
(2015) 01 AHC CK 0025
In the Allahabad High Court
Case No : Rent Control Nos. 27 and 85 of 2014

Salman Kidwai

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16(1)(b), 18

Citation : (2015) 01 AHC CK 0025

Hon'ble Judges : Mahendra Dayal, J.

Bench : Single Bench

Advocate : J.P. Mathur, for the Appellant; Anurag Srivastava and Manish Kumar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Mahendra Dayal, J.—Both the aforesaid writ petitions arise out of the proceedings of rent revision No. 8/2013, pending in the court of Additional District Judge/Special Judge, C.B.I., Court No. 2, Lucknow, hence both the writ petitions are being taken up together for final disposal.

2. Writ Petition No. 27 (R/C) of 2014 has been filed by the tenant assailing the order dated 7.2.2014, passed by the Additional District Judge/Special Judge, C.B.I., Court No. 2, Lucknow, whereby the application of the petitioner C-16 for stay of the proceedings under Section 10 CPC has been rejected.

3. Writ Petition No. 85 (R/C) of 2014 has been filed by the landlord assailing the orders dated 13.5.2014 and 31.5.2014 and alternatively it has been prayed that a direction be issued to the learned court below to decide the Rent Revision No. 8/2013 within time frame.

4. The dispute between the parties relates to a building known as Niyamatullah Building bearing municipal no. 143/90 C situate at Jute Wali Gali, Aminabad,

Lucknow. The landlord, namely, Mod. Faisal Shamsi and Mohd. Faiz Shamsi, jointly purchased the building in question from Smt. Kishwar Fatima Ansari on 26.5.2005 by means of a registered sale deed and became the owners and landlord of the said building. The portion which was purchased by the landlord was occupied by 2 different tenants in different portions. In one portion Mohd. Haleem was the tenant, who died leaving behind Smt. Ishtiaque Azim and others as his legal heirs who became joint tenants of that portion. The landlord sought release against them by filing P.A. Case No. 28/2008, which was decided on 9.8.2012 in favour of the landlord. The Rent Appeal No. 48 of 2012 was filed against the aforesaid order of the Prescribed Authority, which was also dismissed on 24.1.2013. The heirs of late Mohd. Haleem also preferred a Writ Petition No. 18 of 2013 before this Court, which was also dismissed on 18.4.2013.

5. Feeling aggrieved by all the aforesaid orders the heirs of late Mohd. Haleem filed a S.L.P. Before the Hon'ble Supreme Court which was also dismissed on 6.5.2013. Having lost from all the courts the heirs of Mohd. Haleem vacated the portion under their occupation in due course of law and the landlord got vacant possession on 11.5.2013. The legal heirs of late Mohd. Haleem had been claiming ownership on the basis of an oral gift on false ground but ultimately it was held that the present landlord are the owners by means of a registered sale deed dated 26.5.2005. The other portion which was purchased by the landlord was in the tenancy of one Shri Muniruddin, who died leaving behind the opposite party no. 1 of Writ Petition No. 85 (R/C) of 2014 as his heir. They acquired a residential building in vacant estate in the city of Lucknow and as such the portion under their occupation fell vacant under Section 12 of the U.P. Act No. 13 of 1972 and was thus available for release. The landlord moved a release application under Section 16(1)(b) on 13.3.2007 against the legal heirs of Muniruddin. The opposite party no. 2 of Writ Petition No. 85 (R/C) of 2014 is the son of late Muniruddin. He contested the release application on the ground that the premises in question was an Evacuee Property. He also put forward a case that the building under his occupation had vested in the government and took an alternative plea that an oral gift was made in favour of his father. On the basis of false information furnished by him the Custodian General of Enemy Property Mumbai, declared the entire building as enemy property by the order dated 7.8.2008. However, when the landlords filed their objection and evidence, the said order was set aside and it was held by the Custodian General that the property was purchased by the landlord and was not an enemy property. After losing from all the forums, the tenants moved an application dated 16.5.2011 before the trial court claiming themselves as tenant. The trial court/City Magistrate, Lucknow notified the vacancy on 31.5.2013. This order was challenged by the tenant by filing Rent Revision No. 3 of 2013, which was dismissed on 24.9.2013. While dismissing the rent revision it was held that Salman Qidwai claimed himself to be the owner of the property in dispute but subsequently he claimed himself as tenant of the property.

6. The tenant/opposite party no. 2 also filed a Writ Petition No. 125 of 2013(R/C)

before this Hon'ble Court, challenging the orders of declaring vacancy which was also dismissed as withdrawn on 27.11.2013. After a long litigation the learned trial court passed an order of the release in favour of the landlords by the order dated 27.11.2013. This release order was challenged by Shri Salman Qidwai-tenant by filing Rent Revision under Section 18 of the Act, which is Rent Revision No. 8/2013 and is pending in the court of Additional District Judge/Special Judge, C.B.I., Court No. 2, Lucknow. The landlords had opposed the admission of the revision before the District Judge, Lucknow, who on 10.12.2013 passed a detailed order while transferring the revision to another Court. The learned Additional District Judge/Special Judge, C.B.I., while disposing of the stay application of the tenant, directed him to deposit a sum of Rs. 5000/- per month as rent of the premises in question by 5th of every month. It was on the aforesaid terms that the operation of the release order dated 27.11.2013 was stayed. However, inspite of the aforesaid order the tenant did not make compliance and sought adjournment of the case. During the pendency of the rent revision an application C-16 was moved by the tenant on 21.1.2014, wherein it was prayed that till the disposal of the Regular Suit No. 226 of 2013 pending in the court of Civil Judge, Mohan Lal Ganj, Lucknow, the proceedings of the rent revision be stayed. This application was opposed by the landlord and ultimately vide order dated 7.2.2014 the said application was rejected.

7. Feeling aggrieved by the rejection of his application C-16 Writ Petition No. 27 (R/C) of 2014 has been filed by the tenant which is being disposed of by this judgment. Since the tenant had been delaying the disposal of the rent revision and the revisional court had been granting stay order to the tenant, the landlord also filed Writ Petition No. 85 (R/C) of 2014 for a direction to the revisional court to decide the rent revision within a time frame. In the aforesaid background, both the writ petitions have been taken up together for final disposal.

8. I have heard Shri J.P. Mathur, who is appearing on behalf of the tenant Salman Qidwai and Shri Mohd. Arif Khan, learned Senior Advocate, appearing on behalf of the landlord duly assisted by Shri Mohd. Aslam Khan and have also gone through the pleadings of the writ petition as well as the material available on record.

9. Shri J.P. Mathur, learned counsel appearing on behalf of the tenant, has submitted that intricate question of title is involved in this matter and as such a Regular Suit for declaration of title has been filed and the same is still pending. In case the rent revision is decided against the tenant and they are evicted, the very purpose of filing the regular suit would be frustrated. Moreover before the title is decided by the competent court, the rent control authorities should have not proceeded with the matter but the learned Rent Control and Eviction Officer proceeded to decide the release application of the landlord who allowed the same in a hasty manner. When the release order was challenged by the tenant before the District Judge, Lucknow, a condition was imposed upon him to deposit Rs. 5000/- per month as rent. However, the tenant complied with the orders of the

Hon"ble Court but also moved an application for stay of the proceedings till the final disposal of the title suit. The provision of Section 10 CPC are fully attracted to the facts of the present case as the question of title is involved in both the proceedings. Since the title can be decided only by a competent court of civil jurisdiction, the proceedings of rent revision ought to have been stayed till the question of title is decided in the regular suit. The learned revisional court ignoring the provision of law dismissed his application C-16 and proceeded to hear the revision. It has further been argued that a relief for cancellation of sale deed has also been sought in the said regular suit and the result of the regular suit would certainly affect the rights of the parties. In case the regular suit is decreed and the sale deed is cancelled and consequently the tenants are held to be the owner, the entire proceedings initiated under the Rent Control Act would become in effective.

10. Shri Mohdl. Arif Khan, learned Senior Advocate has, on the other hand, submitted that the tenant has always been adopting the delaying tactics so that the landlords may not get the possession of the premises which they have purchased for their own use and occupation. The tenant firstly claimed that the property in dispute was an enemy property but when they lost, they started admitting themselves as tenant. Thereafter they claimed title on the basis of oral gift and filed a suit for cancellation of sale deed as well as for declaration of their title. The said regular suit was filed only with the intention to defeat the release order which has been passed in favour of the landlord.

11. The learned Senior Advocate further submits that the provision of Section 10 CPC is not at all attracted to the facts of the present case, because the proceedings under the Rent Control Act are summary proceedings, in which only this much is to be ascertained as to whether there exists relationship of landlord and tenant between the parties. The learned court below has rightly rejected the application of the tenant for stay of proceedings under Section 10 CPC. It is also not out of the place to mention here that the landlord purchased the property in the year 2005 and immediately thereafter the tenants were informed about the said transaction but at that time they never came forward with the case that they are the owners. They started setting up title themselves when the landlord initiated proceedings for release the tenant at one point of time claimed that the property in dispute is an Enemy Property but when he lost his case, he admitted himself as tenant but at the same time started claiming himself as owner on the basis of an oral gift and filed a suit for cancellation of sale deed and declaration of his title. The provisions of Section 10 CPC are attracted only in those cases where the controversy between the parties with regard to title is pending in two different cases. In that case the subsequent proceeding is stayed till the disposal of the earlier case. Here in the rent control proceedings, the courts are not required to go into question of title and as such there was absolutely no occasion for the revisional court to have stayed the proceedings of the rent revision.

12. I, therefore, do not find any illegality in the order passed by the learned

court below in rejecting the application of the tenant for stay of the proceedings. The writ petition filed by the tenant assailing the order passed on his application C-16, has therefore, no force and is liable to be dismissed.

13. So far as Writ Petition No. 85 (R/C) of 2014 is concerned, the landlord has only prayed that the rent revision be decided at an early date within a time frame. This writ petition filed by the landlord deserves to be disposed of with certain directions to the learned revision court for expeditious disposal of the rent revision.

14. In the result Writ Petition No. 27(R/C) of 2014 filed by the tenant is dismissed and the Writ Petition No. 85 (R/C) of 2014 filed by the landlord is disposed of with the direction that the learned revisional court shall decide the rent revision by passing a reasoned and speaking order within a period of six months from the date a certified copy of this order is produced before him but without giving any unnecessary adjournment to any of the parties.