
(1999) 03 AHC CK 0116
In the Allahabad High Court
Case No : C.M.W.P. No. 13523 of 1998

Smt. Reshma Devi

APPELLANT

Vs

Civil Judge (Senior Division)/Prescribed Authority, Azamgarh
and others

RESPONDENT

Date of Decision : 23-03-1999

Acts Referred:

Transfer of Property Act, 1882 — Section 108, 108(B), 26(2), 6
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7(D),
7(E)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 26, 28, 28(2), 28(4)

Citation : (1999) 2 AWC 1682

Hon'ble Judges : Yatindra Singh, J

Bench : Single Bench

Advocate : Kamal Narain Rai, for the Appellant;

Final Decision : Allowed

Judgement

Yatindra Singh, J.—Petitioner is a widow. She is tenant of the shop after death of her husband. She has filed this writ petition challenging the order dated 23.2.1998 passed by the Prescribed Authority. Azamgarh, dismissing her application u/s 28 (4) of the U. P, Urban Buildings (Regulation of Letting. Rent and Eviction) Act, 1972 (the Act for short).

FACTS

2. The premises in dispute is a kachcha shop. Sri Hazi Mohammad Yusuf father of present respondent Nos. 2 to 6 was the landlord. Sri Mukund Chand husband of the petitioner was tenant in the shop in question at the rate of Rs. 70 per month. He filed a suit for injunction against the original landlord, namely Sri Hazi Mohammad Yusuf and one other person Sri Mangal Chand for injunction restraining them from interfering with the right of the plaintiff as tenant over the premises in dispute. in this suit a compromise has been entered into between the

husband of the petitioner and Hazi Mohammad the father of the contesting respondents. This compromise records that the rent of the shop has been increased from Rs. 70 to Rs. 100 ; the shop in question has become weak and has only ground floor ; the defendant (land-lord) shall have right to get more floors constructed but will hand over the shop of the ground floor to the tenant ; in case it is not done then plaintiff (tenant) shall have right to construct the ground floor shop and defendant shall have to pay the expenses ; the tenant shall be liable to pay the market rent. The other defendant No. 2, namely, Mangal Chand was not party to the compromise and such suit was thereafter has been decided ex parte against him on 31.5.1996. The copy of the judgment is Annexure-6 to the writ petition. The suit was decreed. The defendants were restrained from interfering with plaintiffs right as tenants and were restrained from breaking it or destroying the things kept in the shop.

The original land-lord or his sons respondent Nos. 2 to 6 have neither taken proceeding u/s 21 (1) (b) of the Act to get the shop reconstructed nor have they acted in accordance with the compromise and the decree. On the contrary by their actions have acted against It.

The shop is a kachcha shop. It has khaprail roof which is broken. It is not waterproof. The widow (tenant) was having difficulty in conducting the business in the shop. She filed an application u/s 28 of the Act. She said the expenses involved in repairing the roof of the disputed shop exceed two months rent and the landlord has failed to comply with the notice.

The Prescribed Authority has rejected this application on the ground that:

- (a) according to the petitioner herself the expenses will come out to Rs. 250 which is more than Rs. 200 (two month's rent of the shop) ;
- (b) the notice given to landlord neither include the details of the repairs nor the increased rent:
- (c) the parties has compromised in the suit in 1984 in which it is mentioned that shop has become weak. Twelve years have passed since then. It must have weaken more and the shop cannot be repaired.

Aggrieved by his order the petitioner has filed the present writ petition.

POINTS FOR DETERMINATION

3. Following points arise for consideration :

- (a) What are the rights and liabilities of tenant and the landlord? Has the law changed?
- (b) Are the reasons given by Prescribed Authority while rejecting the application valid?

TENANT AND LANDLORD --RIGHT AND LIABILITY

4. Let's scan the canvass of law before we come to the reasons given by the Prescribed Authority. The rights of the landlord and tenant were governed by Contract Act and the Transfer of Property Act. Section 108 of the Transfer of Property Act governed the rights and liabilities of lessor and lessee. Section 108 (B). (f). (h) and (m) dealt with the question before me. The lessor is under no liability to repair in the absence of an expressed contract making him liable indeed the Section 108(m) implies that the liability is that of the lessee. The liability is the same in England, for that law implies no covenant by the landlord to do repairs of any kind either at the commencement of the tenancy or during the term ; nor does it make any difference that the tenant has covenanted to repair "fair wear and tear excepted" or given the landlord notice that the premises are not in a dangerous condition, indeed, in the absence of an expressed stipulation, the lessor's entry for the purpose of repairs would be a trespass."

The Contract Act and the Transfer of Property Act were superseded by U. P. (Temporary) Control of Rent and Eviction Act. 1947 (hereinafter referred to as the "Old Rent Control Act" for short), initially in the Old Rent Control Act law as far as the repairs is concerned was the same. The Old Rent Control Act put restrictions on eviction ; the landlords disregarded maintenance of premises, unless they were forced by binding contract, which was rare. The Legislature intervened to remove the hardship to the tenants by introducing Section 7 (D) and 7 (E) in 1952. When the present Act came into force these sections were replaced by Sections 26 and 28 of the Act which are substantially similar. Section 26 now mandates the landlord to maintain the amenities enjoyed by the tenant and makes it mandatory for him to keep the building under tenancy windproof or waterproof. Section 28 of the Act stipulates that tenant should give a notice to the landlord to make the repairs and if he does not make the repairs the tenant in case where the cost of repair is not likely to exceed two months' rent in a year carry out the repairs himself and deduct the amount from the rent and in case it is likely, to exceed the amount to more than two months rent (called major repairs), then the tenant has to obtain order from the Prescribed Authority. The amount is to be adjusted and the rent is to be increased. The result is that earlier the landlord if there was no contract was not bound to make repairs as is now bound to make repairs and keep the tenanted premises wind proof and waterproof. The Act also provides a mode of enforcing the same. This is in addition to any contractual obligation that the landlord may have. It also provides an additional way of enforcing the obligations cast upon the landlord. The Act does not prohibit any additional contractual obligation or enforcing a contract or recovering the amount by regular suit.

REASONS GIVEN BY THE PRESCRIBED AUTHORITY

5. The Repairs cannot be done in Rs. 200.

The monthly rent of the shop is Rs. 100 per month. Rs. 200 is two months rent. If the repairs could be done within that amount, then it was not necessary for

the tenant to file an application before the Prescribed Authority. The tenant could do the repair herself and deduct the expenses from the rent. The tenant has mentioned Rs. 250 in her affidavit as the expenses, This is more than two months rent. It is for this reason that she had filed an application u/s 28 (4) of the Act. The Prescribed Authority could permit the tenant to carry out the repairs at a cost not exceeding to two years rent which in the present case would come out to Rs. 2,400. This reason is illegal and contrary to Section 28 (5) of the Act.

Whether the requirement of notice fulfilled.

6. The tenant had given a notice dated 25.6.1996 to the landlord. I have seen this notice. The notice states that shop is single storied and there is Khaprail roof and this Khaprail roof has been damaged. It is because of this that rainy water was coming inside the shop. Shop is no longer waterproof. This should be repaired Immediately. The Prescribed Authority wrongly says that the detail of the repair has not been mentioned in the notice.

7. A law does not require that the tenant should state what would be the increased rent in the notice. The enhanced rent is to be calculated after the repairs have been done u/s 6 of the Act. Section 28 (2) of the Act merely stipulates that the tenant should state his willingness to pay the enhanced rent in accordance with Section 6 of the Act. It is true that in the notice dated 25.6.1996, there is no mention that the tenant is willing to pay enhanced rent under" Section 6. But this objection is not taken by the landlord. It is also not a ground taken by the Prescribed Authority while rejecting the application. The landlord and tenant had already entered into a compromise on 2.8.1984. It was agreed between the parties that on repairs and reconstruction, the tenant would pay the market value rent to the landlord. It is already agreed between the parties. There is a contract. The fact that the tenant's willingness is not mentioned in the notice is not fatal ; the application cannot be dismissed.

Laying of Roof or Raising of Walls --is it a repair?

8. Sections 26 and 28 merely mandates the landlord to maintain and repair. If a roof has to be related or a wall has to be constructed, then will it be repair or is it a reconstruction beyond Sections 26 and 28 of the Act. If we look to a particular wall or roof by itself and say that it requires repairs, it would not be the same thing as its reconstruction. But if we look to an accommodation so as to make it windproof, waterproof, it does not mean that repairs will not include reconstruction of any particular portion of the accommodation such as a wall or even the roof of an apartment. Repairs will include laying down of the roof or the wall.

The shop cannot be repaired

9. The Prescribed Authority has held that the tenant and land-lord have already filed a compromise dated 2.8.1984 in the suit filed by the tenant, mentioning that shop is not in good condition : it must have deteriorated since then. He

relies upon the Commissioner's report and hold that shop cannot be repaired. It should be reconstructed. He has misread the Commissioner's report. His finding is based on surmises and conjecture.

10. An Advocate Commissioner was appointed. His report is dated 9.9.1996. The report says that walls are in strong position and it is only the roof that is damaged. If roof is not repaired immediately, the walls may be weakened. It is clear from the report that walls on the date of moving of the application were not damaged, only the roof was. If the tenant 12 years ago, looking into the need of the landlord, had agreed that in place of Kachcha single story shop or multistoried building may be constructed out of which the ground floor was to be given to tenant, it does not mean that after 12 years, the shop would be so deteriorated that it is not repairable. On the contrary, it is clear from the Commissioner's report that the shop was repairable. The finding given by the Prescribed Authority is without any evidence It is so unreasonable that no reasonable person could have reached it." It is liable to be set aside. It is rather strange that the landlord who is not only a duty bound u/s 26 of the Act to keep the building windproof and waterproof but also by the compromise dated 2.8.1984 and the decree in the suit No. 280 of 1987 got away by his neglect. His action is not only denial of the statutory obligation placed on the landlord but is contrary to the decree passed in the suit.

CONCLUSION

11. The writ petition is allowed with costs. The order dated 23.2.1998 passed by the Prescribed Authority. Azamgarh, set aside. The matter is sent back to re-decision in view of the observations made above. The Prescribed Authority will decide the case expeditiously and if possible within three months from the date of filing of the certified copy of the order.