
(2005) 06 AHC CK 0008
In the Allahabad High Court
Case No : C.M.W.P. No. 27757 of 2001

Smt. Shaheen Ara Begum

APPELLANT

Vs

VIIth A.D.J. and Others

RESPONDENT

Date of Decision : 26-06-2005

Acts Referred:

General Clauses Act, 1897 — Section 6
Uttar Pradesh General Clauses Act, 1904 — Section 6
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 18, 2(1), 2(3), 21

Citation : (2005) 4 AWC 3734

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Advocate : K.G. Srivastava and Rahul Srivastava, for the Appellant; V.K. Nagaich, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Vikram Nath, J.—This petition has been filed by the allottee for quashing the order dated 26.4.2001, passed by VIIth Addl. District Judge (Court No. 7) Bareilly passed in Rent Control Revision No. 136 of 1988, Kaleem Ullah Khan v. State of U. P. and Ors., whereby the said revision has been allowed and the order of allotment dated 9.9.1988, passed in favour of the petitioner by the Rent Control and Eviction Officer, Bareilly, has been quashed.

2. The dispute relates to ground floor portion of house No. 2 Mohalla Aqab Kotwali Gali Maniharan, Bareilly. It is alleged that the said house belong to waqf alul-aulad and Smt. Rais Begum was its mutwalli. The premises having fallen vacant the petitioner applied for allotment of the same, which was registered as Case No. 28 of 1986 in the Court of Rent Control and Eviction Officer, Bareilly. After inviting objections and affording opportunity of evidence and hearing to the parties, the Rent Control and Eviction Officer vide order dated 9.9.1988, directed for allotment of the premises in favour of the petitioner. Subsequent there to possession was also delivered on 13.9.1988 to the petitioner. Aggrieved by the

order of allotment respondent No. 2 filed revision u/s 18 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) before the District Judge, Bareilly, which was registered as Rent Control Revision No. 136 of 1988.

3. During the pendency of the revision an amendment was brought in the Act being U. P. Act No. 5 of 1995 whereby after Clause (b) in Section 2 of the Act, Clauses (bb) and (bbb) were added vide Section 2 (a) (in) of the aforesaid amending Act. Section 2 of the Amending Act is reproduced hereinbelow :

2. Amendment of Section 2 of U. P. Act No. 13 of 1972.--In Section 2 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, hereinafter referred to as the principal Act-

(a) in Sub-section (1),-

(i) in Clause (a), after the words "a public sector corporation", the words "or a Cantonment Board" shall be inserted;

(ii) in Clause (b), the words "the whole of the income from which is utilised for the purpose of such institution" shall be omitted;

(iii) after Clause (b), the following clauses shall be inserted, namely:

"(bb) any building belonging to or vested in a public charitable or public religious institution;

(bbb) any building belonging to or vested in a waqf including a waqf-alal-aulad;"

(iv) after Clause (f), the following clauses shall be inserted, namely:

(g) any building, whose monthly rent exceeds two thousand rupees;

(h) any building of which a Mission of a foreign country or any international agency is the tenant;"

(b) Sub-section (3) shall be omitted."

4. By insertion of Clause (bbb) in Section 2 of the Act any building belonging to or vested in a waqf including a waqf-alal-aulad was excluded from the purview of the Act meaning thereby that the protection available to the tenant and the rights available to the landlord under the Act would not be available to the tenant as well as the landlord. The Amending Act did not make any provision with regard to the pending proceeding under the Act, on the date of coming of Amending Act.

5. The Rent Control Revision No. 136 of 1988 came up for hearing before the respondent No. 1 much after the amendment of 1995 Act and the revisional court vide judgment dated 26.4.2001, came to the conclusion that since the building belonging to or vested in a waqf including a waqf-alal-aulad has been excluded from the purview of the Act, therefore, the order of allotment passed

on 9.9.1988 was also without jurisdiction and it accordingly allowed the revision and set aside the order of allotment. Aggrieved by the said order, the present writ, petition has been filed.

6. I have heard Sri K. G. Srivastava learned Counsel for the petitioner and Sri V. K. Nagaich learned Counsel representing respondent No. 2 and also learned standing counsel for respondent No. 3.

7. The contention raised by learned Counsel for the petitioner are two fold, firstly, according to him in case the revisional court was of the view that the Act was not applicable with respect to the building in question in that event the revision itself ought to have been dismissed as not maintainable and it could not have met with any other fate. In other words the contention is that once the Act itself did not apply the respondent No. 1 could not have assumed jurisdiction as a revisional court u/s 18 of the Act. The second contention is that the proceedings which were initiated prior to the coming of Amending Act of 1995, will have to be considered and decided on the basis of the provisions existing on the date, the proceedings were initiated and would not be affected by the Amending Act. It: is thus contended that the revisional court ought to have decided the revision on its merit considering the legality and validity of the order of allotment and it could not have been allowed on the ground that the Act was not applicable.

8. Another aspect which arises for consideration is that the order of the allotment having been passed on 9.9.1988, which was undisputedly at a time when the building in question was well within the purview of the Act, therefore, under the order of allotment, the right accrued to the petitioner to occupy the building cannot be taken away on the ground that subsequently the building has been taken out of the purview of the Act.

9. On the other hand, learned Counsel for the respondent No. 2 has contended that once the amendment of 1995 came into force w.e.f. 26.9.1994 and its effect was as if the said provision existed in the statute book from the very beginning and therefore, the building in question would not be covered by the Act, the order of allotment could not have been sustained and has been rightly set aside.

10. Learned counsel for the petitioner in support of his contention has relied upon the judgment of the Apex Court in the case of M/s. Amhalal Sarabhai Enterprises Ltd. v. M/s. Amrit Lal and Co. and Anr. JT 2001 (6) SC 477, wherein Apex Court while considering a similar amendment in Delhi Rent Control Act, 1958 where building having rent exceeding Rs. 3,500 once excluded from the purview of the Act, had held that the pending proceedings before the Rent Controller for eviction of the tenant on the date when the repealing Act came into force would not be affected by the repealing statute and will be continued and concluded in accordance with law as existed under the repealed statute. The Apex Court considering the provisions contained in Section 6(c) of the General Clauses Act, came to the conclusion that landlord having accrued right to evict

the tenant and therefore, he could continue the proceedings for eviction irrespective of the amendment of the Act by which the applicability of the Act itself had been withdrawn. Section 6(c) of the U. P. General Clauses Act, 1904 is also similar to Section 6(c) of the General Clauses Act, 1897.

11. In the present case, the order of allotment having been passed on 9.9.1988, when Clause (bbb) was not on the statute book, undisputedly the building was within the purview of the Act and the provisions contained in the Act were applicable. The petitioner had made an application for allotment of the premises in dispute, and the same had been considered and allowed in his favour by order of Rent Control and Eviction Officer u/s 16 of the Act under which definitely the petitioner acquired right to occupy the premises in dispute. Section 6(c) of the General Clauses Act, 1897 includes the case of a right acquired or accrued. In the present case, the petitioner has acquired right to occupy the premises under a valid order of the allotment u/s 16 of the Act therefore could not be deprived of the same only on the ground of adding Clause (bbb) in Section 21 of the Act.

12. On the other hand, learned Counsel for the respondent has placed reliance on the judgment of this Court in the case of Mohd. Saeed-UI-Zqfar v. Rent Control and Eviction Officer/City Magistrate, Rampur and Anr. 1997 (1) ARC 115. In the said case against an order of vacancy a writ petition was filed before this Court which was allowed on the ground that Clauses (bbb) has been inserted in Section 2 (1) of the Act and therefore, the building in question had gone out of the purview of the Act. The said judgment cannot be applied in present case as the effect of Section 6 of the U. P. General Clauses Act, 1904 had not been taken into consideration and secondly since there was only an order of vacancy, the question of any party acquiring any right, or any right accruing in favour of the parties had not been ascertained. The judgment of the Supreme Court in case of M/s. Amba Lal Sarabhai Enterprises Ltd. (supra) considered in detail the effect of Section 6 of General Clauses Act and therefore, applies to the present case. The order of respondent No. 1 is therefore, vitiated in law and it has failed to consider the effect of the right which had accrued in favour of the petitioner and being solely based on the judgment in case of Mohd. Saeed-UI-Zafar (supra) cannot be sustained and has to be set aside.

13. Since the revision was pending prior to the date of 1995 Amending Act it has to be decided on merits. Accordingly, the writ petition succeeds and is allowed. The impugned order dated 26.4.2001, passed by respondent No. 1 is set aside and the matter is remanded for reconsideration of the revision afresh on merits.