

(2005) 08 UK CK 0007

In the Uttarakhand High Court

Case No : C.W.P. No. 386 of 2005 (M/S)

Smt. Usha Sharma

APPELLANT

Vs

Prescribed Authority/Civil Judge (Jr. Div.) and Others

RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 151

Constitution of India, 1950 — Article 226, 227

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 21, 21(1)

Citation : (2005) 4 AWC 3870 : (2006) 1 UC 82 : (2005) 2 UD 264

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Alok Singh and D. Barthwal, for the Appellant; Sudhir Kumar and R. Dobhal, for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—By means of this writ petition, moved under Article 226 read with Article 227 of the Constitution of India, the petitioner/ landlord has sought writ in the nature of certiorari quashing the impugned order dated 4.4.2005, passed by respondent No. 1 in Rent Control Case No. 3 of 2004, whereby the prescribed authority has stayed the proceedings u/s 21 (1) (a) of the U.P. Act No. 13 of 1972, resorting to Section 10 read with Section 151 of the Code of Civil Procedure, 1908.

2. Brief facts of the case, as narrated in the writ petition are that, the petitioner is owner and landlord of the shop in question, who filed an application (copy Annexure-2 to the writ petition) u/s 21 U) (a) of the U.P. Act No. 13 of 1972 for release of the shop. It appears that earlier proceedings u/s 12 of the aforesaid Act were initiated before the Rent Control and Eviction Officer on the ground that the defendant Nos. 1 and 2 have sublet the shop to the defendant Nos. 3 to 8. However, vide order dated 3.11.1999 (copy Annexure-4 to the writ petition), passed in Revision No. 3 of 1998, the revisional court remanded the matter to

the Rent Control and Eviction Officer. But, both the parties filed writ petitions against said order passed by the revisional court, which are pending before this Court in the form of Writ Petition No. 3693 (M/S) of 2001 and Writ Petition No. 454 (M/S) of 2002. Now, the defendant Nos. 1 to 8 (present respondent Nos. 2 to 9) filed objection before the prescribed authority stating that since question of sub-tenancy is sub-judice before the High Court, as such, the proceedings u/s 21 (1) (a) of the U. P. Act No. 13 of 1972 should be stayed. The petitioner (landlord) alleges that the scope of present application u/s 21 is different than that of the proceedings u/s 12 of the aforesaid Act. Therefore, the petitioner has sought quashing of the impugned order, whereby proceedings u/s 21 have been stayed.

3. On behalf of respondent Nos. 2 to 9, respondent No. 6 filed the counter-affidavit, in which it has been admitted that release application filed by the petitioner has been stayed on the ground that writ petitions arising out of proceedings u/s 12 of the U.P. Act No. 13 of 1972 are sub-judice before the High Court in writ petitions mentioned above. However, it has been stated in the counter-affidavit that since the question of sub-tenancy is sub-judice before the High Court, the, proceedings u/s 21 of the U.P. Act No. 13 of 1972 cannot be proceeded with.

4. I heard learned Counsel for the parties and perused the affidavits along with annexures filed, by the parties.

5. learned Counsel for the petitioner argued that the scope of Section 21 (1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is totally different than that of the proceedings u/s 12 of said Act. Section 12 of the Act deals with the deemed vacancy of building in certain cases", while Section 21 pertains to proceedings for release of building under occupation of tenants. In the proceedings u/s 12, a landlord or tenant is deemed to have ceased to have occupied the building if he has :

- (i) substantially removed his effects therefrom, or
- (ii) allowed it to be occupied by any person who is not a member of his family, or
- (iii) in the case of a residential building, members of his family have taken up residence elsewhere.

Proceedings u/s 12, as such, which are sub-judice before this Court in other writ petitions, admittedly, relate to the question of sub-tenancy, whether, the respondent Nos. 2 and 3 have sublet the premises to respondent Nos. 4 to 9 or not? Perusal of copy of application u/s 21 of the U.P. Act No. 13 of 1972, which is Annexure-2 to the writ petition, shows that the petitioner has impleaded respondents as members of joint Hindu family with tenants. The landlord has sought release of the shop, on the ground that her son Anurag Sharma is unemployed and she wants to settle him in business, as such, she needs the shop in question. She has further alleged in the release application that the comparative hardship of all the eight respondents is less than that of the

petitioner, as such, the question of sub-tenancy is not necessarily required to be determined in the present proceedings u/s 21 (1) (a) of the U.P. Act No. 13 of 1972. I agree with the submission of learned Counsel for the petitioner that the scope of both the Sections being different, it was not at all necessary for the respondent No. 1 to stay the proceedings of release application on the ground that some question of subtenancy in respect of building is required to be decided by other Court, particularly, when the alleged subtenants of previous litigation are impleaded as respondents in the release application alleging them to be members of joint Hindu family of the tenants.

6. learned Counsel for the respondents argued that hardship of the subtenants cannot be seen by the prescribed authority u/s 21 of the U.P. Act No. 13 of 1972, as such it is necessary before said proceedings proceed ahead that the issue with regard to the respondent Nos. 4 to 9 get settled whether they are tenants or the subtenants. Neither in the release application nor in the written statement filed against the said application, it has been alleged if the respondent Nos. 2 to 9 are subtenant. Had it been a case in which in the application u/s 21 (1) (a), the petitioners had alleged that the premises were let out by the tenants to the subtenants, I would have agreed with the learned Counsel for the respondents. However, contents of para 12 of the release application suggest that the petitioner has taken a plea that the opposite party Nos. 1 and 2 in the application were the heirs of the original tenant and opposite party No. 8 is their mother. It is further stated that the opposite party Nos. 3 to 6 are their cousins. In para 14 of the release application, it has further been stated that opposite party Nos. 1 to 8, as mentioned in the said application claimed themselves to be members of joint Hindu family. In the earlier proceedings, whether instituted u/s 12 of the U.P. Act No. 13 of 1972 or in the S.C.C. Suit No. 1 of 2004, nowhere by filing written statement, the present respondent Nos. 2 to 9 had claimed that they are subtenants. On one hand, the respondents are claiming in other proceedings that they are not subtenants and in the present proceedings where even the petitioner had not alleged them to be subtenants they want to take benefit of the plea taken by the landlord in other proceedings for staying the present proceedings. Para 16 of the release application shows that the petitioner has alleged that respondents being members of a joint Hindu family can shift their business from the shop in question. In view of these circumstances, where the question of sub-tenancy has not been raised by either of the parties in the application moved by the petitioner, the objection of respondent Nos. 2 to 9 before the prescribed authority, for staying the proceedings is misconceived.

7. In *K.C. Srivastava v. Special Chief Judicial Magistrate/Prescribed Authority, Allahabad and Ors.* 1997 (2) ARC 557 it has been held that Section 10 of the Code of Civil Procedure, 1908 has no application to the proceedings u/s 21 (1) (a) of the U.P. Act No. 13 of 1972. On behalf of learned Counsel for the respondents principle of law contained in *Prabha Manufacturing Industrial Co-operative Society Vs. Banwari Lal*, is relied and referred, but the same does not help the respondents, as the case pertaining to *R. Srinivasan (supra)*, relates to

the two regular suits between the parties and similarly case of Prabha Manufacturing Industrial Co-operative Society (supra), also pertains to two regular suits, and not the proceedings relating to u/s 21 of the U.P. Act No. 13 of 1972.

8. In view of above discussion, the impugned orders staying the proceedings of Section 21 (1) (a) on account of pendency of writ petitions arising out of proceedings u/s 12 of the U. P. Act No. 13 of 1972, is against the law and, as such, liable to be quashed. Accordingly, the writ petition is allowed. The impugned order dated 4.4.2005, passed by the Prescribed Authority/Civil Judge (Junior Division) Ramnagar in Rent Control Case No. 3 of 2004 is quashed. The objection filed by respondents before the prescribed authority stand rejected. The prescribed authority shall proceed with the case. No order as to costs.