result the petition fails and is dismissed but I make no orders as to costs. The execution of the decree for ejectment is, however, stayed for a period of three months. The Petitioner shall hand over vacant possession to the Respondent landlord within this time. The Petitioner shall not directly or indirectly induct any other person into the accommodation in dispute.