
(2003) 09 AHC CK 0182
In the Allahabad High Court
Case No : Writ Petition No. 48 R/C of 2003

Shanti Devi and Ors.

APPELLANT

Vs

Civil Judge (SD), Mohanlal Ganj, Lucknow & Ors.

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 09 AHC CK 0182

Hon'ble Judges : K.S.Rakhra, J

Final Decision : Dismissed

Judgement

K.S. Rakhra, J.—This is a petition under Article 226 of the Constitution of India for quashing of the order dated 1522003 (Annexure No. 1) and the order dated 12101999 (Annexure No. 5) to the writ petition passed by Civil Judge, (Senior Division), Mohanlal Ganj, Lucknow and 1st Additional Judge, SCC/Prescribed Authority, Lucknow, respectively and also for a direction to the opposite parties to restore, the possession of the house in dispute to the petitioners.

2. I have heard Shri Anoop Kumar, Advocate for the petitioners and Shri D.R. Tripathi, for opposite party No. 2. No one responds for opposite party No. 3 who is only a proforma party. Counter affidavit, supplementary counter affidavit and rejoinder affidavit and supplementary rejoinder affidavit have been perused. The facts as appeared from the contention of the parties and submission of the learned Counsel for the parties are that house No. 88/15, Juriyan Tola, Sunder Bagh, Lucknow was the property of one Kasi Prasad in which opposite party No. 2 was in possession on part as a tenant. On 18111998, Kasi Prasad sold this house to opposite party No. 2 and the sale deed was registered on 10121998. In order to accommodate for sometime Kasi Prasad, who was living in a portion of that house, he was accommodated by opposite party No. 2 by creation of a short term licence in accordance with the provisions of Section 2A (5) and (6) of U.P. Act XIII of 1972. The licence so created on 10121998 was for one month but Kasi Prasad could not vacate the premises till his death on 511999. Opposite

Party No. 2 then made an application before the Prescribed Authority on 2011999 under Section 2A (5) and (6) of the said Act for an order of eviction against Purshottam, who was impleaded as opposite party as he was shown to be the nephew of Kasi Prasad and he was in possession of house. On 12th October, 1999 the Prescribed Authority allowed the application of opposite party No. 2 in P.A. Case No. 8 of 1999 and directed Purshottam Das Gupta to vacate the premises within a month of the passing of the order. The premises was not vacated, and on 27th November, 1999, opposite party No. 2 further made another application under Section 23 of the said Act for enforcement of the order dated 10121999, (a copy of which is Annexure No. 6 of the writ petition). This application was also made against Purushottam Das Gupta. On 1152000, the Prescribed Authority in P.A. Case No. 26 of 1999 passed an order for eviction of the occupant and delivery of the possession to opposite party No. 2. In compliance with this order, on 2152000 the possession of the property was delivered to opposite party No. 2 as per report of P.S. Qaiserbagh (Annexure No. 14 of the writ petition). This report stated that the possession of the property was delivered to opposite party No. 2 from Shanti Jaiswal so called wife of Kasi Prasad Gupta. On 2252000, an application was moved by the petitioners No. 2 to 5 before the Prescribed Authority for recalling of the order dated 12101999 (Annexure No. 7 is the copy of the said application) alongwith it and on the same day, another application was moved by all of them (Annexure No. 8) for restoration of the possession to the said petitioners.

3. By the impugned order dated 1522003, the Prescribed Authority has rejected all these applications. The said impugned order also disposed of another application dated 2452000 (Annexure No. 10 of the writ petition) of all the five petitioners, which was filed by the petitioners for removal of same construction.

4. The petitioner No. 1 claims to be the second wife of Kasi Prasad and also claims to be the mother of petitioners Nos. 4 and 5 and petitioners Nos. 4 and 5 claim to be the children of Kasi Prasad from second marriage and petitioners Nos. 2 and 3 claim to be the children of Kasi Prasad from the first marriage. Their relationship with Kasi Prasad is, however disputed by opposite party No. 2. On 3152000, the petitioner No. 1 Smt. Shanti Devi filed a writ petition bearing No. 1424 of 2000, (M/s) Smt. Shanti Devi v. Kisan Das Gupta, in which it was prayed that the order dated 1152000 and 12101999 of the Prescribed Authority passed in P.A. Case No. 26 of 1999 and P.A. Case No. 8 of 1999, respectively, be quashed. That writ petition was dismissed on 2112000, and the same was restored on 15112000 and then finally dismissed on 23112003 as withdrawn but no prayer for liberty to file a fresh writ petition was sought by the petitioners. The reason for withdrawal of the writ petition was that the petitioner No. 1 had applied before the Prescribed Authority for recalling of the aforesaid impugned order and therefore, it was prayed that the writ petition be dismissed.

5. Now, the present writ petition has been filed for the same relief on 2032003. Learned Counsel for the opposite party No. 2 has raised a preliminary objection

that on the same subject successive writ petitions are not maintainable. He has further argued that the petitioners have no locus standi and they are not related to Kasi Prasad and that even Kasi Prasad was given only one month short term licence under the provisions of U.P. Act 13 of 1972 and since Kasi Prasad had already sold out the premises in question to opposite party No. 2, the petitioners are not entitled to get any relief. It is also argued by the learned Counsel for the opposite party No. 2 that the petitioners have already filed civil suit challenging the right and title of opposite party No. 2 as well as for cancellation of the sale deed executed by Kasi Prasad on 10121998. Learned Counsel for the petitioners on the other hand contended that the report of P.S. Qaiserbagh shows that the petitioner No. 1 was dispossessed from the premises in question on 1152000 and therefore, in proceeding under Section 23 of the Act initiated on the application of opposite party No. 2, she ought to have been impleaded as party. It was argued that since she was not impleaded as party in the said case, her interest has been prejudiced. Further, it has been argued by the learned Counsel for the petitioners that writ petition No. 1424 (M/S) of 2000 was filed by Shanti Devi alone and therefore, remaining petitioners No. 2 to 5 still have right to challenge these orders dated 1152000 and 12101999 passed by the Prescribed Authority through the present writ petition.

6. After consideration the submission of both the sides and refraining from making unnecessary observation, which may affect the rights of the parties in proceeding between them in Civil Court, I am of the opinion that the present writ petition is liable to be dismissed. First of all, the petitioner No. 1, who claims that she was in possession and was dispossessed under the order dated 1152000, had earlier filed a writ petition No. 1424 of 2000 and withdrew the same without seeking liberty to file it afresh. The writ petition filed on the same subject by petitioner No. 1 is not maintainable as held in *Sarguja Transport Services v. S.T.A.T.*

7. So far as the petitioners Nos. 2 to 5 are concerned, the report dated 2152000 of P.S. Qaiserbagh does not indicate that anybody else was in possession or was claiming to be in possession on their own right. The petitioners No. 2 to 5 appeared to be claiming through only petitioner No. 1, secondly, even if it is taken for a moment that Shanti Devi in filing a writ petition No. 1424 (M/S) of 2000 was not representing the interest of petitioners No. 2 to 5, their writ petition is also liable to be dismissed on the ground of delay because the impugned order was passed in October, 1999 and May, 2000, while the present petition has been filed in the year 2003.

8. This Court is of the opinion that the petitioners have not been able to make out any case for interference.

9. The writ petition is dismissed.