

(1993) 02 AHC CK 0061

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8599 of 1987

Smt. Swaran Devi and Others

APPELLANT

Vs

Smt. Meenakshi Gautam alias Chandrawati Devi and Others

RESPONDENT

Date of Decision : 09-02-1993

Acts Referred:

Transfer of Property Act, 1882 — Section 108
Uttar Pradesh Cantonments (Control of Rent and Eviction) Act, 1952 — Section 14
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2), 28

Citation : (1993) 2 AWC 860

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Rajesh Tandon, for the Appellant; H.S. Nigam, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated April 17, 1987 passed by the Additional District Judge, Dehradun, affirming the judgment of the Judge Small Causes court, whereby the suit of the Plaintiff-represents was decreed for arrears of rent, ejectment and damages.

2. The facts in brief are that Plaintiff Smt. Shanti Devi was owner of property No. 2, Ramlila Bazar, Dehradun. A portion of this property consisting of one room was in Defendants' tenancy on a monthly rent of Rs. 10/-, the Plaintiff filed suit on the allegations that the Defendant without permission of the Plaintiff in writing or even orally constructed one room in front of the room under his tenancy and such construction amounts to structural alteration which diminished its value, utility and disfigured it. It was further alleged that the Defendant caused substantial damage to the walls, roof and doors of the tenanted accommodation and thereby the Defendant rendered himself liable for eviction as provided u/s 20(2) (b) and (c) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act"). The Plaintiff served him

with a notice dated 15-6-75 and thereby determined the tenancy,

3. The tenant contested the suits and it was denied that he raised new construction. It was stated that tin shed construction was built by the Plaintiff himself in the year 1969 and the Defendant had merely effected certain repairs in the said tin shed in March 1978. Originally, there were two rooms and a kitchen in the tenancy of the Defendant but the Plaintiff had taken possession of one room from the Defendant assuring him that it would be restored to him after some time but he failed to carry out his promise. He denied that any substantial damage was caused to the accommodation in question. The Judge, small causes court decreed the suit on the finding that the tenant has raised new constructions and thereby diminished its value, utility and disfigured it. The said finding has been affirmed in revision by the Additional district Judge.

4. Learned Counsel for the Petitioner urged that the findings recorded by the courts below are erroneous in law and secondly even assuming that such construction was made, it did not diminish its value, utility or disfigured the accommodation under tenancy.

5. The courts below have recorded a finding that the Petitioners were tenants of one room. In front of the said room there was a chabutra. The tenants constructed a room by raising walls over the chabutra in front of the tenanted room in May 1978. They placed tin shed roof over the newly constructed walls the tenant?s thus added one room to their tenanted accommodation. The courts below have recorded this finding on the basis of the evidence on record. The tenants in their written statement had denied that they raised any construction. The courts below on perusal of the evidence on record did not believe the version of the Defendant. The tenant had sent a reply to the notice (paper No. 49-C) and that revealed that he had constructed the existing wall. His version that he only constructed the wall on the old existing wall was disbelieved by the courts below. Admittedly, no permission in writing was obtained by the tenants from the Plaintiff to construct the new wall. The Courts below considered the statement of the tenant Sri Vilayati Ram and other witness Sri Manhey Ram There is no illegality in the findings recorded by the trial court.

6. The learned Counsel for the Petitioners further urged that the Petitioners had raised the construction and by raising construction the value of the property has been enhanced and not diminished and if a tenant raises any construction that adds value to the property and it cannot be taken as to have diminished the value of the property or its utility or disfigured it.

7. It was submitted that Section 20(2)(c) of the Act contemplates that tenant may raise certain construction or make structural alteration in the building even without the permission in writing of the landlord and only restriction is that construction or structural alteration in the building should not be such as it is likely to diminish its value or utility or disfigure it, is case It is likely to diminish Its value or utility or it disfigures it, the tenant is liable for eviction. It is not

necessary that all these conditions should co-exist. If either of the two conditions do exist, the tenant is liable for eviction.

8. In *Smt. Ram Janki v. 1st Additional District Judge Banda* 1984 (1) ARC 465, it was held that in regard to Clause (c) to Sub-section (2) of Section 20 of the Act the use of the word "or" towards the end of this clause on two places namely, before the word "utility" and the words "disfigure" makes it clear that the requirement of Section 20(2)(c) of the Act will be fulfilled even if the case is brought under any of the three categories mentioned therein namely (1) diminishing the value of the accommodation (2) diminishing its utility; and (3) disfiguring it. Similar view was expressed in *Udai Bhan Gupta v. Hari Shankar Bunsal* 1985 (2) ARC 20.

9. What construction or structural alteration would amount to diminishing value, utility or disfigure the building depends upon various factors.

10. Section 20(2)(c) of the Act, however, does not permit a tenant to make additions in the tenanted accommodation. The right to make additions to the existing tenanted accommodation is only with the landlord and if an addition to the tenanted accommodation is made, it diminishes its value or utility. The landlord could have made additions according to his own plans and if the tenant has done it, it has reduced its utility as the tenant has utilized the land of the landlord which was under his tenancy.

11. Section 108(p) of the Transfer of Property Act prohibits a tenant from making any permanent construction. Under the provisions of Section 28 of the U.P. Urban Buildings (Regulation of letting, Rent and Eviction) Act 1972, a tenant has no right even to make repairs without giving notice to the landlord. It could not be legislative intent u/s 20(2)(c) of the Act, to permit a tenant to raise permanent construction in the demised premises. This aspect has been considered in the various decisions of this Court.

12. In *Shabbir Ahmad v. 1st Additional District and Sessions Judge Saharanpur* 1983 (1) ARC 145, where the tenant had constructed rooms over the roof of the accommodation it was held that such construction diminished the value of the accommodation and its utility as the roof could not be utilized as a roof and to that extent utility of the accommodation in question was diminished.

13. In *Moot Narain Mehrotra v. Smt. Gulab Devi* 1987 (2) ARC 411, where the tenant had constructed eight rooms without the landlords' permission on vacant land forming part of tenancy of the accommodation, it was held that in the opinion of the landlord it was likely to diminish the value and utility of the accommodation in question. The Court observed as under:

The trial court could not be said to have acted arbitrarily or unreasonably in being of opinion that this was likely to diminish the value or utility of the premises. The consideration had to be in this respect from the point of view of the landlord and not the convenience of the Respondents -tenants alone. Vacant

land has its own utility in a premises and dependent on the situation etc.

It was further held that such construction also disfigured the building.

14. In *Shyara Lal v. Vth Additional District Judge Agra* 1989 (1) ARC 267, It was held that where the tenant enclosed verandah, constructed chatries, put on tin sheds and constructed one room, such act not only diminished utility of the building but also disfigured it.

15. The Supreme Court in *Sohan Lal v. Ram Prakash* 1988 (2) ARC 243, held that where the tenant put tin shed with pucca pillars and raised a platefarm making the demised premises of permanent nature, such construction amounted to material alteration in the building.

16. Learned Counsel for the Petitioners urged that raising of the wall and putting tin shed is a temporary construction and does not amount to either diminishing its value and utility or disfigure it. He placed reliance on *Om Prakash v. Amar Singh* 1987 (1) ARC 185. The Supreme Court while interpreting the provisions of Section 14(c) of the U.P. Cantonment Rent Control Act 1954, held that where the tenant had raised temporary wall of 6 height in a hall, that did not amount to material alteration. The facts of the said case are not applicable in the present case. Here the tenant has raised a permanent construction by converting Chabutra in room by raising pucca wall and putting tin shed on it. Secondly, the disputed constructions are in front of the tenanted room and such construction amounts to disfigurement. The findings recorded by the courts below do not suffer from any manifest error of law.

17. No other point has been pressed.

18. The writ petition is dismissed. The parties shall bear their own costs.

19. The Petitioners are, however, granted three months time to vacate the accommodation in question provided they give an undertaking in writing before the Judge, Small Causes Court, Dehradun, within three weeks from today to vacate the building within the time granted by this Court.