

(2000) 05 AHC CK 0002
In the Allahabad High Court
Case No : C.M.W.P. No. 26081 of 2000

Sheetal Prasad Kesharwani

APPELLANT

Vs

XVIth Addl. District and Sessions Judge, Kanpur Nagar and
others

RESPONDENT

Date of Decision : 25-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 22, 3

Citation : (2000) 3 AWC 2224 : (2000) AWC 2224

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Deepak Jaiswal, for the Appellant;

Judgement

A. K. Yog, J.—This is a tenant's petition under Article 226. Constitution of India.

2. A release application. Parwati Tandon and others v. Sheetal Prasad Kesharwani, Case No. 35 of 1993, was filed by the landlords (contesting respondent Nos. 3 to 6) u/s 21 (1) (a). U. P. Urban Buildings (Regulation of Letting Rent and Eviction) Act. 1972. U. P. Act No. XIII. of 1972. (for short called "the Act") contending that first floor portion of House No. 43/168B. Chowk. Kanpur Nagar, comprised of two rooms and open space (8" x 12") (called accommodation in question) is in the tenancy @ Rs. 15 p.m.

3. Release was claimed on the ground of their genuine, bona fide, personal need and also that their hardship was more as compared to that of the tenant.

4. Tenant-petitioner opposed release application primarily on the ground that the landlords had no valid title or right under law because "Will" [executed by the erstwhile owner/landlord Laloo Mal in favour of Smt. Ratan Devi - predecessor in interest of Parwati Tandon and others) did not permit property including accommodation in question to be partitioned. Laloo Mal had three daughters one of whom (Smt. Ratan Devi) was made executor of the Will. It is admitted to the

parties that said Ratan Devi had executed a lease-deed in favour of Smt. Parwati Tandon, respondent No. 3.

5. Before the Prescribed Authority, an application and an "Affidavit"-annexing a document (called "kabzanama" dated 13.6.1994] was filed on 21.4.1997 (Annexure-7 to the writ petition). It was contended that the document [paper No. 82) may be read in evidence. On the basis of the "kabjanama", an attempt was made to show that landlord had acquired another accommodation. Execution of "kabjanama" was admitted by landlords but in defence, they contended that "kabjanama" was got executed by way of security to protect the loan of Rs. 3,50,000 taken by them from one Smt. Shahnaz Begum and she got kabzanama executed to protect realisation of her loan amount.

6. Learned counsel for the contesting respondents (who had appeared as caveator) placed for perusal of this Court a certified copy of the order sheet of Rent Case No. 35 of 1993. Petitioner had no objection to it. Order of 16th January, 1997, this indicates that tenant had earlier filed an application (paper No. 68) for issuing commission to prove that house (subject-matter of alleged "kabzanama") had come in possession of the landlords. Prescribed Authority granted fifteen days time to the tenant to file a copy of the "sale deed". It is not disputed at the bar that "sale deed" was never filed in spite of opportunity given to the tenant.

7. The Prescribed Authority aide order dated 21.4.1997, (Writ Annexure-7), held that there is no need for summoning Smt. Shahnaz Begum as witness as execution of "kabzanama" was not denied. The affidavit (paper No. 82 Ga) was, however, taken on record as part of evidence.

8. Prescribed Authority aide judgment and order dated 29.11.1997, allowed the release application (Writ Annexure-10).

9. Tenant filed Rent Appeal No. 3 of 1998, u/s 22 of the Act, which was dismissed vide judgment and order dated 17.2.2000 [Writ Annexure-13).

10. Heard learned counsel for the parties. Writ Petition is finally decided at the admission stage with the consent of the counsel.

11. Learned counsel for the petitioner argued that Paper Nos. 80 and 82, which were brought on record were part of the evidence but they have not been referred and considered by the two Courts in their judgments and it is manifest error apparent on the face of record.

12. The petitioner, however, failed to show anything from the memo of appeal or from the petition that these documents were at all referred to and relied upon at the time of hearing before the Courts below. Tenant was evidently conscious of the fact that his theory of landlord's acquiring house on the basis of alleged "kabzanama" had no force and it was not worth canvassing before the Courts below in view of the landlord's defence that it was merely by way of security to protect the loan taken by Parvati Tandon (Respondent No. 2) and that there was

no "sale deed" in favour of the landlords to prove acquisition of additional accommodation as alleged by the tenant. Perusal of the impugned judgment of the Prescribed Authority shows that tenant did not rely upon and did not press the said issue. There is no reference to the paper Nos. 80 and 82 in the said Judgment.

13. Ground Nos. 9 and 10 in Memo of Appeal (Writ Annexure-II) are to the effect that Court below failed to take into consideration the papers and evidence filed by the appellant already taken on record and the Court below failed to take into consideration the "entire material" on record. These grounds are vague. Particulars of said documents on record have not been given. There is no averment that Paper Nos. 80 and 82 have been ignored in spite of the fact that they were referred at the time of hearing and in fact issue was pressed. Tenant cannot be permitted to take advantage of his own wrong or lapse as an afterthought and assail the judgment of the Courts below on a point which was not urged before them.

14. It is argued that the present release application was not maintainable as contesting respondents were not landlord on the ground that the contesting respondents had no valid title or legal right with respect to the premises in question. Entire thrust, on the part of the tenant, has been to challenge the validity of the "lease deed" and to prove that Smt. Ratan Devi could not transfer the premises in question in breach of the Will. Learned counsel argued that a person - who is not owner in law, cannot be "landlord" under the Act.

15. In this context, a reference was made to the definition of "landlord" in Act and it is argued that the person to whom rent is payable means "owner" who is entitled to receive rent in law.

16. It is well-settled that "landlord" need not be owner and that any person to whom tenant is under an obligation to pay rent (irrespective of the fact whether he is owner or not) is the landlord.

17. Ratan Devi, having executed a lease deed in favour of present contesting respondents and entitled to receive rent from the tenants-their locus standi as "landlord" cannot be challenged by the tenant on the allegation of infirmity in the "lease deed",

18. Relying upon order dated 2.2.1999 in Rent Case No. 6 of 1999. Satyendra Swaroop Saxena v. Gopal Das, the petitioner argued that one portion of the house (in the tenancy of one Gopal) has been released and, therefore, the present release application should not be allowed. This contention of the appellant has been considered by the appellate authority (particular page 108). There is no averment in the petition (see para 23 of the petition) that this order was promptly filed by the tenant before the Court below. Moreover, there is no averment that landlord had succeeded in getting de facto possession of the accommodation in the tenancy of said Gopal.

19. Sri Rajesh Tandon, counsel for the contesting respondents, on instructions of his client made statement before this Court that release order has not been executed and landlord has not been able to take possession as yet because of stay order granted in revision. This fact has not been disputed or denied by the tenant.

20. Mere passing of release order will make no difference so long as landlords do not get possession and uncertainty prevails over this aspect. The contention of the petitioner fails on this score.

21. From the copy of the order sheet referred to above placed by the learned counsel for the contesting respondents, it is clear that petitioner adopted delaying tactics before the court below. On this score also, it is not a fit case for interference under Article 226. Constitution of India.

22. No other point raised or pressed.

Writ petition lacks merit.

Writ petition fails and accordingly, dismissed.

No costs.