

(1998) 07 AHC CK 0111
In the Allahabad High Court
Case No : C.M.W.P. No. 10058 of 1998

Smt. Angoori Devi Gupta

APPELLANT

Vs

Prescribed Authority/Civil Judge (Junior Division), Shikohabad
and others

RESPONDENT

Date of Decision : 24-07-1998

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 26, 26(2), 28, 28(2), 28(3)

Citation : (1998) 3 AWC 2336

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : J.N. Singh, for the Appellant;

Final Decision : Allowed

Judgement

J.C. Gupta, J.—This writ petition by the landlady is directed against the order dated 11.2.1998 passed by the respondent No. 1 allowing the application of respondent No. 2 moved u/s 28(5) of the U. P. Act No. XIII of 1972, (hereinafter referred to as the "Act").

2. Counter-affidavit and rejoinder-affidavits have been exchanged and with the consent of the parties counsel, this writ petition is disposed of finally at the admission stage itself.

3. According to the petitioner, respondent No. 2 is the tenant in the disputed shop at a monthly rent of Rs. 70. It further appears that the respondent No. 2 served a notice dated 14.1.1992 on the landlady-petitioner calling upon her to repair the roof of the shop within 30 days from the date of receipt of the notice. The respondent No. 2 thereafter on the expiry of notice period and on the failure of the landlady to get the roof repaired moved an application u/s 28 (5) of the Act before the Prescribed Authority. The landlady filed her reply infer alia alleging that the notice, which was served upon her was not valid as the same did not make any mention that the tenant was willing to pay the enhanced rent in

accordance with the provisions of Section 6 of the Act. It was further pleaded that the tenant is not in occupation of the shop and the same has been sub-let to Kali Charan respondent No. 3. She further alleged that the roof was in a good condition and in any case, repairs of the roof could not be carried out because of the fact that there is only one common roof of the shop and two residential rooms of the tenant. No estimate has been furnished by the tenant regarding the expenditure to be incurred in the repairs. By the impugned order the respondent No. 1 has allowed the tenant's application and has directed the petitioner to repair the roof in question within one month from the date of the order so as to make it water-proof and to submit the details of the expenses incurred in the repairs.

4. Learned counsel for the petitioner contended before this Court that the Prescribed Authority did not have the jurisdiction to proceed in the matter inasmuch as no valid notice as contemplated under sub-section (2) of Section 28 of the Act was served upon the petitioner. It was further contended that the Prescribed Authority failed to consider that the amount of expenses to be incurred in repairs cannot exceed the amount of two years rent, meaning thereby that repairs could be ordered only upto the extent of Rs. 1,400 in the instant case.

5. In order to appreciate the contention raised by the petitioner's counsel, it is necessary to look into the relevant provisions of the Act.

6. Section 26 of the Act lays down certain obligations of the landlord and tenant with regard to the amenities enjoyed by the tenant. Sub-section (1) thereof provides that no landlord shall without lawful authority or excuse cut off, withhold or reduce any of the amenities enjoyed by the tenant.

7. Under sub-section (2) of Section 26, the landlord is bound to keep the building under tenancy wind-proof and water-proof and carry out periodical repairs, subject to any contract in writing to the contrary. However, under the garb of repairs, the landlord cannot be called upon to reconstruct the building. Only such of the repairs which are necessary for the purpose of keeping the building wind-proof and water-proof are made the liability of the landlord, but the repairs which do not fall within the aforesaid category, the landlord is not bound to carry out the same. Relaying of fallen roof has been considered to be falling under the terms of "repairs". The Court should always keep in mind the distinction between "repairs" and "reconstruction" while considering the scope of sub-section (2).

8. Section 28 lays down the procedure for enforcement by a tenant of landlord's obligation to keep the building wind-proof and water-proof. Section 28 reads as under :

"(1) If the landlord fails to carry out white-washing or repairs as required by sub-section (2) of Section 26, the tenant may, by notice in writing, call upon him to carry out the same within one month from the date of service of such notice.

(2) Where the cost of the requisite white-washing or repairs is likely to exceed the amount of (two months' rent) in a year, then the tenant in his notice shall also intimate to the landlord his willingness to pay enhanced rent in accordance with the provisions of Section 6.

(3) If the landlord falls to comply with the notice, the tenant may himself carry out the white-washing or repairs at a cost not exceeding (two months' rent) in a year and deduct the amount from the rent, and in any such case he shall furnish the account of the expenditure incurred to the landlord.

(4) Where the tenant claims that the building requires white-washing or repairs to such extent that the cost thereof is likely to exceed the amount of (two months' rent) in a year, hereinafter in this section referred to as "major repairs", and the landlord either declined his responsibility to carry out the same or fails to comply with the notice, the tenant may apply to the prescribed authority for an order under sub-section (5).

(5) The prescribed authority on receiving an application under subsection (4) may, after giving an opportunity of hearing to the parties-

(a) either reject the application ; or

(b) require the landlord to carry out the requisite major repairs within such period as may be specified in the order, and on his failure to do so, permit the tenant to carry out those repairs at a cost not exceeding such amount (which shall not be more than the amount of two years' rent) and within such period as may be specified in the order.

(6) Where in pursuance of an order under sub-section (5), any major repairs are carried out by the tenant, he shall furnish an account of the expenditure to the prescribed authority, which shall certify the amount recoverable by the tenant, and thereupon such amount, unless paid or otherwise adjusted by the landlord, may be deducted by the tenant from the rent in monthly installments not exceeding twenty-five per cent of one month's rent, and in any such case, the enhancement of rent u/s 6 shall come into effect only from the month following the month in which the cost is fully recovered by the tenant.

(7) No appeal or revision shall lie from any order of the prescribed authority under sub-section (5) or sub-section (6), which shall be final,"

9. It is clear from the above provisions that where the landlord fails to carry out white-washing or repairs as required by sub-section (2) of Section 26, the tenant may by a notice in writing call upon the landlord to carry out the same within one month from the date of service of such notice. However, where the cost of the requisite white-washing or repairs is likely to exceed the amount of two months' rent in a year, the further requirement of law is that in the notice the tenant shall also intimate to the landlord his willingness to pay enhanced rent in accordance with the provisions of Section 6 of the Act.

10. Section 6 of the Act provides that notwithstanding anything contained in Section 4 or Section 5, but subject to the provisions of Section 8, where the landlord has, after the commencement of this Act, either with the consent of the tenant or in pursuance of any requirement of law, made any improvement in a building, he may, by notice in writing to the tenant, given within three months from the date of completion of the improvement, enhance the monthly rent of the building by an amount not exceeding 1% of the actual cost of such improvement, with effect from the said date, and thereupon the standard rent of that building shall stand enhanced accordingly. The word "improvement" has been defined u/s 3 (n) in the following words :

" "improvement" in relation to a building means any addition to it or alteration thereof or the provision of any new amenity to the tenant, and includes all repairs made in any year the cost whereof exceeds the amount of two month's rent thereof."

Thus improvement in relation to a building means-- : (i) additions to a building let out ; (ii) alterations to a building let out ; (iii) provision of any new amenity to the tenant ; and (iv) all repairs made in any year the cost whereof exceeds the rent of two months.

11. A plain reading of the provisions of Section 28 (2) along with the provisions of Section 6 and Section 3 (n) aforesaid makes it clear that whenever the cost of repairs made in any year is likely to exceed the rent of two months, the tenant is legally required to intimate to the landlord in his notice calling upon him to carry out the repairs that he is willing to pay enhanced rent in accordance with the provisions of Section 6, whereas if the cost of requisite white-washing or repairs does not exceed the amount of two months" rent in a year, the tenant has to serve the landlord with a simple notice calling upon him to carry out the same within one month from the date of receipt of the notice.

12. Sub-section (3) of Section 28 lays down the procedure where the landlord does not comply with the notice served upon him under sub-section (1). It provides that where the landlord fails to carry out white-washing or repairs whose cost does not exceed two months" rent in a year, the tenant has been vested with a right to carry out the repairs himself after expiry of notice period of one month and he is further entitled to deduct the amount from the rent payable but he is under a statutory duty to furnish to the landlord the account of the expenditure so incurred by him in carrying out the repairs. It follows that while carrying out the repairs under sub-section (3) the tenant can deduct the expenses incurred on the repairs subject to a maximum limit of two months" rent in a year.

13. Sub-section (4) applies to cases where the expenses of whitewashing or repairs are likely to exceed two months rent in a year and in respect whereof notice as contemplated under sub-section (2) has been served upon the landlord. It provides that after service of notice, If the landlord has declined his

responsibility to carry out the repairs or fails to comply with the notice, the tenant may move an application before the Prescribed Authority for an order under sub-section (5).

14. Sub-section (5) then lays down that on receiving an application under sub-section (4), the Prescribed Authority shall give an opportunity of hearing to the parties- and thereafter he may :

- (a) either reject the application moved by the tenant under sub-section (4) ; or
- (b) require the landlord to carry out the requisite major repairs within Such period as may be specified in the order, and on his failure to do so, permit the tenant to carry out those repairs at a cost not exceeding such amount, which shall not be more than the amount of two years" rent, and within such period as may be specified in the order,

15. Sub-section (6) then lays down that where the tenant carried out the "major repairs" in pursuance of an order under sub-section (5), he shall furnish an account of the expenditure to the Prescribed Authority. The Prescribed Authority shall then examine the expenses and certify the amount recoverable by the tenant, and thereupon such amount, unless paid or otherwise adjusted by the landlord, may be deducted by the tenant from the rent in monthly installments not exceeding twenty-five per cent of one month's rent, and in any such case, the enhancement of rent u/s 6 shall come into effect only from the month following the month in which the cost is fully recovered by the tenant.

16. By virtue of sub-section (7) a finality has been given to the orders passed by the Prescribed Authority under sub-section (5) or sub-section (6), as no appeal or revision is provided against the said orders.

17. Perusal of Section 28 of the Act indicates that the Legislature has classified the repairs under two heads :

- (a) "Minor repairs"--the repairs whose cost does not exceed the amount of two months" rent in a year ; and
- (b) "Major repairs"--the repairs, the cost whereof is likely to exceed the amount of two month"s rent in a year.

18. As far as "minor repairs" are concerned, the tenant has got a right to carry out the same if the landlord fails to carry out them within one month from the date of service of notice served upon him by the tenant, and then to deduct the amount from the rent but he has to furnish to the landlord the account of the expenditure incurred. It would thus appear that as far as "minor repairs" are concerned, the tenant is not required to move the Prescribed Authority for any order in respect of such repairs.

19. However, as far as "major repairs" are concerned, the first requirement is that the tenant has to serve a notice upon the landlord calling upon him to carry out the "major repairs" within one month from the date of service of notice and

in that notice, he has also to intimate to the landlord his willingness to pay enhanced rent in accordance with the provisions of Section 6. If despite the service of such a notice, the landlord does not carry out the repairs, the tenant does not get a right to carry out the repairs himself and for that matter, he has to obtain an order from the Prescribed Authority under sub-section (5) by moving an application under sub-section (4). If the Prescribed Authority is satisfied with the claim of the tenant, then he may require the landlord to carry out the requisite "major repairs" within such period as may be specified in the order and on the landlord's failure to do so, the Prescribed Authority may permit the tenant to carry out those repairs at a cost not exceeding such amount, which shall not be more than the amount of two years' rent and within such period as may be specified in the order. Therefore, it is the function of the Prescribed Authority to determine the amount of cost incurred in carrying out the "major repairs" but that amount cannot be fixed at a figure exceeding two years' rent. As such, even the Prescribed Authority has no jurisdiction to permit the tenant to carry out repairs at a cost exceeding the amount of two years' rent. When in pursuance of the order of Prescribed Authority "major repairs" are carried out by the tenant, he himself cannot deduct the amount from the rent payable by him. For that matter, he is required to furnish an account of the expenditure to the Prescribed Authority and the tenant can only deduct that amount from the rent in monthly installments as certified by the Prescribed Authority. The installment shall not exceed twenty five per cent of one month's rent. The landlord becomes entitled to the enhancement of rent u/s 6 following the month in which the cost is fully recovered by the tenant.

20. In the present case, a perusal of the notice which was served upon, the landlord would show that it was not a valid notice as contemplated under sub-section (2) of Section 28. There was no averment in the notice that the tenant was willing to enhance the rent though undisputedly the repairs of roof fell under the category of "major repairs". Notice as contemplated under subsection (2) is mandatory and unless it is proved that such a notice was sent and served upon the landlord, the tenant does not get any right to move any application under sub-section (4) before the Prescribed Authority nor the Prescribed Authority gets Jurisdiction to entertain such an application, and to pass any order thereon under sub-section (5). Any such order would be wholly illegal and without jurisdiction being violative of the provisions of Section 28 (2). In the instant case, since the notice which was sent and served upon the landlord did not fulfill the requirement of sub-section (2) of Section 28 of the Act, the Prescribed Authority did not get the jurisdiction to entertain the tenant's application moved u/s 28 (4) of the Act and consequently the impugned order is without jurisdiction, null and void. The petitioner shall, however, be at liberty to intimate fresh proceedings after making compliance of sub-section (2) of Section 28 of the Act.

21. For the above reasons, this writ petition is allowed and the impugned order of the Prescribed Authority dated 11.2.1998 (Annexure-4 to the writ petition) is set aside. Parties are directed to bear their own costs.