
(2009) 09 SC CK 0085

In the Supreme Court Of India

Case No : Civil Appeal No's. 6140-6141 of 2009 (Arising out of S.L.P. (C) No's. 26275-26276 of 2008)

Sunita Rani and Others

APPELLANT

Vs

Sri Chand and Others

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Citation : (2009) 4 AWC 165 Supp : (2009) 15 JT 344 : (2009) 12 SCALE 470 : (2009) 10 SCC 628 : (2009) 15 SCR 295 : (2010) 1 UD 16

Hon'ble Judges : S. H. Kapadia, J;Aftab Alam, J

Bench : Division Bench

Advocate : Dinesh Kumar Garg, for the Appellant; Vivek Gupta and Chandan Ramamurthi (NP), for the Respondent

Final Decision : Allowed

Judgement

Application for deletion of the name of Respondent No. 4 is allowed.

Leave granted

1. The respondents (Landlord) instituted proceedings for eviction of the appellants (Tenant) from three different premises let out to them at different times. One of the proceedings was in respect of a go-down let out to the appellants at the monthly rental of Rs. 50/-. The other was in regard to a shop with the monthly rental of Rs. 35/- and the third was for a kothari on the monthly rental of Rs. 15/-.

2. The Prescribed Authority/Munsif, Deoband, Saharanpur, consolidated the three proceedings and by a common judgment and order dated 8 November, 1983 dismissed all the three eviction/release petitions filed by the respondents.

3. Against the order passed by the Prescribed Authority the respondents preferred appeals before the Additional Judge, Saharanpur. The appellate authority allowed the appeal relating to the go-down and ordered its release/

eviction of the appellants by judgment and order dated 30 May, 1989. By the same judgment, however, it rejected the respondents' appeals in regard to the other two premises, namely, the shop and the kothari.

4. The respondents filed two writ petitions before the Allahabad High Court challenging the orders rejecting his eviction/release petitions in respect of the shop and the kothari. The appellants too approached the High Court in a writ petition against the judgment of the appellate authority in so far as it allowed release of the go-down in favour of the respondents. The High Court, like the two courts below, heard all the three writ petitions together and disposed them of by a common judgment and order dated 19 August, 2008. The High Court held that the judgment and order passed by the lower appellate court was eminently just and in accordance with law. It therefore, dismissed all the three writ petitions.

5. But the High Court did not stop there. It felt that the existing rent of the shop and the kothari (in regard to which the landlord's eviction/release petitions were finally rejected) was very low and was liable to be increased. It, accordingly, passed the following order:

The existing rent of Rs. 50/- per month for two accommodations, kothari and shop left in the occupation of the tenant, is extremely inadequate. Accordingly, it is directed that w.e.f. August 2008 onwards tenants shall pay rent for the portion left in their occupation, i.e. kothari and shop at the total rate of Rs. 500/- per month

6. Aggrieved by the order of the High Court increasing the rent of the shop and the kothari from Rs. 50/- pm to Rs. 500/- pm, the appellants have come in appeal.

7. In a recent judgment dated 27 August, 2009 in C.A. No. 5835 of 2009 (State of Maharashtra and Anr. v. Super Max International Pvt. Ltd. and Ors.) a three-Judge Bench of this Court examined the question of the Court's authority to increase the existing rent or to direct the tenant to pay/deposit in court an amount in excess of the existing monthly rent. The Court upheld the court's power and authority to make such a direction in cases where the tenant goes to the superior court in appeal or revision against a decree or order of eviction. But at the same time it made clear that in a case where the landlord goes to the superior court against an order rejecting his application for eviction/release, it is not open to the Court to direct any increase in the monthly contractual/statutory rent of the premises. In this regard the decision in the M/s Super Max International referred to an earlier decision of this Court in Niyas Ahmed Khan v. Mahmood Rahmat Ullah Khan (2008) 7 SCC 539 and made the following observations:

7. In Niyas Ahmed Khan, the position was quite different. The landlord's application for eviction of the tenant on grounds of personal necessity was turned down by the prescribed authority. The order of the prescribed authority was confirmed by the appellate authority. The landlord challenged the orders passed

by the two authorities under the Rent Control Act in a writ petition filed before the Allahabad High Court and while admitting the writ petition the Court gave an interim direction to the tenant to pay rent at the rate of Rs. 12,050/- per month (in place of the contractual monthly rent of Rs. 150/-). The Court further directed that if the rent fixed by it was not paid for two consecutive months the landlord could evict the tenant by coercive means taking the aid of police. In appeal by the tenant, this Court naturally frowned upon the interim order passed by the High Court and in paragraph 10 of the decision observed as follows:

10. To sum up, in writ petitions by landlords against rejection of eviction petitions, there is no scope for issue of any interim direction to the tenant to pay higher rent. But in writ petitions by tenants against grant of eviction, the High Court may, as a condition of stay, direct the tenant to pay higher rent during the pendency of the writ petition. This again is subject to two limitations. First, the condition should be reasonable. Second, there should not be any bar in the respective State rent control legislation in regard to such increases in rent. Be that as it may.

8. In light of the decisions in *Niyas Ahmed Khan* and *State of Maharashtra*, the High Court judgment in so far as it enhanced the monthly rent of the shop and the kothari in occupation of the appellants from Rs. 50/-pm to Rs. 500/- pm is clearly unsustainable.

9. It may be noted here that the High Court has sought to justify its direction to the appellants to pay the monthly rent for the shop and the kothari at a rate ten times higher than the existing rent by pointing out that in the U.P. Rent Control Act there is no provision for enhancement of rent after October, 1972 (except where the Landlord is the Government or a public charitable or public religious trust). It has also relied upon decisions of this Court in (i) *Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another*, ; (ii) *Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Another*, and (iii) *Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another*, . There is nothing in either *M.V. Acharya* or *Satyawati Sharma* to suggest that in the absence of any provision in the Rent Control Act, the High Court can assume the authority and the power to enhance manifold the contractual/statutory rent payable by the tenant in a writ petition filed by the landlord against an order rejecting his eviction/release application. Further, the reliance placed by the High Court on the decision in *Shangrila* is equally misplaced. The decision in *Shangrila* was rendered in a very different set of facts and under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which has not only a different scheme but altogether different object and purpose than the Rent Act. But in *Shangrila* too, in paragraph 8 of the decision it was observed as follows:

...It is thus plain and clear that unless the occupant is first adjudged as an unauthorized occupant, his liability to pay damages does not arise. In other words, if he is an unauthorized occupant, he may be required to pay rent but not

damages....

(emphasis added)

10. Similarly, the absence of any provision for enhancement of rent after a cut off date in the Rent Act may be an issue for consideration in a different context (as in M.V. Acharya) but in a writ petition filed by the landlord against an order rejecting his eviction/release application that cannot be made a ground for the High Court to assume the authority to enhance the existing rent. It needs to be realised that a tenant against whom the eviction/release application filed by the landlord has been rejected by the courts below enjoys all the protections afforded by the Rent Act, including the one against the enhancement of rent. That being the position, it is not open to the High Court, to summarily strip the tenant of the statutory protection and enhance the existing rent in a completely unguided and subjective manner.

11. For the reasons stated above we find the High Court order enhancing the rent of the shop and the kothari from Rs. 50/- to Rs. 500/- pm quite unsustainable. To that extent, the High Court order is set aside.

12. The appeals are allowed to the limited extent, but without any order as to costs.