

(2009) 04 AHC CK 0468
In the Allahabad High Court

State of U.P.And Another

APPELLANT

Vs

VIIth Addl.District Judge And Others

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0468

Hon'ble Judges : Prakash Krishna, J

Final Decision : Dismissed

Judgement

Prakash Krishna, J.

Heard Shri Avaneesh, learned standing counsel for the petitioner and Shri P.K. Jain, learned counsel for the respondent no.3. S.C.C. Suit No.10 of 1998 was filed against the petitioners by the respondent no.3 herein, for recovery of arrears of rent, damages and ejectment on the allegations that the premises in question was let out to the petitioners on a monthly rent of Rs.500/-. The tenancy of the petitioners was for a fixed term which expired on 31st March, 1979. Thereafter, the petitioners neither got the said lease renewed nor they paid any rent to the respondent no.3. The tenancy has been determined by a notice dated 29th August, 1988 under section 106 of the Transfer of Property Act and under section 80 of the Civil Procedure Code. In spite of service of notice, the petitioners have not cleared the arrears of rent w.e.f. 1st of March, 1979. The rent up to 6th December, 1985 became time barred and therefore, arrears of rent up to that period was not claimed.

The suit was contested on number of pleas including that the disputed accommodation was constructed in the year 1963 for office of the N.C.C. Unit and out of matching grant paid by the State of U.P. to Meerut College. The total cost of the construction of the building was Rs.55,000/- out of which Rs.22,000/- was paid by the State Government as matching grant to the respondent no.3 for raising the said construction. The remaining amount of construction was spent by the respondent no.3. The benefit of deposit under section 20 (4) of the U.P. Act No.13 of 1972, was also claimed. On the basis of the pleadings of the parties the

court below framed four issues.

Under Issue no.1 it was found that the suit as framed is maintainable. Under Issue No.2 it was found that the petitioners have failed to clear the arrears of rent as demanded in the notice and therefore, they are liable for eviction under section 20 (2) (a) of the U.P. Act No.13 of 1972. Under Issue No.3 relating to the benefit under section 20 (4) of the Act it was found that the petitioners are not entitled to avail the same as the requisite amount was not deposited on the first date of hearing. Under the Issue no.4 it was found that the remaining amount which has been deposited in excess can be withdrawn by the petitioners.

The suit was decreed for recovery of arrears of rent, ejectment and mesne profit etc. by the judgment and decree dated 30th of March, 1992. The said decree has been confirmed in revision preferred under Section 25 of the Provincial Small Cause Courts Act by the court below vide judgment dated 22nd December, 1994.

Challenging the aforesaid two judgments the present writ petition has been filed. The learned standing counsel submits that the U.P. Act No.13 of 1972 is not applicable to the building in question. He submits that in view of section 2 (1)(b) of the said Act a building belonging to or vested in a recognized institution is exempt from the operation of the Act. In this regard, reliance was placed on a letter dated 18/31st of October, 1973 given by the Principal of the institution wherein, under clause (g), it has been stated that institutions are exempt from the U.P. Rent Control Act. The further plea is that the building in dispute was constructed in the year 1963 for the office of the N.C.C. Unit out of the matching grant of Rs.22,000/ paid by the State of U.P. to the Meerut College. The total cost of construction of the building was Rs.55,000/. The plaintiff, therefore, is not sole owner of the building in question vide para 15 of the written statement. It was further submitted that since there was a direction by the Accountant General, U.P. to the petitioners not to pay rent to the respondent no.3, there was a justifiable cause for not making the payment of rent to the respondent no.3.

Shri P.K. Jain, learned counsel appearing on behalf of the respondent no.3 states that he does not want to file any counter affidavit to the writ petition and he argued the matter as such.

The learned standing counsel has also placed reliance upon the judgment of this Court in *Munish Chandra Gupta Vs. Additional District Judge Bojnor & Others*: 2007 (3) ARC 806 for the purposes of reduction of the mesne profit.

Shri Jain submits that it is an admitted case of the parties that the building in question was leased out for a fixed term to the petitioners. The term of the said lease has expired. Elaborating the argument, it was submitted that the relationship of landlord and tenant between the parties is admitted and in this view of the matter, the petitioners were under legal obligation to pay rent/damages for the use and occupation of the building in question to the respondent no.3. He further submits that if the argument of the learned standing counsel, though not raised earlier, is accepted that the building in question is exempt from

the operation of the aforesaid Act, it will worsen the case of the petitioners and the petitioners are liable for eviction as no illegality in determining the tenancy could be pointed out by the learned standing counsel in the said notice dated 29th August, 1988, which has been served on the petitioners.

Considered the respective submissions of the learned counsel for the parties and perused the record. So far as the question of exemption is concerned, section 2 (1) (b) of the Act provides exemption to a building belonging to or vested in a recognized institution. The fact that the building in dispute belongs to the respondent no.3 which is a recognized educational institution, is not disputed by the learned standing counsel. As rightly pointed out by the learned counsel for the respondent no.3, if the said argument is accepted, it will not improve the case of the petitioners. If a building is exempt from the operation of the U.P. Act No.13 of 1972 and there is a relationship of landlord and tenant between the parties, the tenant is liable for eviction after determination of tenancy by a simple notice as provided under section 106 of the Transfer of Property Act. This being so, I find the decree for eviction has been rightly passed. The lease has, admittedly, expired on 31st of March, 1979. The existence of lease is not in dispute between the parties. It clearly shows that there has been a relationship of landlord and tenant between the parties. So far as the default in payment of rent is concerned, it is also almost admitted case of the petitioners that they have not paid even a single cent to the respondent no.3 after expiry of the lease period. Therefore, the petitioners are also in arrears of rent for more than 4 months and a statutory ground for their eviction as envisaged under section 20(2) (a) of the Act has been made out.

Before the trial court a plea was raised that the entire arrears of rent etc. has been deposited in view of section 20 (4) of the Act, therefore, the petitioners should be relieved against the decree for eviction. The trial court has found that the money so deposited by the petitioners was not on the date of first hearing which is one of the conditions required to be fulfilled. It appears from the judgment of the revisional court that the said finding was not challenged before it. When the matter was heard earlier by this Court and the judgment was reserved, the learned standing counsel was required to file along with the supplementary affidavit the details of the deposit as also the complete order sheet of the suit since the date of its filing till the decision on merit i.e. 30th of March, 1994. The said order was passed by the Hon'ble Mr. Justice S.U. Khan on 19th September, 2008 but till date the learned standing counsel could not file the copy of the order sheet of the suit. In this view of the matter, the finding recorded by the trial court that the deposit was not made on the first date of hearing, cannot be disturbed and same stands affirmed. From the judgment of the revisional court, it does not appear that any such plea was advanced before it. Then, it was urged that the building in question was got constructed for the office of N.C.C. Unit, the petitioners are not liable for eviction and the said building cannot be used for any other purposes. Be that as it may, the copy of the agreement has not been placed before this Court and in view of the fact that

there is a relationship of landlord and tenant between the parties and the tenancy has been validly determined and the respondent no.3 is owner and landlord of the building in question, I find no substance in the said plea. No other point was pressed by the learned standing counsel.

The writ petition consequently fails and it is dismissed. But no order as to costs.