
(2002) 04 AHC CK 0150
In the Allahabad High Court
Case No : C.M.W.P. No. 3007 of 1998

Smt. Suloch Rani Jain and Others

APPELLANT

Vs

VIIIth Additional District Judge, Saharanpur and Others

RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 18, 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 25

Citation : (2002) 2 AWC 1467

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

Bench : Single Bench

Advocate : H.N. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

J.C. Gupta, J.—By means of this writ petition, the petitioners have prayed for issuing a writ of certiorari quashing the orders dated 13.1.1998 and 26.10.1994 passed by respondent .No. 1 and the Rent Control and Eviction Officer, Saharanpur, respectively contained in Annexures-7 and 1 of the writ petition.

2. The dispute relates to house No. 49/13, Gatta Mill Colony, Saharanpur, which was in the tenancy of Pyarey Lal Jain. Respondent No. 2 Hulash Rai Singhal made an application before the Rent Control and Eviction Officer for allotment of the said house stating therein that the house had fallen vacant on account of the tenant having ceased to occupy the same as he has removed his effects therefrom and had shifted to Faridabad with his son and other family members. On this application, a report was called for from the Rent Control Inspector who vide his report dated 18.10.1993 reported that the tenant Sri Pyarey Lal Jain has permanently shifted to Faridabad and the house in question was open for allotment on account of deemed vacancy. By the order dated 4.11.1994, vacancy was declared by the Rent Control and Eviction Officer. On 7.12.1993, the tenant

Sri P.L. Jain filed review application stating therein that he was living in the premises with his family and paying rent to the landlord. He also filed Writ Petition No. 3540 of 1994 challenging the order dated 4.11.1993 whereby vacancy was declared. The High Court stayed dispossession of tenant Sri. P. L. Jain upto 30.4.1994 and the same was not extended. It is also noteworthy that though dispossession of Sri P. L. Jain was stayed upto 30.4.1994 but proceedings pending before the Rent Control and Eviction Officer were not stayed. Consequently, the Rent Control and Eviction Officer by the order dated 26.10.1994 rejected the review application and the accommodation in question was allotted in favour of respondent No. 2 by the order dated 26.10.1994. Challenging the order of allotment, Sri P. L. Jain filed revision u/s 18 of the U. P. Act No. XIII of 1972 (hereinafter referred to as the "Act"). During the pendency of the said revision, Sri P. L. Jain expired on 23.12.1995. Though under Rule 25 of the Rules framed under the Act. substitution application was to be moved within one month from the date of the death of the deceased party, the petitioners moved substitution application on 5.4.1996 stating therein that they were entitled to be substituted in place of deceased Sri. P.L. Jain. It may be relevant to mention here that petitioner No. 1 Smt. Suloch Rani Jain is wife of the pre-deceased son of Sri P.L. Jain while petitioner Nos. 2 and 4 are children of Vijay Jain the predeceased son of deceased-tenant P. L. Jain. They alleged that they were the only legal heirs of deceased P. L. Jain and were residing in the house in question. Objections were filed by respondent Nos. 2 and 3 supported by counter-affidavit inter alia on the ground that no death certificate of P. L. Jain was filed with the application, that the place of death of Sri. P. L. Jain was not disclosed in the application ; and that detailed facts regarding occupation of the petitioners were not given and it was specifically alleged that none of the petitioners resided with the deceased-tenant at the time of his death. The revisional court by the impugned order rejected the substitution application holding that no cogent evidence has been filed from the side of petitioners with regard to the place of death of P. L. Jain nor It has been proved that the petitioners were residing with the deceased-tenant at the time of his death and further that It has been proved by the respondents that Sri P. L. Jain had left the disputed property long before his death. The revision was accordingly dismissed as abated.

3. This writ petition has been contested by both respondent Nos. 2 and 3. i.e., the allotted and the landlord respectively. Counter-affidavits and rejoinder-affidavit have been filed. Arguments of counsel were also heard and when the case was taken up for further hearing, petitioners' counsel Sri H.N. Sharma did not appear. The Court heard Sri Ravi Kiran Jain, Senior Advocate and Ashish Kumar Singh for respondent No. 3 and Sri Mohd. Yusuf for respondent No. 2. The Court also allowed ten days time to the parties for filing written submissions, if any. Only respondent Nos. 2 and 3 have filed written submissions and not the petitioners.

4. Sri Ravi Kiran Jain also apprised the Court that Sri P. L. Jain was tenant @ Rs.

50.45 p. and no rent has been paid from March, 1998, therefore, approximately rent of more than Rs. 2.500 has become due which neither the petitioners have paid nor landlord is able to realise the same from respondent No. 2. the allottee.

5. It is not disputed from either side that Sri. P. L. Jain was the tenant in the accommodation in question which was declared vacant by the Rent Control and Eviction Officer by the order dated 4.11.1993 on the ground that Sri P.L. Jain has permanently shifted to Faridabad with his family keeping the tenanted accommodation locked. It is also not disputed that by a subsequent order dated 26.10.1994, the accommodation in question was allotted in favour of respondent No. 2 on whose application the proceedings had commenced. The tenant Sri P. L. Jain filed revision u/s 18 of the Act challenging the order of the Rent Control and Eviction Officer dated 26.10.1994 whereby accommodation in question was allotted in favour of respondent No. 2. During the pendency of the said revision Sri P. L. Jain expired on 23.12.1995. The petitioners moved substitution application on 5.4.1996. claiming themselves to be legal heirs of the deceased-tenant P. L. Jain.

6. On consideration of material placed on record, the revlsional court in the Impugned order has recorded categorical findings of fact that it is proved that Sri P. L. Jain had left the premises in question much before his death : that it is not proved that he died in the disputed accommodation ; that it is also not proved that petitioners were residing with Sri P. L. Jain in the disputed accommodation at the time of his death ; and that the respondent has successfully proved that the petitioners were not residing with Sri P. L. Jain at the time of his death in the house in question. A perusal of the Impugned order would further indicate that it was specifically alleged from the respondents side that the petitioners were residing in house No. 1337/1 in Faridabad and they had exercised their right of franchise from that house. This fact was not controverted from the petitioners" side. These are all findings of fact based on appraisal of" evidence. It is well-settled that while exercising Jurisdiction under Article 226 of the Constitution of India, this Court cannot convert Itself into a court of appeal, particularly when the Legislature has not chosen to confer such a right. The Jurisdiction of this Court is limited to see that subordinate court. Tribunal or authority functions within the limits of its power. The power of superintendence under Article 227 is to be exercised cautiously and only in appropriate cases of gross injustice. The power to issue writ of certiorari cannot be invoked simply to correct an error of fact which a superior court can do in exercise of its statutory powers as a court of appeal. The power of Judicial review cannot be exercised to upset the findings of fact reached by the fact finding authority. Where in exercise of such powers this Court finds, that on the evidence on record no other reasonable conclusion is really possible as has been arrived at by the court below on the facts established, writ of certiorari is not to be issued as a matter of course. The real test in such matters is to see whether justice has been done to the parties. While exercising writ jurisdiction, this Court also takes into account whether the petitioners have approached this Court with clean hands.

7. In the present case, the lower revisional court has recorded categorical findings of fact which I have already mentioned above. It cannot be said that these findings are not supported by any evidence on record or that the view taken by the court below is manifestly erroneous. Before this Court with the supplementary-affidavit, the petitioners have filed copies of Ration Card, Voter list of 1995 and of a Bank document showing that the deceased and petitioners were having a joint locker. These documents cannot be taken into consideration by this Court as they were not filed before the court below and any material filed for the first time in writ petition cannot be normally taken into consideration.

8. Rule 25 of the Rules framed under the Act makes a provision for bringing legal representatives on record which runs as under :

"25. Bringing legal representatives on record.--[Section 34 (4)]:

(1) Every application for substituting the name of (the heirs or legal representatives, the claimants or occupants) of any person who was a party to any proceedings under the Act and died during the pendency of the proceedings shall be preferred within one month from the date of the death of such person.

(2) The application shall contain the names and addresses and other details of the heirs or legal representatives and their relationship with the deceased and be accompanied by any affidavit in its support, and, thereupon, the application shall be decided after a summary inquiry by the authority concerned."

9. From the above Rule, it is clear that under Sub-rule (1) application for substitution has to be preferred within one month from the date of the death of such person. Sub-rule (2) then, inter alia, requires as to what particulars the application shall contain. In the present case, the court below has found that the substitution application was not moved within the time as prescribed under Sub-rule (1) nor the application disclosed the details as required by Sub-rule (2). It was submitted by petitioners' counsel that since Rule 25 does not make any provision for abatement, the time limit prescribed under Sub-rule (1) is merely directory,

10. In the case of Gauri Shanker Sharma v. IVth Additional District Judge. Agra and Ors. 1998 (2) AWC 2.106 : 1998 (2) ARC 101. It has been held that though there is no automatic abatement of the proceedings like the one as contained in Order XXII, C.P.C. and Rule 25 is directory, but it does not mean that the proceedings could be continued against a dead person and could be kept pending for all times to come in the expectation of filing of an application for substitution. Similar view was taken in Deena Nath and another v. Special/Additional District Judge, Azamgarh 1995 (1) ARC 30.

11. A perusal of the impugned order clearly indicates that the substitution application has not been rejected merely on the ground of the same having been moved beyond a period of one month from the date of the death of deceased but it has been rejected for the reason that the petitioners would not establish that

they were residing with the deceased-tenant in the accommodation in question at the time of his death and accordingly, they could not be allowed to be substituted in place of deceased-tenant. Section 3 (a) of the Act defines the term "tenant" in following manner :

"3. Definition.-- In this Act, unless the context otherwise requires :

(a) "tenant", in relation to a building, means a person by whom its rent is payable, and on the tenant's death :

((1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death ;

(2) in the case of a non-residential building. his heirs :]"

12. It may be worthwhile to mention here that in the old Act No. 3 of 1947, the definition of the word "tenant" did not include his heirs. The definition under the present Act has now included in case of a residential building only those heirs who normally resided with him in the building at the time of his death.

13. A bare perusal of Section 3 (a) of the Act would show that the word "tenant" in relation to a residential building means a person by whom its rent is payable and on the tenant's death, such only of his heirs who normally resided with him in the building at the time of his death. In the case of Surendra Kumar Vs. XIth Addl. District Judge, Kanpur Nagar and others, , it was held that after the death of original tenant, only such heirs of the deceased-tenant who normally resided with the tenant in the tenanted building at the time of his death are entitled to succeed. Heirs casually or temporarily coming to stay with the tenant are not legal heirs within the meanings of Section 3 (a) of the Act. It was further held in the aforesaid decision that in cases of residential building, the heirs who were residing separately with the deceased-tenant in another district for any reason will not be covered by the definition of "tenant" under Clause (1) of Section 3 (a) of the Act. Similar view was expressed in Smt. Sarwari Begam. v. District Judge, Moradabad and others. 1981 ARC 186 ; Smt. Asha Devi v. VIth Additional District Judge, Gorakhpur and Anr. 1991 (2) AWC 1074 ; 1991 (2) ARC 172 and Dr. Ram Narain Bagley v. District Judge, Saharanpur and Ors. 1997 (1) AWC 2138 : 1997 ARC 199,

14. Since in the present case, the findings of fact recorded by the court below are to the effect that the tenant Sri P.L. Jain had shifted to Faridabad and had ceased to occupy the tenanted accommodation much before his death and that it has not been established that the petitioners who claimed substitution in place of deceased-tenant were residing with him in the accommodation in question at the time of his death, the court below has taken a correct view that they were not entitled to succeed as legal heirs of deceased-tenant as per the definition of the term "tenant" given in Section 3 (a) of the Act. This Court thus finds no merit in this writ petition. Further, this Court declines to interfere as the petitioners have not approached this Court with clean hands. On one hand they are claiming

themselves to be tenant in the tenanted accommodation after the death of deceased-tenant but at the same time, they have not paid even a single paisa towards rent to the landlord. They cannot be allowed to blow hot and cold together.

15. For the reasons stated above the writ petition fails and is hereby dismissed.

16. No order as to costs is made.

17. Stay order granted earlier shall stand vacated.