
(2010) 10 AHC CK 0185

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.61693 of 2010

Shiv Shankar Awasthi

APPELLANT

Vs

Guru Narayan Lal Nigam and another

RESPONDENT

Date of Decision : 11-10-2010

Acts Referred:

Citation : (2010) 10 AHC CK 0185

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record. Tenant petitioner is challenging the validity and correctness of the judgment and order dated 31.8.2010 passed by District Judge, Kanpur Nagar in SCC revision no. 47/2010, Shiv Shanker Awasthi Vs. Guru Narayan Lal Nigam as well as judgment and decree dated 26.5.2010 passed by Judge, Small Causes Court, Kanpur Nagar in SCC suit no. 515 of 1985, appended as annexure no. 13 and 11 respectively to the writ petition.

2. The landlord respondent filed a suit for ejectment and recovery of arrears of rent on the ground that the petitioner was tenant of one room and courtyard on the ground floor of House no. 119/10, Darshan Purwa, Bamba Road, Kanpur at the rate of Rs. 50/ per month; that tenant petitioner illegally occupied courtyard measuring 10 X 6 feet and raised constructions thereon upto the height of about 14 feet; that tenant petitioner was required to leave the unauthorised construction but instead of doing so, he agreed to enhance the rent from Rs. 50/ to Rs. 90/ per month; that tenant petitioner did not pay enhanced rent thereafter and failed to pay rent w.e.f. July 1981 and rent w.e.f. 3.12.1983; hence a notice of demand and determination of the tenancy was personally served upon him but he neither paid the arrears of rent nor vacated the disputed accommodation.

3. The petitioner tenant contested the case by filing his written statement denying the plaint allegations. He further pleaded that he had not agreed to enhance rent from Rs. 50/ to Rs. 90/; that plaintiff respondent refused to accept

the rent and as such he deposited rent under section 30(1) of U.P. Act No. 13 of 1972 in the court of Munsif City; that he has also made requisite deposit under section 20(4) of U.P. Act no. 13 of 1972 on the first date of hearing. It was further submitted that he did not make any addition or alteration in the accommodation in question; that he had paid Rs. 1855/ in advance for repairs of the building at the time of letting and the plaintiff accordingly carried on requisite repairs in the building which amount was adjusted in the amount of rent.

4. On the basis of pleadings and evidence led by the parties, the Judge, Small Causes court, decreed the suit in to to vide judgment and decree dated 26.5.2010, against which SCC revision no. 47 of 2010 was filed by the petitioner tenant.

5. The revisional court by its judgment and order dated 31.8.2010 modified the judgment and decree of the trial court to the extent that suit for arrears of rent and damages was dismissed but decree for eviction of the tenant petitioner was confirmed.

6. Counsel for the petitioner has filed a supplementary affidavit and submits on its basis that a house was purchased in the name of petitioner's wife by means of registered sale deed dated 15.9.2007. The house has now been sold by the petitioner by sale deed dated 29.9.2009 allegedly for repayment of loan as well as for treatment of his wife. He further submits that at present the petitioner has no accommodation except the tenanted accommodation in question.

7. Explanation to third proviso of section 21 of U.P. Act No. 13 of 1972 is as under :

" Explanation: In the case of a residential building

(i) Where the tenant or any member of his family who has been normally residing with him or is wholly dependent on him, has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub section shall be entertained."

8. Considering the entire facts and circumstances, there appears to be no illegality in the order of the courts below in view of explanation to third proviso to section 21 of the Act. The fact that petitioner tenant had acquired a vacant residential house in the name of his wife in the same municipality on 15.9.2007 and thus explanation to third proviso to section 21 of the Act, came into play at that juncture. Subsequent sale of that accommodation by the petitioner vide sale deed dated 29.9.2009 is therefore of no help to the petitioner.

9. From the impugned judgment and orders, it is apparent that all the findings recorded by the courts below are findings of fact i.e. the tenant made structural alteration without permission of the landlord; that he has made default and is not entitled to the benefit of section 20(4) of U.P. Act no. 13 of 1972 as his wife has purchased a house in the same municipality.

10. This Court is not inclined to interfere with concurrent findings of fact in exercise of its extra ordinary powers under Art. 226 of the Constitution.

11. For the reasons stated above, the writ petition has no force and is accordingly dismissed.