
(2006) 03 AHC CK 0125

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 37060 and 37376 of 1993

Satish Chand Kakkar and Ors., Ramesh Chand Kakkar and Ors. APPELLANT
Vs

VII Addl. District Judge & Ors. RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Citation : (2006) 03 AHC CK 0125

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—Both these writ petitions are directed against judgments, decree and order passed in the same cases. Some tenants/defendants in S.C.C. Suit No. 255 of 1983 on the file of Judge, Small Causes Court, Allahabad have filed the first writ petition and other defendant/tenants have filed the second writ petition.

2. Landlord Mohan Ji Tandon had filed the suit for eviction and recovery of arrears of rent against 11 defendant/tenants. The suit was decreed for eviction and for recovery of arrears of rent etc. through judgment and decree dated 11/3/1991. Against the said judgment and decree Civil Revision (ought to be S.C.C. Revision) No. 46 of 1991, was filed by the tenants, which was dismissed by VIIth A.D.J. Allahabad on 30/9/1993, hence these writ petition.

3. Landlord Mohan Ji Tandon respondent in both the writ petitions purchased the property in dispute which is a shop bearing No. 40/1977 and is situated at Chowk Market Allahabad through registered sale deed dated 14/2/1979 from its previous owner Sudhir Kumar Agarwal. At that time Late Sri Purushottam Das Kakkar was its tenant who died on 19/1/1979. Defendants in the suit/petitioners in these writ petitions are legal heirs of original tenant Purushottam Das Kakkar. Suit was decreed on the ground of default and material alteration.

The ground of default is taken first.

4. According to the tenants rate of rent is Rs. 50 per month. According to the

landlord apart from Rs. 50 per month rent, tenants are also liable to pay Rs. 7 per month (@ Rs. 14%) as water tax. Tenants deposited the rent @ Rs. 50 per month in Miscellaneous Case No. 329 of 1980 before the Munsif, West, Allahabad under Section 30 of U.P. Act No. 13 of 1972. In the said case tenant deposited total amount of Rs. 2625 as rent from 1421979 till 3061983. The said amount was deposited on different dates. Last deposit was made on 2421983. Thereafter on 1731983 landlord served notice of termination of tenancy and demand of rent upon the tenants. The Courts below have not categorically held the deposit under Section 30 of the Act to be invalid. The Courts below have held that even if the said deposit is taken to be valid, still tenants were defaulters. One of the reasons given by the Courts below for holding part of the deposit under Section 30 to be invalid is that tenants had deposited advance rent which is not permissible under Section 30 of the Act. I do not agree with this view in the least. There is nothing wrong in paying or depositing advance rent.

5. Let us examine the position of payment of rent taking the rate of rent to be Rs. 57 per month as alleged by the landlord. If the amount of Rs. 2625 deposited by the tenant under Section 30 of the Act is divided by 57, the quotient comes to 46 ($57 \times 46 = 2622$). It means that the rent of Rs. 2625 deposited by the tenants will cover the period till 14121982. (There are 46 months from 1421979 to 14121982). In view of this at the time of notice of demand dated 1731983 the default was only for three months. Liability to eviction on the ground of default under Section 20(2) (a) of U.P. Act No. 13 of 1972 accrues only when tenant is in arrears of rent for not less than four months.

6. The liability to pay water tax was vehemently denied by learned Counsel for the tenant. According to the learned Counsel Jal Sansthan could levy water tax in respect of building where there was no water tap only if such building was situate within the radius prescribed by the rules. In this regard learned Counsel has cited: *Mis. Model Tenancy v. State*, (1990)2 U.P.LB.E.C. 1409).

7. Learned Counsel has further argued that in pursuance of the said judgment Jal Sansthan has fixed radius regarding the levy of water tax through Rules of 1993 (Jal Sansthan (Radius Regarding Levy of Water Tax) Rules) hence before 1993 no water tax could be levied by the Jal Sansthan on the shop in dispute as there was no water tap in the said shop. However, as I have already decided that even if tenants are held liable to pay water tax of Rs. 7 per month also as demanded by the landlord, still they were not defaulter for 4 months or more than 4 months on the date of notice;"e. 1731983, hence, I need not decide this question.

8. The other ground on which suit has been decreed is of material alteration and damage to the building as provided under Section 20(2) (b) and (c) of U.P. Act No. 13 of 1972. The alterations found to have been made by the tenants are as follows:

(i) A shutter has been placed which according to the landlord has weakened the ceiling.

(ii) The boundary wall has been extended;

(iii) Pucca Chabutara 10 feet x 6 feet has been constructed.

9. In my opinion all these three constructions do not amount to damage to the building or material alteration. In this regard reference may be made to the following authorities of the Supreme Court:

(1) *Om Prakash v. A. Singh*, (AIR 1987 SC 617), where it was held that temporary constructions do not amount to material alteration.

(2) *Waryam Singh v. B. Singh*, (2003) 1 SCC 59, where it was held that enclosing the front Varandah by walls and placing rolling shutter does not amount to the building and material alternation.

(3) *G. Raghunath v. K.V. Varghese*, AIR 2005 S.C.W. 4086. In this authority it was held that closing the door and window by bricks lowering level of floor, cutting the rafters erecting concrete pillars and fixing rolling shutters do not damage the building and are not material alterations.

(4) *Hari Rao v. N. Govindachari*, AIR 2005 SC 3389. According to this authority putting up racks on the wall by drilling hole does not amount to material alteration.

10. Accordingly both the writ petitions are allowed. Judgments of the Courts below, decree of the trial Court and order of the revisional Court in respect of eviction are set aside. Suit for eviction is dismissed. Landlord is entitled to withdraw the amount deposited by the tenants either before Judge, Small Causes Court or before the Munsif.

11. I have held in *Khursheeda v. A.D.J., Allahabad*, 2004(2) JCLR 452 (SC): 2004 (2) A.R.C. 64, that while granting relief against eviction to the tenant writ Court is empowered to enhance the rent to a reasonable extent. Property in dispute is a shop which is situate in Chowk market, Allahabad. Chowk is the most important market of Allahabad. Rent of Rs. 50 per month is virtually as well as actually no rent. Accordingly it is directed that with effect from April, 2006 onward tenants shall pay rent to the landlord @ Rs. 4, 000 per month inclusive of all taxes etc. No further amount shall be payable by tenant. However, U.P. Act No. 13 of 1972 shall continue to apply to the building in dispute in spite of rent of Rs. 4, 000 per month. This direction of applicability of Rent Control Act in spite of the fact that by virtue of Section 2(g) of U.P. Act No. 13 of 1972 the said Act does not apply to any building whose monthly rent exceeds Rs. 2000 rupees is being issued for the reason that by agreement parties can apply the Rent Control Act to a building to which it is not applicable. The Supreme Court in *Lachoo Mal v. Radhey Shyam*, 1971 (1) SCC 619, while interpreting old Rent Control Act of U.P (U.P. Act No. 3 of 1947) has held that landlord can legally waive the benefit of exemption clause (Section 1A of the said Act). I The Court can also, therefore, while enhancing rent for more than Rs. 2.000 per month can waive the applicability of Section 2 (g) of UP Act No. 13 of 1972.