(2008) 03 UK CK 0011

In the Uttarakhand High Court

Smt. Veermati APPELLANT

Vs

State of Uttaranchal and Others RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

General Clauses Act, 1897 — Section 3
Income Tax Act, 1961 — Section 10
Transfer of Property Act, 1882 — Section 106

Citation : AIR 2008 Utt 43 : (2008) 8 UC 1204 : (2008) 1 UD 479

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—This writ petition has been filed for setting aside the order dated 10-12-2002 passed by the District Judge, Nainital and the order dated 24-9-2002 passed by respondent No. 3 (contained in Annexure Nos. 1 and 2 respectively). The petitioner has further prayed for direction to respondents not to evict the petitioner from the premises in question (Argles Ford) which has been duly allotted to her. By the order dated 24-9-2002, the Prescribed Authority had confirmed the notice issued to the petitioner u/s 4(1) of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act 1972 (for short the Act) and also passed an order of eviction against the petitioner from the public premises. By order dated 10-12-2002 the appeal of the petitioner has been dismissed by the learned District Judge Nainital.

2. Relevant facts, giving rise to the present writ petition, in brief are that a building known as Argles Ford in Mallital, Nalnital was allotted to Chaudhary Shivraj Singh on December 02, 1957 by the then Rent Control and Eviction Officer, Nainital (for short the R.C. & E.O.). At that time, M/s. Parma Shiv Lal Sah was the landlord of the house in question. On or about 27-4-1976, the said house was purchased by the Kumaon University from the heirs of the original landlord and Sri Shiv Raj Singh continued to be the tenant. After the death of

Shiv Raj Singh the University asked the petitioner to vacate the premises and it also served a notice/letter dated 22-12-1978. The said letter was challenged by the petitioner in the Court of Munsif, Nainital by filing Original Suit No. 01 of 1979 against Kumaon University. The suit was decreed on 21-8-1979 by Sri S.C. Agarwal, the then Munsif, Nainital and the University was restrained from evicting the plaintiff-petitioner except in accordance with law. The petitioner approached the University for purchase of the building which appears to have been considered acceptable on certain terms and the Government was moved by the University for necessary permission by letter dated 24-4-1981. However, the deal could not be materialized between the parties. Ultimately, a notice dated 6-4-2000 was served upon the petitioner on behalf of the University on 9-4-2000 thereby the tenancy of the petitioner was terminated on the expiry of 30 days from the date of service of notice. In reply to the said notice, the petitioner appears to have paid a sum of Rs. 73,345/- vide Cheque No. 057497 dated 8-5-2000 towards part of the demanded arrears of rent and interest thereon and she sent reply through her counsel on 8-5-2000, but she did not vacate the premises in question. Subsequently, on 16-8-2000, the University through its Register moved an application u/s 4(1) of the Act for eviction of the petitioner from the premises in question, which was earlier known as Strawberry Cottage. Eviction Case No. 22/49 of 2000-2001 was registered before the Prescribed Authority and notice in Form A was issued to the petitioner. She contested the application of the University and filed her objections on 18-5-2001. She admitted the University to be the owner and landlord of the premises known as Argles Ford but contended that she still continues to be the tenant of the premises in question and she is not liable to be evicted.

3. Before the Prescribed Authority, the University examined P.W. 1 Prakash Chandra Pande, Assistant Engineer and P.W. 2 Shri C.M. Tewari, Officer on Special Duty while the petitioner requested the Prescribed Authority for getting her statement recorded on commission. One Onkar Goswami Advocate was appointed Commissioner, but the petitioner sought adjournments time and again and ultimately on 12-10-2001, the petitioner moved an application for being discharged from the list of witnesses. The Prescribed Authority after hearing the parties passed the impugned order, confirmed the notice u/s 4(1) of the Act and ordered the eviction by issuing Form B against the petitioner vide judgment and order dated 24-9-2002.

4. Aggrieved, the petitioner preferred an appeal before the District Judge, Nainital. The learned District Judge after hearing both the parties and perusing the entire material on record did not find favour with the petitioner in appeal and ultimately dismissed the appeal by a detailed judgment and order dated 10-12-2002.1 have heard learned Counsel for both the parties and perused the contentions raised in the memo of writ petition, the counter-affidavit and the rejoinder affidavit along with their Annexures on record.

5. At the outset it may be mentioned that the petitioner has stated in paragraph

No. 16 that since 1981 no response was received from the respondent No. 4, then petitioner in the year 1986 instituted a suit for specific performance of contract of sale executed between the petitioner and the respondent No. 4, but the petitioner did not like to disclose the particulars as well as the fate of the suit, while in paragraph No. 20, it has been stated that all of a sudden on 16-8-2000 the respondent No. 4 filed a case before the opposite party No. 2 against the petitioner under provisions of the Act wherein an order was passed on 24-9-2002 directing for eviction of the petitioner from the premises in question. Moreover, in the counter-affidavit the averments made in paragraph No. 16 of the writ petition have been denied. It was stated that in the light of the decision of the Executive Council the petitioner was informed about the terms and conditions for resale of the building but the same was not followed by the petitioner and a letter to this effect was sent by her on 17-12-1980. Rejoinder Affidavit has also been filed by the petitioner but even the particulars of the suit allegedly filed in the year 1986 have not been furnished. Even if it may be taken that the petitioner had filed a suit for specific performance of contract, mere filing of the suit does not confer any right or title to the petitioner. Besides, the impugned orders have been passed by the Prescribed Authority and the Appellate Court under the provisions of the Act, therefore, the contents of paragraph No. 16 of the writ petition have no relevance for the controversy involved in the present writ petition.

6. Firstly, the learned Counsel for the petitioner has vehemently argued that the findings recorded by the respondent No.2 are perverse because the provisions of the Act are not attracted in the case at hand. According to the learned Counsel, Kumaon University is neither a State nor a Local Authority. In support of this argument, reliance has been placed in the case of The Commissioner of Income Tax, Lucknow Vs. U.P. Forest Corporation, The Apex Court has observed that even though Section 3(3) of the U.P. Forest Corporation Act regards the Corporation as a local authority, for the purposes of the Act, the meaning of the expression "local authority" as contained in General Clauses Act, which is the Central Act, has to be seen. Merely because the U.P. Forest Corporation Act regards the respondent as a local authority, would not, in law, make the respondent a local authority for the purposes of Section 10(20) of the Income Tax Act. The ratio of the judgment cannot be disputed. The case Apex Court was dealing with an Income Tax matter under the Income Tax Act, 1961.

7. On the other hand, learned Counsel for the contesting respondent No. 4, while supporting the impugned judgment and orders has contended that in view of the provision of Section 3 of the U.P. State Universities Act 1973, Kumaon University is corporate body and the provisions of the Act are fully applicable because the University is a local authority within the meaning of Section 2(e) of the Act, which defines the word "Public Premises".

8. In the case at hand, the premises in question had been purchased by the Kumaon University. The point to be determined is whether the University is a

local authority or not. The Apex Court In the case of Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, has dealt with the definition of ''local authority'' u/s 3(31) of the General Clauses Act, 1897 and has inter alia held in paragraph No. 2 that "A proper and careful scrutiny of the language of Section 3(31) suggests that an authority, In order to be a local authority, must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board, or Body of Port Commissioners, but, possessing one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. What then are the distinctive attributes and characteristics, all or many of which a Municipal Committee, District Board or Body of Port Commissioners shares with any other local authority? First, the authorities must have separate legal existence as corporate bodies. They must not be mere governmental agencies but must be legally independent entities. Next, they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. Next, they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of autonomy there (sic) must." It was further observed that "finally, they must have the power to raise funds for the furtherance of their activities and the fulfillment of their projects by levying taxes, rates, charges, or fees. This may be in addition to moneys provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority.'' In the case of Union of India v. R.C. Jain (supra), the Apex Court has in other words put a test to derive as to which shall constitute ''local authority''.

9. Secondly, this argument was raised before the learned District Judge, Nainital on behalf of the petitioner that the provisions of the Act are not applicable to the present case. The learned District Judge has relied upon the judgment in the case of The Gandhi Faiz-e-am Degree College Vs. The University of Agra and Another, . The learned District Judge has observed at page 3 of his judgment that "the expression "local authority" has not been defined under Public Premises (Exaction of Unauthorised Occupants) Act, 1973. As such, the definition given in Section 4(25) in U.P. General Clauses Act, 1904 is applicable for the purposes of U.P. Act No. 22 of 1972. If the definition of word "local authority" and that of word "local fund" as given in Section 4(25) and Section 4(26) of U.P. General Clauses Act, 1904 is applied there remain no doubt that a University is a local authority.

10. The Apex Court in the case of Kashi Vidyapith Vs. Motilal and others, in para graph No. 11 has inter alia observed that "when the "local authority" was widely de fined under the General Clauses Act to include "any authority", a university must be construed to be any other authority within the meaning of Section 3(31)

of the General Clauses Act as applicable to the State of U.P. Therefore, the establishment of a university being by an authority established under the Universities Act, the amount spent from the university fund is a local fund within the meaning of Section 3(31) of the General Clauses Act."

11. In view of the discussion above, I hold that the approach of the learned District Judge that the University is a local authority and the premises in question owned by Kumaon University are the public premises is correct. The contention of the learned Counsel for the petitioner that the provisions of the Act are not applicable to the case at hand is not acceptable. To my mind the case law The Commissioner of Income Tax, Lucknow Vs. U.P. Forest Corporation, does not Help the petitioner. The findings recorded by the learned District Judge on this score do not call for any interference in writ jurisdiction by this Court.

12. It has further been argued by the learned Counsel for the petitioner that no notice u/s 106 of the Transfer of Property Act had been served upon the petitioner, therefore, the petitioner cannot be evicted from the premises in question. I am not inclined to accept this contention also for the simple reason that the learned District Judge has already dealt with this point at page 4 of the judgment. It has been observed by the learned District Judge that "notice dated 6-4-2000 (Ext. A1) served on the appellant on 9-4-2000 is nothing but a notice u/s 106 of the Transfer of Property Act, 1882 whereby the tenancy of the appellant has been terminated on expiry of 30 days of receiving the notice." I therefore hold that a legal notice u/s 106 of the Transfer of Property Act 1882 had been served on the petitioner.

13. For the reasons and discussion aforesaid, I do not find any merit in this writ petition, which is liable to be dismissed outright. The writ petition is dismissed. Costs easy. All applications stand disposed of. Interim order dated 21-12-2003 is vacated.