
(2011) 10 AHC CK 0086
In the Allahabad High Court
Case No : Writ A. No. 10058 of 2002

Sarfaraz Rasheed and Others

APPELLANT

Vs

A.D.J., Court No.5, Meerut and Others

RESPONDENT

Date of Decision : 30-10-2011

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(1)(b)

Citation : (2011) 10 AHC CK 0086

Hon'ble Judges : Sudhir Agarwal, J

Judgement

Sudhir Agarwal, J.—The petitioner has assailed the order dated 02.3.2002 (Annexure 13 to the writ petition) passed by Additional District Judge, Court No.5, Meerut dismissing Revision No.153 of 2001 against the order dated 10.4.2001 passed by District Supply Officer/Delegated Authority, Meerut rejecting petitioner's objection against release order dated 14.1.1993 and issuance of Form C for delivery of vacant possession of the premises in dispute to respondent no.3 and one Smt. Noor Jahan.

2. The facts in brief giving rise to the present dispute are as under:

3. The dispute relates to property No.18 (Old No.13) Sarai Jeena Meerut City. An application was filed by Smt. Noor Jahan, Wife of late Fakhruddin and respondent no.3 Sri Roshan Zameer under Section 16(1)(b) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") for release of accommodation in question alleging that it was earlier in the tenancy of one Dharam Pal who has vacated on 27.4.1991 and since it was required by them for own purpose, the same may be released.

4. In the said application petitioners filed an objection dated 14.7.1992 (Annexure 3 to the writ petition) stating that the accommodation is in possession of petitioners and a title suit no.928 of 1991 is already pending in the Court of Munsiff City, Meerut therefore, the application deserve to be rejected. It appears that the Rent Control Inspector (hereinafter referred to as "RCI") made an

inspection and submitted report dated 26.5.1992 (Annexure 6 to the writ petition) confirming possession of applicants Smt. Noor Jahan and Roshan Zameer on the accommodation in question. Consequently, District Supply Officer/Delegated Authority by order dated 23.10.1992 declared a vacancy on the premises in question and fixed 13.11.1992 for further orders. Ultimately, a release order was also passed on 14.1.1993 and thereafter an order was issued for issuance of Form C for giving effect to the release order. Thereagainst petitioners filed an objection on 26.8.1995 and the District Supply Officer/Delegated Authority by order dated 28.8.1995 granted a stay order. Ultimately, the District Supply Officer/Delegated Authority passed an order on 27.7.1999 deferring the proceedings holding that till the issue of title is decided, release order need not be given effect to.

5. Smt. Noor Jahan, one of the applicants, in whose favour release order was passed, preferred Civil Revision no.217 of 1999 challenging District Supply Officer/Delegated Authority's order dated 27.7.1999 which has been allowed by the Revisional Court vide judgment dated 13.9.2000 directing the District Supply Officer/Delegated Authority to consider petitioner's objection afresh and decide on merits.

6. The revisional order dated 13.9.2000 was challenged by the petitioner Sarfaraz Rasheed in Writ Petition No.53500 of 2000 but the same was dismissed by this Court vide judgment dated 11.12.2000. Consequently, District Supply Officer/Delegated Authority passed order on petitioner's objection on 10.4.2001 (Annexure 12 to the writ petition), rejecting petitioner's objection and the said order has been confirmed in revision by dismissing revision by Additional District Judge by impugned judgment dated 02.3.2002.

7. Sri Promod Kumar Jain, learned Senior Advocate appearing for the petitioner submitted that without deciding question of title, petitioners' objection was rejected by District Supply Officer/Delegated Authority and Revisional Court's order was not complied with hence impugned orders are illegal and liable to be set aside. It is submitted that petitioner's objection was not decided at all and therefore the impugned orders cannot sustain.

8. The Court finds that against release application, petitioners had filed objection on 14.7.1992. The District Supply Officer/Delegated Authority thereafter on 23.10.1992 declared vacancy and also passed release order on 14.1.1993. The petitioners' objection against release order dated 14.1.1993 were founded on the ground that an issue regarding title of the property in question is pending in Civil Court i.e. Suit No.928 of 1991 (Sarfaraz Rasheed Vs. Roshan Zameer) and therefore till the suit is decided, parties should maintain status quo. This Court also finds that original suit no.928 of 1991 filed by petitioner and others impleading Roshan Zameer, Smt. Noor Jahan and others is not a title suit but it is an injunction suit filed by the petitioners claiming that defendants therein should not interfere in the possession of the petitioners in respect to the accommodation i.e. house no.18 (old No.13) situated at Sarai Jeena, Meerut City. A copy of the

plaint dated 9.9.1991 is Annexure C.A. 9 to the counter affidavit filed on behalf of the respondent No.3. Earlier thereto petitioners no.2 and 3 had filed suit no.887 of 1991 seeking a declaration in respect to the property in dispute. The declaratory suit no.887 of 1991 was dismissed for want of prosecution on 7.2.1992. There is nothing on record to show whether it was actually restored thereafter or not. Further suit no.928 of 1991 filed by petitioner was also dismissed for want of prosecution on 8.11.1995 (C.A.18 to the counter affidavit). It is said that a restoration application was filed and pending. There is nothing on record to show that till date the above suit has been restored. The fact remains that in the eyes of law the alleged suit of petitioner is not pending. Only two issues were raised in the objection by the petitioners, firstly, during pendency of suit he should not be evicted from the accommodation in question, and secondly, that there is no construction on the site and respondents no.3 was not in possession.

9. So far as first aspect is concerned, it is evident that in the eyes of law no alleged suit of the petitioners is pending. In respect to the other aspect, RCI had submitted report against the petitioner and relying on the same, impugned orders have been passed by the Courts below. The contention of Sri P.K.Jain, learned counsel for the petitioners that objection of petitioners have not been decided while passing the impugned order is not correct.

10. In these facts and circumstances, I find no reason to interfere with the impugned orders.

11. Dismissed.

12. There shall be no order as to costs.