
(2011) 01 AHC CK 0161
In the Allahabad High Court
Case No : Writ A No. 75307 of 2010

Thakur Prasad Madhesiya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Contract Act, 1872 — Section 10, 23

Citation : (2011) 2 ADJ 482 : (2011) 3 AWC 3002 : (2011) 2 RCR(Rent) 487

Hon'ble Judges : Shashi Kant Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shashi Kant Gupta, J.—This writ petition is directed against the judgment and order dated 19.11.2010 passed by the learned Additional District Judge, Deoria upholding the order dated 8.4.2010 passed by the Prescribed Authority, Deoria, District Deoria whereby the application filed by the landlord u/s 21(1)(a) of the UP Act No. 13 of 1972 (in short "the Act") has been allowed.

2. The brief facts of the case are as follows;

3. An application for release of the disputed shop was filed by the landlord u/s 21 of the Act for settling his son in the business. The application was allowed. Aggrieved and dissatisfied with the said order, the Petitioner filed an appeal which was dismissed by the appellate authority by order dated 19.11.2010 holding the need of the landlord to be genuine and bonafide and also held that the comparative hardship tilts in favour of the landlord.

4. The only point raised by the learned Counsel for the Petitioner is that the application filed u/s 21 of the Act against the Petitioner is not maintainable since he is not a tenant within the meaning of the Act but merely an unauthorized occupant inducted by the landlord without any allotment order in contravention of the Act.

5. He further submitted that the application u/s 21 of the Act can be filed only against a person having a allotment order in his favour. The Petitioner cannot be said to be "tenant" as he was inducted without any allotment order in contravention of the Act. In support of his contention, the learned Counsel for the Petitioner has relied upon the decision of this Court in the case of Nand Lal Chaurasia v. VIth Additional District Judge, Pratapgarh and Ors. 2003 (6) AWC 5288 wherein it has been held that the landlord leasing out shops in question to the Petitioner (of that writ petition) under written agreement in contravention of provisions of Section 11, 13 and 16 (without allotment order), cannot be said to be "tenant" within the meaning of the Act. Hence, the application for release u/s 21(1)(a) of the Act is not maintainable.

6. Per contra, learned Counsel for the Respondent No. 2 has submitted that in view of the decisions of Supreme Court in the cases of Nutan Kumar and Ors. v. IInd Additional District Judge and Ors. 2002 (2) ARC 645 and Nanakram Vs. Kundalrai, the law laid down in the case of Nand Lal Chaurasia (supra) cannot be said to be a good law.

7. Heard the learned Counsel for the Petitioner and Mr. P. K. Jain, learned Senior Counsel assisted by learned Counsel, Mr. Saurav Jain appearing on behalf of the Respondents No. 2.

8. The only question to be adjudicated upon by this Court as to whether the application u/s 21 of the Act is maintainable against the Petitioner who was inducted without an allotment order.

9. A bare perusal of the impugned judgment would indicate that allotment order.

the court below has recorded a very categorical finding that parties are having landlord and tenant relationship. The relationship of landlord-tenant has also been admitted by the Petitioner in paragraph 3 of his written statement.

10. Apex Court in the case of the Nutan Kumar and Ors. (supra) while following the decision of Bench of three judges in the case of Nanak Chandra (supra) in paragraphs 7 and 12 has held as follows;

7. In the case of Nanakram Vs. Kundalrai, the question was whether a lease in violation of statutory provisions was void. It was held that in the absence of any mandatory provision obliging eviction in case of contravention of the provisions of the Act the lease would not be void and the parties would be bound, as between themselves, to observe the conditions of lease. It was held that neither of them could assail the lease in a proceeding between themselves. This authority was in respect of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949, whereunder also the landlord was obliged to intimate a vacancy to the Deputy Commissioner of the District and the Deputy Commissioner could allot or direct the landlord to let the house to any person. The provisions were more or less identical to the provisions of the said Act. This authority has directly dealt with the questions under consideration and answered

them. The majority judgment takes note of this authority and holds as follows :

With utmost humility and reverence it is stated that above observations are not compatible with provisions of Section 10 and 23 of the Contract Act. Otherwise also, it is most respectfully pointed that the statement of law contained in the said observation is, perhaps, in conflict with the law declared in the decisions of the Hon''ble Suprme Court in Waman Shriniwas Kini v. Rati Lal Bhagwan Das and Co. Shrikrishna Khanna V. Additional District Matgistrate, Kanpur and others, and Manna Lal Khetan V. Kedar Nath Khetan.

Thus it is to be seen that the majority Judgment, with a pretence of humility and reverence refuse to follow a binding authority of this Court. It was not open for the Full Bench to comment that the authority was not compatible with provisions of Sections 10 and 23 of the Contract Act. The Full Bench also realised that there are no conflicting authorities. They therefore say that this authority is "perhaps in conflict with" the decisions in Waman Shriniwas Kini, Shrikrishna Khanna and Manna Lal Khetan. One must therefore see whether there is any conflict of decisions. If there is no conflict then judicial discipline and propriety required that the majority of the Full Bench followed the binding authority of this Court.

12. As Nanakram''s case was decided by three Hon''ble Judges of this Court, it would also be binding on us. We are therefore not going into the question of correctness or otherwise of such a view. We may however mention that the impugned judgment dated 20th May, 1993, of the Full Bench, is not correct for another reason also. Section 13 of the said Act specifically provides that a person who occupies, without an allotment order in his favour, shall be deemed to be an unauthorised occupant of such premises. As he is in auauthorised occupation he is like a trespasser. A suit for ejectment of a trespasser to get back possession from a trespasser could always be filed. Such a Suit would not be on the contract/ agreement between the parties and would thus not be hit by principles of public policy also.

11. Thus, it was held that unless the statute specifically provides, lease in violation to the statutory provision would not be void and the parties would be bound as between themselves to observe the conditions of lease.

12. Learned Counsel for the Petitioner has vehemently argued that although the suit filed for arrears of rent and ejectment u/s 20 of the Act is maintainable against the person occupying the premises without allotment order but an application u/s 21 of the Act is not maintainable for release of the premises. Learned Counsel for the Petitioner further submitted that Nutan Kumar''s (supra) case is not applicable since in the said case the issue was only with regard to the maintainability of the suit filed u/s 20 of the Act against the person occupying the premises without allotment order and the Apex Court in the said case never held that the application u/s 21 of the Act would also be maintainable against a person inducted by the landlord without an allotment order.

13. The argument of the learned Counsel for the Petitioner is wholly

misconceived and is untenable. The suit for arrears of rent and ejectment u/s 20 of the Act and an application u/s 21 of the Act are maintainable only against the tenant. In both the provisions it is necessary that the Defendant should be a tenant. There is no specific provision in the Act to debar the landlord from filing an application u/s 21 of the Act for release of the premises in favour of the landlord against the tenant occupying the premises without any allotment order. The law laid down by the Supreme Court in the cases of Nutan Kumar (supra) and Nanak Chand (supra) shall also apply with full force qua the maintainability of the application filed u/s 21 against the tenant occupying the premises without allotment order.

14. I am also fortified in my opinion by following decisions of this Court which I wish to refer briefly;

(1). Munna Lal v. IInd Additional District Judge/Fast Track Court and Ors. 2008 (3) ARC 772,

(2). Munna Lal Agarwal Vs. Rent Control and Eviction Officer/City Magistrate and Others,

(3). Pavitra Kumar Garg Vs. Addl. District Judge and Others,

15. This Court in the case of Munna Lal v. IInd Additional District Judge/Fast Track Court and Ors. 2008 (3) ARC 772, inter alia, held as follows;

13. On the parameters set out, the facts of present case is being dealt with. Once it has been held by the Hon''ble Apex Court in the case of Nanakram Vs. Kundalrai, , that inter se parties contract, even if, it is if against the provisions of law is binding and ejectment proceedings therein have been held to be maintainable. Thus as far as Madan Lal Respondent is concerned once he had entered into an agreement of tenancy which fact has been admitted by him in his written statement, then vis-a-vis Petitioner-landlord he cannot come forward and say that he is unauthorized occupant and as such proceeding u/s 21(1)(a) of U.P. Act No. 13 of 1972 is not maintainable. Vis-a-vis landlord, his status is that of tenant, as tenant in relation to building means a person by whom rent is payable. In term of Section 13, without an order of allotment, tenant's status under deeming provision is that of an unauthorized occupant and that of trespasser and suit for getting back possession from trespasser can always be filed. In such a situation as far as landlord is concerned, it would be case of election of remedies for him. It is for the landlord to chose, the forum provided for. Tenant cannot gain any advantage or benefit out of the said situation. Inter se parties who have entered contract of tenancy and have developed landlord tenant relationship though contrary to law quo the same, landlord has got right to enforce his right on the basis of aforementioned contract which is inclusive of his right of eviction. Said contract of tenancy is not binding of Rent Control and Eviction Officer and even on prospective allottee, and the machinery for declaring vacancy can always be set in motion and on vacancy being declared landlord has every right to file release application u/s 16(1)(b) of U.P. Act No. XIII of 1972.

Proceedings u/s 21(1)(a) of U.P. Act No. 13 of 1972 deals with situation when landlord requires premises in question for bona fide need of the landlord vis-a-vis tenant. Madan Lal had entered into agreement as tenant and has paid rent also, in this background it does not lie in the mouth of Madan Lal to say that by operation of law as his status is that of unauthorized occupant, as such proceedings are not competent and maintainable. This plea is totally in breach of rights settled in the case of Nanakram (supra), which still holds the field. This Court even before reversal of Nutan Kumar v. IInd A.D.J. 1993 (2) ARC 204 (FB), took the view in the case of Brij Nandan Sahai Hajela v. IInd A.D.J. Shahjahanpur 1996(1) ARC 165, wherein it was held that if tenant has not raised this plea when an application u/s 21 was filed and accepted himself as tenant, such question cannot be raised subsequently. Said judgment has been followed by this Court, in the case of Shaliq Ahmad v. A.D.J. 1999 (1) ARC 321, as follows. "The Petitioner in the present case having never raised the question that he is unauthorized occupant, it is not now open to him to urge that the application u/s 21(1)(a) of the Act is not maintainable. In case Petitioner had alleged that he was in unauthorized occupation, it was open to landlord-Respondent to file application for release u/s 16(1)(b) of the Act." The view has again reiterated in the case of Kailash Chandra Gaur v. Raj Kumar Sharma 1999 (1) ARC 333 . The issue, which is sought to be raised by the Petitioner after reversal of the Full Bench judgment by Hon"ble Apex Court has already been answered by this Court in the case of Munna Lal Agarwal Vs. Rent Control and Eviction Officer/City Magistrate and Others, as the agreement of letting is binding in between the landlord and tenant, hence landlord is fully entitled to file release application u/s 21 of the Act. Relevant paras 8 and 9 is being extracted below :

8. In my opinion during the currency of Full Bench judgment of the Nootan Kumar landlord could be permitted to file release application u/s 16 of the Act on the ground that even though he himself let out the building to the tenant still as it was done without allotment order, hence legally building was vacant. The reason is that in view of the Full Bench landlord had been left with no other option. He could not file release application u/s 21 of the Act where need of the landlord might be contested by tenant and tenant could asserts his hardship. By virtue of the Full Bench judgment even suit on the grounds of default etc. as mentioned u/s 20(2) of the Act could not be filed if the landlord had let out the building after July 1976 without allotment order,

9. However, reversal of the Full Bench judgment by the Supreme Court has changed the entire scenario. Now the agreement is binding in between landlord and tenant and landlord can file suit for eviction on the grounds mentioned u/s 20(2) of the Act and also release application u/s 21 of the Act on the ground of bonafide need. I am, therefore, of the opinion that if landlord lets out building on which U.P.R.C. Act is applicable without allotment then he himself can not file release application on the ground of deemed vacancy u/s 12/16 of the Act. In release proceedings u/s 16 of the Act tenant/unauthorized occupant can not participate and he can not assert that need of the landlord is not bonafide. As the

agreement of letting is binding in between landlord and tenant hence landlord is fully entitled to file release application u/s 21 of the Act.

16. In Munna Lal Agarwal Vs. Rent Control and Eviction Officer/City Magistrate and Others, also this Court has held that the agreement is binding between the landlord and tenant if building is covered by the Rent Control Act and in case the tenant has been inducted without allotment order, the landlord can file release application u/s 21 of the Act.

17. In the case of Pavitra Kumar Garg Vs. Addl. District Judge and Others, this Court has reiterated that the release application u/s 21(1)(a) of the Act is maintainable against the person occupying the premises without any allotment order.

18. In view of the aforesaid discussions, with utmost humility, I respectfully differ with the decision of this Court in the case of Nand Lal Chaurasia (supra). I do not see any reason to uphold the contention of the Petitioner that the application u/s 21 of the Act is not maintainable against a tenant inducted by the landlord without any allotment order. I am of the considered opinion that the application u/s 21 of the Act is fully maintainable in view of the decisions in the cases of Nutan Kumar's and Nanakram's (supra).

19. No other point has been pressed.

20. In view of the above, I do not find any illegality or infirmity in the orders passed by the court below.

21. In the result, the writ petition is dismissed.