

(2018) 07 UK CK 0136

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1571 of 2016

Sardar Paramjeet Singh

APPELLANT

Vs

Sardar Inderjeet Singh Kalra & others

RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 — 3, 3(g), 12(1) (b), 12(2), 12(3), 21(1) (a), 25, 25(2)
Constitution of India, 1950 — Article 227

Citation : (2018) 07 UK CK 0136

Hon'ble Judges : MANOJ K. TIWARI, J

Bench : Single Bench

Advocate : K.N.Joshi, Shiv Pande, Anurag Bisaria

Final Decision : Allowed

Judgement

MANOJ K. TIWARI, J. (ORAL)

1. This writ petition arises out of an interlocutory order passed in proceedings under Section 21 (1) (a) of Urban Buildings (Regulation of Letting Rent

and Eviction) Act, 1972, (hereinafter U.P. Act No. 13 of 1972). Sardar Paramjeet Singh (petitioner herein) claims to be the owner of the property

known as Hartâ??s Office Building Kulri Bazar, the Mall Mussoorie, District Dehradun, which he claims to have purchased on 19.05.2007 from Shri

Naresh Chand Aggarwal through registered sale-deed. In the year 2013, petitioner filed an application seeking release of premises in question before

the Prescribed Authority which was registered as PA Case No. 30 of 2013. In the release application against Sardar Inderjeet Sing Kalra (respondent

no.1) one Shri Tarjeet Singh s/o late Sardar Pritam Singh was also impleaded as proforma respondent. Since respondent no.1 (Sardar Inderjeet Singh

Kalra) did not appear before the Prescribed Authority despite service of notice, therefore, learned Prescribed Authority passed an order on

22.07.2015 for proceedings ex parte in the matter. Thereafter, on 12.08.2015, one Smt. Budhwanti moved an application before the Prescribed

Authority for setting aside the order dated 22.07.2015 whereby the matter was directed to proceed ex parte. In that application, Smt. Budhwanti

claimed herself to be the partner of M/s Madras Caf   who was occupying the shop in question. The said application was rejected by the Prescribed

Authority vide order dated 16.09.2015. Learned Prescribed Authority after recording the submission made on behalf of the landlord that neither the

Budhwanti his tenant nor M/s Madras Caf   is tenant and no relief has been sought against the Smt. Budhwanti. Learned Prescribed Authority

rejected the application made by Smt. Budhwanti by observing that the release application is filed against Sardar Inderjeet Singh and not against Smt.

Budhwanti and the order to proceed ex parte has also been passed against Inderjeet Singh. Moreover, Smt. Budhwanti had not made any application

for her impleadment as respondent in the release application, therefore, there is no reason to recall the order dated 22.07.2015.

2. Thereafter, Smt. Budhwanti moved a third party application on 14.10.2015 stating that her husband Sardar Gurbachan Singh and Sardar Inderjeet

Singh (respondent no.1) were real brothers and were running a business in the name and style of M/s Jhelum Show Company in the shop in question

and in the year 1974 they changed the business and started a partnership firm in the name and style of M/s Madras Cafe. It was further stated that

after death of her husband, Smt. Budhwanti became partnership in M/s Madras Cafe and she used to pay of the shop in question. He further stated

that landlord (petitioner) deliberately did not make a party in the release application, therefore, she made a prayer that M/s Madras Cafe to Smt.

Budhwanti be permitted to participate in the proceedings of the release application as opposite party/tenant. Petitioner filed objection to the said

application of Smt. Budhwanti stating that Sardar Gurbachan Singh was never inducted as tenant in the premises in question and further that the

appellant (Smt. Budhwanti) is not an agent of M/s Madras Cafe. It is further stated that there is no brevity of contact between the petitioner and Smt.

Budhwanti. That application was ,therefore, opposed on the ground that Smt. Budhwanti is not a necessary party to the proceedings. In support of this

contention, petitioner also produced a municipal record regarding assessment of the premises in question, which shows that license in respect of M/s

Madras Cafe was with Sardar Inderjeet Singh S/o of Jagat Singh (respondent no.1) till 2007, and thereafter, since 2008-09 onwards license was issued

in the name of Smt. Budhwanti. The third party application subsequent filed by Smt. Budhwanti on 14.10.2015 was allowed by the Prescribed

Authority on the ground that one the release application has been filed against Sardar Inderjeet Singh who was the original tenant and since Smt.

Budhwanti is partner in M/s Madras Cafe in which Sardar Inderjeet Singh is also a partner, therefore, Smt. Budhwanti is a necessary party to the

release application. This order dated 17.03.2016 passed by Prescribed Authority has been challenged by the landlord in this petition under Article 227

of Constitution of India.

3. Learned counsel for the petitioner has referred to para -3 of the sale-deed dated 19.05.2007 whereby petitioner purchased the premises in question.

In that a recyle is made that the portion hereby sold is in the tenancy and occupation of Sardar Inderjeet Singh on a monthly rental of Rs. 1083.33.

Thus, learned counsel for the petitioner submits that Sardar Inderjeet Singh alone was the tenant and no tenancy was created in favour of Madras

Cafe. He further submits that the partnership, if any, created by Sardar Inderjeet Singh in the name and style of M/s Madras Cafe in the year 1990

was not created in accordance with Section 25 (2) of the U.P. Act No. 13 of 1972, thus, according to him, the partnership, if any, created by Sardar

Inderjeet Singh is hit by Section 12 (2) of the said Act.

4. Per contra, learned counsel for respondent no.2 submits that on the sale-deed relied upon by the petitioner respondent no.2 was not a party to the

sale-deed executed by the erstwhile owner in favour of the petitioner. He further submits that Smt. Budhwanti tender rent in respect of the premises

in question to the landlord although learned counsel for the petitioner disputes this statement by submitting that petitioner never accepted the rent, if

any, offered by Smt. Budhwanti. He further submits that since Smt. Budhwanti is a partner in the firm in the name and style of M/s Madras Cafe,

therefore, rent tendered by one of the partner and should be treated as rent tendered by the entire firm. He further submits that the erstwhile owner

Shri Naresh Chand Aggarwal has not disputed the factum of creation of

partnership between Sardar Inderjeet Singh and Smt. Budhwanti. Learned counsel for the petitioner refuses their contention by submitting that it is not the case of Smt. Budhwanti that the partnership, if any, was created with the consent of erstwhile landlord Shri Naresh Chand Aggarwal. Although, he fairly submits that this aspect can be dealt with at the stage of trial.

5. In the case of Harish Tandon vs. ADDL.District Magistrate, Allahabad, U.P and others reported in (1995)1 SCC 537. Honâ??ble Supreme Court

has held that induction of a person who is not the member of the family as defined under Section 3(g) of U.P. Act No. 13 of 1972 will result in, then

the tenant shall be deemed to have ceased to occupy the building in terms of Section 12 (2) of the Act. Paragraphs 17, 18 and 27 of the said judgment

are extracted below:-

17. When sub-section (2) of Section 12 provides that whenever a tenant carrying on business in a building admits a person, who is not a member of his

family, as a partner, the tenant shall be deemed to have ceased to occupy the building, full effect has to be given to the mandate of the Legislature.

There is no escape from the conclusion that such tenant has ceased to occupy the building. No discretion is left to the court to enquire or investigate

as to what was the object of such tenant while inducting a person as partner who was not the member of his family. It can be said that the aforesaid

statutory provision requires the court to come to the conclusion that by the contravention made by the tenant, such tenant has ceased to occupy the

building. The framers of the Act have not stopped only at the stage of Section 12(2) but have further provided in Section 25, Explanation (i) another

legal fiction saying that where the tenant ceases to occupy the building within the meaning of sub-section (2) of Section 12 â??he shall be deemed to

have sub-let that building or partâ?. In view of the three deeming clauses introduced in sub-section (2) of Section 12, sub -section (4) of Section 12

and Explanation (i) to Section 25, no scope has been left for the courts to examine and consider the facts and circumstances of any particular case, as

to what was the object of admitting a person who is not the member of the family, as partner and as to whether, in fact, the premises or part thereof

have been sub-let to such person.

18.It was then urged that if such strict interpretation is given to sub-section (2) of Section 12, then similar interpretation should be given to Section

12(1)(b) and to Section 12(3) of the Act which prescribe other conditions under which the tenant shall be deemed to have ceased to occupy the building under his tenancy. It was pointed out that sub-section (1)(b) of Section 12 says that a landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if he has allowed it to be occupied by any person who is not a member of his family. According to the learned counsel for the respondents if the daughter-in-law or son-in-law of the landlord or tenant comes to reside in the building in occupation of such landlord or tenant, then it shall be deemed to have ceased to be in occupation of such landlord or tenant, which shall lead to an absurd result. Clause (b) of sub-section (1) of Section 12 shall not be applicable to such occupation by daughter-in-law or son-in-law or even outsider with the tenant himself. The words "allowed" and "occupy" are significant. The landlord or the tenant, as the case may be, shall be deemed to have ceased to occupy the building only if he has allowed it to be occupied by any person who is not a member of his family. The words "allowed to be occupied" indicate that the possession of such building has been given to a person who is not a member of the family. It shall not be attracted when any person who is not a member of the family resides in such building either along with the landlord or the original tenant. If the landlord or the tenant allows any person, who is not a member of the family within the meaning of the Act to occupy the premises, with the object that such person shall occupy such premises in his own rights, in that event, Clause (b) of sub-section (1) of Section 12 shall be attracted.

27. In the result, the appeal is allowed. The judgment of the High Court allowing the writ petition of the respondent-tenants is set aside and the orders of the Rent Controller and Eviction Officer are restored. In the circumstances of the case, there shall be no order as to costs.

6. Admittedly, Smt. Budhwanti does not come within the definition of family of Sardar Inderjeet Singh in terms of Section 3 (g) and there is nothing on record to show that the partnership if any was created in accordance with Section 25 (2) of U.P. Act no. 13 of 1972.

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7. In such view of the matter, the writ petition is allowed and the order impugned is set aside.