

(2016) 04 AHC CK 0219
In the Allahabad High Court
Case No : CMWP No. 305 Of 2016

Sri Ramesh Chandra

APPELLANT

Vs

Sri Ran Singh

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21 (1)(a)

Citation : (2016) 4 AllWC 3333 : (2016) 119 ALR 84 : (2016) 2 ARC 644

Hon'ble Judges : Mrs. Sunita Agarwal, J.

Bench : Single Bench

Advocate : Nagendra Kumar Srivastava, Komal Agrawal, Advocates, for the Appellant; Sumit Daga, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Sunita Agarwal, J.— Heard Sri Nagendra Kumar Srivastava, learned counsel for the petitioner and Sri Sumit Daga, learned counsel for the respondent.

2. By means of the present writ petition, the judgments and orders passed by the Courts below dated 4.3.2009, 14.8.2015 and 24.11.2015 are under challenge.

3. The present petition arises out of the release proceeding namely P.A. Case No. 18 of 2005 Ran Singh v. Ramesh Chandra instituted under Section 21(1)(a) of U.P. Act No. 13 of 1972 for the release of shop no. 766/264 situated at Mohalla Hastinapur Road, near Jain Mandir, Mawana Kala, District Meerut. The need set up in the release application was for the landlord and his son to start a business. The ground of challenge to the order of the release in the present petition is that the Prescribed Authority/Judge Small Causes Court, Meerut had no jurisdiction to entertain and adjudicate the release application. The Court of Civil Judge (Junior Division), Mawana was the designated Prescribed Authority for the area in question and, therefore, it was the only competent authority to entertain the

release application.

4. The petitioner contested the matter by filing his written statement on 27.7.2006, however, the Prescribed Authority namely the Civil Judge (S.D.), Meerut without any jurisdiction, vide judgment and order dated 4.3.2009 had allowed the release application of the landlord. Aggrieved the appeal under Section 22 of the Act namely Rent Appeal No. 22 of 2009 was filed before the District Judge, Meerut.

5. During pendency of the said appeal, the petitioner came to know that the trial court namely the Judge, Small Causes Court, Meerut had no jurisdiction to hear the release application for the shop in question which is situated in Mawana. The Outlying Court of Civil Judge (Junior Division) only had jurisdiction to hear the matter. The application 72-Ga was, accordingly, filed before the appellate court with the request to call for a report regarding the jurisdiction of the trial court.

6. A report was called for which states as under:-

"Sriman Ji,

C.J. (J.D.) se varsh 2005 mein P.A. case ko nirnit karne ka kshetradhikar us samay Sri Rakesh Verma C.J. (J.D.) Mawana ko varsh 2009 mein Sri P.K. Tyagi C.J. (J.D.) Mawana ko P.A. vado ko tay karne ka kshetradhikar tha."

7. Thereafter, the petitioner filed an application 71-Ka seeking permission to amend the written statement as well as the grounds of appeal to challenge the jurisdiction of the Prescribed Authority at Meerut to hear the release application. The lower appellate court rejected the amendment application on 22.10.2013, aggrieved the petitioner filed a Writ Petition No. 62081 of 2013 (Ramesh Chandra v. Ran Singh), which was decided on 19.8.2014 with the observation that the amendment about the territorial jurisdiction of the court is a legal plea and irrespective of the fact that the amendment to this effect in the pleadings has not been permitted, the petitioner was permitted to raise this question at the time of final hearing of the appeal and the appellate court was directed to consider and decide the same in accordance with law.

8. On the merits of the release application, it was submitted that the appellant on an application under Order 41, Rule 27 read with Section 107(d) of C.P.C. has brought on record of the appellate court that the landlord/respondent was in possession of the shop situated towards north side of the shop in question and the said shop has been let out to one Naushad s/o Akhlakh who was running the said shop under the name and style of "Lucky Juice Corner". The landlord contested it with the plea that there was no shop in the name and style of "Lucky Juice Corner" rather the landlord himself was running his business under the name and style of "Partner Juice Corner" with the help of Naushad s/o Akhlakh, who was his servant.

9. The appeal was dismissed on 14.8.2015 and the release order was affirmed by the Appellate Court, however, on the question of jurisdiction, no finding has been

recorded by the Appellate Court.

10. On a challenge to the orders of release in Writ Petition No. 53381 of 2015, this Court remanded the matter back to the appellate court with the specific direction to examine the issue of jurisdiction raised by the petitioner and return a finding only on this issue.

11. So far as bona fide need and comparative hardship of the landlord is concerned, this Court in the judgment and order dated 22.9.2015 has specifically recorded that on the merits of the need set up by the landlord in the release application, no interference is required.

12. The operative part of the judgment and order dated 22.9.2015 is as under:-

"A perusal of order of the Appellate Court indicates that there is no consideration of the question of jurisdiction raised by the appellant. In view of the direction of this Court the matter is remanded back to the Appellate Court to examine the issue of jurisdiction raised by the petitioner and give a finding only on this issue. Rest of the finding on the issue of bona fide need and comparative hardship of the landlord i.e. merits of the release application require no interference."

13. On the merits of the release application i.e. on bona fide need and comparative hardship, this Court in judgment and order dated 22.9.2015 had observed as under:-

"Need set up by the landlord respondent for the shop in question is that after retirement he wanted to settle himself and his son in hardware business by merging the shop adjacent to the shop in question which is in possession of the landlord. The said shop is too small for carrying on the hardware business which requires much more space for displaying the sanitary wares.

The tenant has contested the release application on the ground that the landlord had no intention to start the hardware business otherwise he would have opened it in the vacant shop in his possession without waiting for the release of the shop in question. The need of landlord could not be rejected for the only reason that the landlord requires both the shops for setting up hardware business. He has categorically stated that in case the shop in question is vacated then he would merge both the shops for opening the show room.

It is well settled that the landlord can settle himself in whatever business he wants to do, to which the tenant has no right to suggest as to in what manner the landlord should do his business.

On comparative hardship, the tenant has made no effort to get an alternative accommodation and further the landlord has proved his need for the shop, and therefore the landlord would face more hardship than the tenant. On the ground of bona fide need and comparative hardship, no interference is required in the order passed by the Appellate Court."

14. After remand on the limited issue of jurisdiction of the Prescribed Authority,

the appellate court found that as per the report of the Munsarim dated 8.3.2015, for the territories of Mawana in the year 2009, Civil Judge (Junior Division) was designated Prescribed Authority. However, no Gazette notification is on record and further the report of Munsarim is not a conclusive proof.

15. It is further observed that the issue of territorial jurisdiction was not raised at the initial stage by the petitioner before the trial court. In appeal, the plea of lack of jurisdiction was taken by means of an amendment application filed in the year 2013.

16. It is further observed that the question is not of lack of jurisdiction rather it is an irregularity on account of which the entire order of release passed by the Prescribed Authority cannot be said to be illegal.

17. Challenging these finding returned by the lower appellate Court in its judgment and order dated 24.11.2015, learned counsel for the petitioner vehemently argued that the lack of jurisdiction is an issue which goes to the very root of the claim of the landlord for release of the shop. It makes a Court incompetent to hear and decide the matter on merits. It is incumbent upon every Court to assess its jurisdiction to entertain the matter and only then to proceed to hear the same on merits. The records proves that the Prescribed Authority which has decided the release application on 4.3.2009 sitting at Meerut had no jurisdiction to entertain the release application for the area in question and, therefore, the judgment and order dated 4.3.2009 passed by it is a nullity. The issue that the decree passed by a Court is a nullity can be raised at any time even in the execution proceeding or in a collateral proceeding. The issue of jurisdiction cannot be determined on the basis of consent of the parties.

18. Reliance has been placed upon the judgments of this Court in Sushil Kumar Mehta v. Govind Ram Bohra (dead) through his LRs. 1990 (2) ARC 330; Kiran Singh and others v. Chaman Paswan and others 1955 (1) S.C.R 117; Sarwan Kumar & another v. Madan Lal Aggarwal JT 2003 (1) SC 607; Mathura Prasad Sarjoo Jaiswal and others v. Dossibai N.B. Jeejeebhoy AIR 1971 SC 2355; Atma Ram v. VIth Additional District Judge and others 2006 (1) ARC 168 and Subhash Mahadevasa Habib v. Nemasa Ambasa Dharamdas (Dead) by LRs. and others (2007) 13 SCC 650.

19. It is further submitted by the learned counsel for the petitioner that this Court by judgment and order dated 22.9.2015 remanded the matter to the appellate court to examine on the question of jurisdiction and record its finding. The appellate court has committed a grave error of law in arriving at a conclusion that the notification to designate Prescribed Authority was not on record.

20. The Prescribed Authority is defined under Section 3(e) of U.P. Act No. 13 of 1972 which means a Civil Judicial Officer or Judicial Magistrate authorised by the District Judge to exercise, perform and discharge all or any of the powers, functions and duties of the Prescribed Authority under the Act. The Prescribed Authority so designated under the Act is not a Court of Civil jurisdiction.

21. The Civil Judge (Junior Division) who is sitting in the Outlying Court at Mawana has been designated by the District Judge in exercise of powers conferred upon him under Section 3(e) of the Act 13 of 1972, to decide the cases under Section 21 of the U.P. Act. The shop in question is situated in Mawana and, therefore, the Prescribed Authority at the Outlying Court in Mawana only had territorial jurisdiction. In any case, the Prescribed Authority at Meerut had overreached his jurisdiction in adjudicating the release application for a shop situated in Mawana.

22. The appellate court has erred in rejecting the application on the ground that the issue of jurisdiction was not taken at the first instance. The petitioner was not aware of the lack of jurisdiction of the Court at Meerut but as soon as he came to know, he filed an application for amendment before the appellate court which was rejected and ultimately the order was challenged before this Court.

23. This Court though did not interfere in the order of the rejection of amendment, however, by judgment and order dated 19.8.2014 left it open to the petitioner to raise this question at the time of final hearing of the appeal. The lower appellate court, however, ignored the issue of jurisdiction while dismissing the appeal by judgment and order dated 14.8.2015 and, therefore, the matter was remanded.

24. Now after remand it has illegally rejected the plea of the petitioner for lack of jurisdiction of the Prescribed Authority. The order of release passed by the Prescribed Authority as affirmed in appeal, therefore, cannot be sustained.

25. On the other hand, Sri Sumit Daga, learned counsel for the respondent has placed reliance upon the judgments of this Court in *Purshottam v. Sheo Prasad and others* 1972 ALJ 742; *Abdul Hameed v. VIIth Addl. Distt. And Sessions Judge, Kanpur Nagar and others* 1976 ALJ 421; *Atma Ram v. VIth Additional District Judge and others* 2006 (1) ARC 168 and the judgment of the Apex Court in *Koopilan Uneen's daughter Pathumma and other v. Koopilan Uneen's Son Kuntalan Kutty dead by LRs, and others* AIR 1981 SC 1683.

26. On the strength of these pronouncements, learned counsel for the respondent submits that the mistake, if any, of jurisdiction in the order of the Prescribed Authority has been rectified with the decision on the merits of the release application by the appellate court. The appellate court admittedly had jurisdiction to entertain the appeal and decide the same on merits.

27. Having heard learned counsel for the parties and perused the record, one fact is admitted to the parties that the jurisdiction to decide the appeal was before the court at Meerut which had decided the appeal. Earlier the appellate court did not at all advert itself to the issue of jurisdiction and, therefore, the matter was remanded back.

28. First submission of learned counsel for the petitioner that the observations on the merits of the release application in the judgment and order dated 22.9.2015

in the Writ Petition No. 53381 of 2015 will not come in his way to challenge the merits of the decision of the appellate court in the present petition. As the Prescribed Authority had no jurisdiction, the order of affirmation in appeal cannot be allowed to stand.

29. This submission of the learned counsel for the petitioner does not appeal to the Court for the reason that in any case, even if the release application would have been decided by a Court of competent jurisdiction at Mawana, the appellate court would be the concerned Court at Meerut, which has decided the Appeal. There is no challenge to the jurisdiction of the appellate court.

30. The appellate court after appreciation of the evidence on record, has recorded its findings on the merits of the release application i.e. on the bona fide need and comparative hardship of the landlord while affirming the release order passed by the Prescribed Authority.

31. Moreover, when the matter was argued by the same counsel on 22.9.2015 in earlier Writ Petition No. 53381 of 2015, the judgment was dictated in open Court and the matter was remitted to the appellate court with the clear understanding and knowledge of the counsel that on the merits of the judgment and order of the appellate court, the findings have been affirmed by this Court.

32. That being so, only in one situation where this Court comes to the conclusion that the appellate court could not have entertained the appeal, it can interfere in the findings recorded by that court.

33. Moreover, so far as the challenge to the jurisdiction of the Prescribed Authority is concerned, even if, the petitioner is able to prove that the Prescribed Authority had no jurisdiction to entertain and decide the release application, it would not make any difference on the merits of the release order as the judgment rendered by the appellate court cannot be said to be without jurisdiction.

34. When the appeal was filed against the judgment of the Prescribed Authority, it was open before the appellate Court to render the judgment of the Prescribed Authority being without jurisdiction and remit the matter back. Another choice open before the appellate court was to appreciate the evidence and record its independent findings. The appellate court did not choose to remit the matter rather adjudicated it on the merits.

35. The finding recorded by the appellate court, therefore, cannot be said to be without jurisdiction or nullity terming it an order of affirmation.

36. On the similar set of facts, the Division Bench of this Court in Purshottam (supra) has held that the defect, if any, in the jurisdiction was cured by the order passed in appeal after the appeal is adjudicated on merits. The findings recorded by the appellate court could not be held to be without jurisdiction.

37. This view taken in Purshottam (supra) has been followed in Abdul Hameed

and in Atma Ram relied by the learned counsel for the respondent. The Apex Court in Koopilan Uneen's daughter Pathumma and other v. Koopilan Uneen's Son Kuntalan Kutty dead by LRs, and others AIR 1981 SC 1683 has held in para "3" as under:-

"3. We have heard learned counsel for the parties on the question of jurisdiction. An unfortunate aspect of this litigation has been that although that question has been agitated already in three courts and has been bone of contention between that parties for more than a decade, the real provision of law which clinches it was never put forward on behalf of the appellant before us nor was adverted to by the learned District Judge or the High Court. That provision is contained in sub-section (1) of Section 21 of the Code of Civil Procedure which runs thus:

"21 (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."

In order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfilment of the following three conditions is essential:

- (1) The objection was taken in the Court of first instance.
- (2) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement.
- (3) There has been a consequent failure of justice.

All these three conditions must co-exist. Now in the present case conditions Nos. 1 and 2 are no doubt fully satisfied; but then before the two appellate Courts below could allow the objection to be taken, it was further necessary that a case of failure of justice on account of the place of suing having been wrongly selected was made out. Not only was no attention paid to this aspect of the matter but no material exists on the record from which such failure of justice may be inferred."

38. Thus even it is accepted that the Prescribed Authority at Meerut had no jurisdiction to decide the release application, the finding recorded by it having been challenged in an appropriate court of appeal, it is held that no prejudice has been caused to the petitioner.

39. The jurisdictional mistake in the order of the Prescribed Authority has been rectified by the appellate court. The judgment and order dated 24.11.2015 passed by the lower appellate court, therefore, cannot be interfered on the grounds of challenge raised by the petitioner.

40. Earlier the findings of the appellate court on the merits of the release application returned in the judgment and order dated 14.8.2015 has been affirmed by this Court in the Writ Petition No. 53381 of 2015 while remitting the

matter on the limited issue of jurisdiction.

41. For the above reasons, there is no merit in the writ petition. Dismissed.

42. Lastly learned counsel for the petitioner submits that the petitioner may be given a reasonable time to vacate the premises in question.

43. To this submission, Sri Sumit Daga, learned counsel for the respondent has no objection.

44. It is, therefore, provided that :-

(1) The petitioner shall file an undertaking along with a certified copy of this order within a period of four weeks before the Court below that he would vacate the premises in question on or before 1st May, 2017.

(2) In case the petitioner fails to furnish undertaking or vacate the premises within the period given above, appropriate proceeding for his eviction may be initiated.