

(2009) 03 AHC CK 0104

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20599 of 2007

Sri Ram Gupta

APPELLANT

Vs

Prescribed Authority/Civil Judge (S.D.), Kanpur Dehat and
others

RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 23, 24

Citation : (2009) 03 AHC CK 0104

Hon'ble Judges : Prakash Krishna, J

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The present writ petition arises out of execution proceedings as contemplated under section 23 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 hereinafter, referred to as the said Act.

2. The facts of the case may be noticed in brief. An application for release of a shop, situate at House No. 86, Ashok Nagar Uttari, Ghatampur, District Kanpur Dehat, was filed by Sri Ram Gupta jointly with Sri Ram Chandra Gupta against Sri Indrapal Verma, the tenant. The release of the said shop was sought on the ground that two sons namely Sandeep Kumar and Sachin Kumar of Sri Ram Gupta are not engaged in any business, they are sitting idle. To establish them in a business, the release of the shop was sought for, under section 21 (1) (a) of the said Act. The said release application was registered as Case No. 1 of 2000. It was dismissed by the prescribed authority on 22nd January, 2003. The said order was challenged in appeal by the two landlords in Rent Appeal No. 2 of 2003 and the appeal was allowed by the judgment dated 10th November, 2004 passed by the Additional District Judge, Court No. 1, Kanpur Dehat. The need of Shri Ram Gupta was found genuine as he wants to open a shop for running a business for his sons, to settle them in life. The said order was the subjectmatter of challenge in Writ Petition No. 49804 of 2004, at the instance of tenant, in this Court. The arguments in the writ petition were heard finally on 30th November,

2004 and the judgment was reserved. It was delivered on 18th February, 2005. The writ petition was ultimately dismissed. During the pendency of the said writ petition, the tenant remained in occupation of the disputed shop on the strength of the interim order passed therein.

3. After the dismissal of the said writ petition, Sri Ram Gupta for whose sons need the shop was got released, filed an application for execution of the release order under section 23 of the Act which was registered as Rent Case Misc. No. 1/23 of 2006.

4. Sri Indrapal Verma against whom the release order was passed, filed objections on the allegations that he has already vacated the disputed shop on 25th December, 2004 and handed over its vacant possession to Sri Ram Chandra Gupta, the colandlord, who has let it out to Sri Atul Kumar Verma. It may be noted that Atul Kumar Verma is none else but, son of the alleged outgoing tenant namely Indrapal Verma. Interestingly, an objection on the same lines was also filed by Sri Ram Chandra Gupta, the colandlord. The Court below by the impugned order held, that since the possession has already been delivered on 25th December, 2004, the present application is liable to be dismissed. Challenging the aforesaid order, the present writ petition has been filed.

5. Heard, Sri Atul Dayal, learned Counsel for the petitioner and Sri A.K. Sachan, learned Counsel for the contesting respondent Nos. 2 and 3. The respondent No. 2 is Sri Indrapal Verma, the tenant who has suffered the ejectment/release order and the respondent No. 3 is Sri Ram Chandra Gupta, the colandlord.

6. The simple contention of the learned Counsel for the petitioner is that the Executing Court has wrongly dismissed the said application filed under section 23 of the Act. It is the duty of the prescribed authority to evict any tenant against whom an order is made either under section 21 or in an appeal under section 12, as the case may be. The said section further provides that any other perspn, found in actual possession shall also be liable for eviction. Elaborating the arguments, he submits that the theory as set out by the alleged outgoing tenant is collusive and bogus. Sri Indrapal Verma and Sri Ram Chandra Gupta are handsin glove with each other and they are in collusion with a view to frustrate the release order. The theory of handing over the possession to Sri Ram Chandra Gupta and thereafter its letting to the son of the tenant has been set up with oblique motive. The fact that the possession has not been delivered to the petitioner, whose need was found bona fide and genuine remains and as such the petitioner is entitled to get the possession under section 23 of the Act.

7. In reply, Sri A.K. Sachan, advocate submits that during the pendency of the writ petition, a partition between the twolandlords took place on 1st December, 2003, vide Annexure C.A.1 to the counteraffidavit filed on behalf of Sri Indrapal Verma. As a result of the said partition the house in which the present shop is housed, came in the lot of Sri Ram Chandra Gupta. Sri Ram Chandra Gupta being the owner of the property in question, has let it out to the son of the tenant.

Elaborating the argument it was submitted that the joint release application was filed before the prescribed authority and the appeal was filed by them jointly. Since the possession has been delivered to one of the colandlords, the question of delivering possession now does not arise.

8. Considered the respective submissions of the Counsel of the parties and perused the record. It may be noted that the release application was filed jointly. It is also not in dispute that the release of the disputed shop was sought for the need of two sons of the present petitioner but till date he has not been delivered the possession of the shop. In other words, the release of the shop was sought for bona fide need of Sri Ram Gupta the petitioner alone. According to the respondents delivery of possession of the disputed shop has been made during the pendency of the writ petition, to a colandlord and the Writ Court was not informed either by the tenant or by Sri Ram Chandra Gupta that the possession has been delivered and as such the writ petition has become infructuous.

9. The following two issues on these facts fall for consideration in the present petition:

(1) Whether an application for delivery of possession of the released property is liable to be rejected, where the tenant alleges that he has delivered the possession to a colandlord, whose need was not set up and/or the possession has not been handed over to a colandlord whose need was subjectmatter of release proceedings?

(2) Whether there is collusion in between the respondent Nos. 2 and 3? Taking the first point first let us have a look to the provisions of section 23 of the Act.

Section 23 of the Act reads as follows:

Enforcement of Eviction Order. (1) The prescribed authority may use or caused to be used such force as may be necessary for evicting any tenant against whom an order is made under section 21 or on appeal under section 22, as the case may be, or against any person found in actual possession, and for putting the landlords into possession.

(2) Every order of the prescribed authority in proceedings under this section shall be final."

10. The section 23 casts statutory obligation; (1) to evict any tenant against, whom an order has been made; or (2) against any other person found in actual possession; and (3) put the landlord into possession. The word "landlord" in this provision (section 23) should have a restricted meaning. "Landlord" has been defined in section 3 (j) of the Act. The relevant portion is quoted below:

"In this Act unless the context otherwise requires:

a.....

b.....

C.....

d.....

j. "landlord" in relation to building, means a person to whom its rent is or if the building, were let would be, payable and includes, except in Clause (g), his agent or attorney, of such person."

11. The definition of "landlord" as given in the definition clause is subject to "unless the context otherwise requires". Admittedly the release was sought for and was granted for the need of Shri Ram Gupta, the petitioner, landlord. Sri Ram Chandra Gupta's need was not set up in the release application. He was the colandlrod. The word "landlord" in section 23 shall draw its colour from the word "landlord" used in section 21 of the Act. As a matter of plain grammatical construction it is obvious that the word "landlord" under section 23 of the Act should be interpreted with reference to section 21 (I) (a).

12. The Supreme Court in a case under Tamil Nadu Buildings (Lease and Rent Control) Act K.V. Muthu v. Anga Muthu Ammal, AIR 1997 SC 628=1997 SCFBRC 156 (SC) has held that the effect of words "unless context otherwise requires" in the definition clause has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the Legislature. While interpreting the definition, it has to be borne in mind that interpretation placed on it should not be repugnant to the context. It should be such as it would aid the object which is sought to be served by the Act. A construction which would defeat or is likely to defeat the purpose of the Act has to be ignored and not accepted. If a wider meaning is given to landlord to include the whole body of the landlords under section 23 of the Act, it would defeat the very purpose and object of section 21 of the Act. Section 24 of the Act gives option of reentry to the tenant evicted in the proceedings under section 21 of the Act. The object of the Act will be achieved only when the possession of the release accommodation is delivered to that landlord for whom it was released."

13. The Supreme Court in the case of Syed Asadullah Kazmi v. A.D.J. 1981 ARC 542 had an occasion to interpret section 23 of the Act. It has been interpreted by the Supreme Court that once the release order having become final it cannot be reopened by the prescribed authority on the ground of subsequent events. The Supreme Court has observed as follows:

"Plainly, the order dated 25th March, 1997 of the appellate authority releasing a portion of the premises in favour of the third respondent and leaving the remaining portion in the tenancy of the appellant acquired finality when the proceedings taken against it by the appellant failed. The order having become final was found to give effect to it. In doing so, the prescribed authority was not acting outside its jurisdiction or contrary to law.....the order for release of a portion of the accommodation acquired finality before the death of Raj Kumar Sinha and the controversy concluded by it could not be reopened."

14. In view of the above discussion, the word "landlord" used in section 23 of the Act should be understood, in case there are more than one landlords, the landlord for whose need the release application was allowed. In other words, the word "need" of landlord has a nexus with the particular landlord in case of colandlords. Reverting to the facts of the present case it is axiomatic that the shop in dispute was released for the need of the present petitionerlandlord namely Shri Ram Gupta to whom, admittedly, the tenant has not delivered the possession of the shop in question. This being the position, the prescribed authority committed patent error of law in rejecting the application for delivery of possession filed under section 23 of the Act by the petitionerlandlord, simply on the ground that the possession has been delivered to a colandlord.

15. The above view finds support from section 24 of the Act which provides an option of reentry by the tenant. It provides that where a building is released in favour of the landlord and the tenant is evicted under section 21 or on appeal under section 22, and the landlord puts any person different from the person for whose occupation according to the landlord's representation, the building was required, or the landlord omits to occupy it within one month or such extended time as the prescribed authority for sufficient cause allow from the date of his obtaining possession, the tenant will have an option of reentry.

16. Now, I take up the second point. It was vehemently argued by the learned Counsel for the petitioner that the plea set out in defence to the application filed under section 23 that possession has been delivered by the tenant to colandlord namely Shri Ram Chandra Gupta, is bogus and collusive. Had it been so, the tenant would have applied for dismissal of the Writ Petition No. 49840 of 2004 wherein he had obtained the stay order from this Court. No permission was sought for nor any information was given to the Writ Court before effecting delivery of possession in pursuance of the release order. I find merit in the said contention.

"Collusion" means agreement or understanding between the parties to make the Court to believe in the existence or truth of the circumstances which the parties know to be nonexistence of false, and the existence or truth of which is necessary for the grant of the relief claimed by the petitioner. [Tirukappa v. Kamalamma AIR 1966 Mys 1=(1965) 1 Mys LJ 329.]

17. The word "collusion" means a secret agreement for illegal purposes or a conspiracy. The use of the word "collusion" suggests that a person knew what he was about and that he did it secretly or fraudulently. Collusion implies that a man does something evil designedly. [Subhash Chandra Dass Mushib v. Ganga Prasad Mushib, (1967) 1 SCWR 271=AIR1967 SC 878=(1967) 1 SCR 331.]

18. The distinction between fraudulent and collusive transactions has been set out very clearly by the Supreme Court in Nagubai Ammal v. Shama Rao, AIR 1956 SC 593. The Supreme Court observed:

"There is a fundamental distinction between a proceeding which is collusive and

one which is fraudulent. Collusive in judicial proceedings is a secret arrangement between two persons that the one should institute a suit against the other in order to obtain the decision of judicial Tribunal for some sinister purpose. [Wharton's Law Lexicon, 14th E., p. 212]. In such a proceeding the claim put forward is fictitious, the context over it is unreal and the decree passed therein is a mere mask having the similitude of a judicial determination and worn by the parties with the object of confounding third parties. But when a proceeding is alleged to be fraudulent, what is meant is that the claim made therein is untrue but that the claimant has managed to obtain the verdict of the Court in his favour and against his opponent by practising fraud on the Court. Such a proceeding is started with a view to injure the opponent and there can be no question of its having been initiated as the result of an understanding between the parties. While in collusive proceedings the combat is a mere sham, in a fraudulent suit it is real and earnest."

19. Besides the above, collusion is "writ large" in the present case. Indrapal Verma, the tenant against whom the release order was passed and Ram Chandra Gupta, the colandlord, are being represented by the same Counsel. There is absolutely no reason also to why the tenant delivered the possession to Shri Ram Chandra Gupta, whose need was not subjectmatter of lis between the parties and it was not brought to the notice of the Writ Court. It follows that theory of handing over the possession is nothing but a cock and bull story.

20. It was contended by the respondents that a partition in between the colandlords on 1.12.2003, and this shop fell in the lot of the respondent No. 3. As to whether the partition between the two colandlords had taken place or not, is not open to the proceedings. It is an acknowledged legal position that the Executing Court could not go behind decree. The prescribed authority was exercising the power under section 23, as that of an Executing Court. If the landlord/the decree holder has sought for the execution of the release order it is the duty of the Executing Court to execute the said order by evicting the tenant or any person found therein. Validity of the alleged partition cannot be examined, if disputed in these proceedings.

21. A bare perusal of the alleged partition deed also casts a doubt on its genuineness as also on its admissibility in evidence. A partition deed in respect of immovable property requires registration under the Registration Act. The alleged deed of partition is not a registered document.

22. In view of the above discussions, the prescribed authority has committed illegality in rejecting the application filed under section 23 of the Act.

23. In the result, the writ petition succeeds and is allowed. The impugned order is hereby set aside. The prescribed authority is hereby directed to deliver the vacant possession to the petitioner/landlord within a period of one month from the date of production of certified copy of this order, by evicting any person who is in possession of the shop in question. The prescribed authority shall also

provides police force if necessary.

24. The writ petition is allowed with costs of Rs. 10, 000 which shall be paid by the respondent No. 2, to the petitioner.