

(2012) 08 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 53119 of 2002

Thakur Rang Ji Maharaj and Another

APPELLANT

Vs

Om Prakash Agarwal and Others

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 1, 2, 2(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Amendment Act, 1995 — Section 2, 2(1)(bb), 2(bb)

Citation : (2013) 1 ALJ 90 : (2013) 2 AWC 1740

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Murlidhar, Ram Pratap Singh, C.P. Agarwal, G.P. Agarwal and H.P. Pandey, for the Appellant; H.L. Pandey, Ram Singh, S.K. Singh, Shiv Ram Singh and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri H.P. Pandey for the petitioners and Sri Shiv Ram Singh for respondent No. 1. It is firstly contended that by insertion of Section 2(1)(bb), w.e.f. 26.9.1994, by Uttar Pradesh Urban Buildings (Regulations of Letting, Rent & Eviction) (Amendment) Act, 1995 (U.P. Act No. 5 of 1995), the Act No. 13 of 1972 itself became inapplicable to a building, belong to or vested in a charitable or religious institution, and, therefore, proceedings initiated by Rent Control and Eviction Officer (hereinafter referred to as "R.C.E.O") and Revisional Court, under Act 13 of 1972, rendered wholly illegal and without jurisdiction, since, the same could not have continued thereafter.

2. It is further contended that petitioner sought to file a compromise dated 19.7.1989 before Revisional Court and that has also been rejected wrongly.

3. However, in my view, both the submissions are thoroughly misconceived and deserve to be rejected. The issue of compromise having already been nullified as

a consequence of the revisional order dated 24.10.1991 cannot be allowed to be agitated at this stage now when the proceedings consequent to the revisional order dated 24.10.1991 have also undergone.

4. The premises in question, i.e. house No. 85 situated in Swami Ghat, Mathura is owned by petitioner No. 1 was under tenancy since much before 1987. The petitioner filed an application before R.C.E.O. seeking release of the accommodation. The R.C.E.O. declared vacancy vide order dated 28.4.1987 and thereafter allowed landlord's application and released accommodation in his favour vide order dated 29.1.1988.

5. Kishan Lal, petitioner No. 2, challenged release order dated 29.1.1988 and filed a revision No. 142 of 1989. During pendency of aforesaid revision, the petitioner No. 1 and Sri Kishan Lal i.e. petitioner No. 2, entered into a compromise whereby petitioner No. 1 agreed to deliver the disputed building on rent to Kishan Lal at the rate of Rs. 100/- per month. Before any order could be passed, Sri Om Prakash Agrawal, respondent No. 1 filed an application for allotment of the said accommodation in his favour, whereupon R.C.E.O. again declared vacancy on 20.6.1989 and thereafter allotted the said accommodation in favour of Om Prakash Agrawal by order dated 4.9.1990.

6. Petitioner No. 1, assailing the order dated 4.9.1990, filed Rent Control Revision No. 154 of 1990.

7. Both these revisions i.e. 142 of 1989 and 154 of 1990 were taken up for hearing by the revisional Court namely, Special/Additional District Judge, Mathura and were decided by a common judgment dated 24.10.1991. Both the above said revisions were allowed. The orders dated 29.1.1988, 26.6.1989 and 4.9.1990 passed by R.C.E.O., Mathura were set aside and the matter was remanded to pass a fresh order in accordance with law.

8. Consequently, on remand, R.C.E.O. passed an allotment order dated 5.10.1994 allotting the accommodation in question to Om Prakash Agarwal, respondent No. 1. The landlord i.e. petitioner No. 1 and the prospective allottee namely petitioner No. 2, both filed two separate revisions i.e. Civil Revision No. 144 of 1992 and 152 of 1994, assailing R.C.E.O.'s order dated 5.10.1994. Both these revisions have been dismissed, vide judgment dated 2.12.2002, and it is this order of revisional Court which has been impugned in this writ petition.

9. I propose first to consider submission that since there was a compromise dated 19.7.1989 between the petitioners, the accommodation could not have been allotted to the respondent No. 1. This Court finds that once the landlord has got an accommodation released in his favour, it could not have let out the same again which is against the very order of release. It vitiates the release order. Hence it was rightly set aside in revision by the revisional Court vide judgment dated 24.10.1991 which has already attained finality having not been taken up further before the higher Court.

10. Now coming to the second question, i.e. the effect of insertion of Section 2(bb) by Amendment Act 5 of 1995 on the pending proceedings, I find that this submission is also thoroughly misconceived and is bound to be rejected. In order to substantiate the submission that after insertion of sub-section (bb) in Section 2(1) in Act 13 of 1972 by U.P. Act No. 5 of 1995, the pending proceedings could not have continued having rendered without jurisdiction, learned counsel for the petitioner could not place any provision either under the Amendment Act or Act 13 of 1972 providing for such consequence. It is not in dispute that the proceedings, as initiated in 1987 and onwards before the enactment of U.P. Act No. 5 of 1995 in respect to premises in question, were within the jurisdiction of R.C.E.O. since Act 13 of 1972 was applicable to the accommodation in question.

11. The U.P. Amendment Act of 1995 by virtue of Section 1, sub-section (2) came into force on 26.9.1994. By Section 2 thereof clause (bb) was inserted in sub-section 1 of Section 2 of Act 13 of 1972. It is a small Amendment Act, containing only four sections. It has not said anything about the proceedings already pending in respect of the buildings which otherwise were within the ambit of Act 13 of 1972 but after amendment in Section 2 of Act 13 of 1972 would be entitled to claim exemption from the application of Act 13 of 1972. Learned counsel for the petitioner admitted that there is no provision in the Amendment Act or under Act 13 of 1972 stating that pending proceedings shall stand abated or rendered without jurisdiction.

12. Moreover the aforesaid issue, is already settled by Apex Court as well as by a larger Bench i.e. Division Bench of this Court. In M/s. Ambalal Sarabhai Enterprises Ltd. Vs. M/s. Amrit Lal and Co. and Another, , the Court has held that insertion of certain provision in the principal Act, taking away application of the Act, would not affect pending proceedings, if on the date when proceedings were initiated, the same were well within its jurisdiction.

13. The said principle has been followed by a Division Bench in Smt. Champa Devi and Another Vs. Rent Control and Eviction Officer (1st), Allahabad and Another, and in Para 4 of the judgment, the reference made to the larger Bench was answered as under:--

Accordingly, the answer to the question referred would be that clause (g) to Section 2 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, inserted in the Act by Section 2 of U.P. Act No. 5 of 1995, will not affect the proceedings pending on the date of enforcement of U.P. Act No. 5 of 1995.

14. In view of the above authority of Apex Court and the Division Bench judgment of this Court, the submission that the Amendment Act of 1995 would result in abating the pending proceedings is clearly misconceived and is rejected.

15. No other argument has been advanced.

16. The petition, in view of the above discussions, is clearly devoid of merits.

Dismissed with cost, which I quantify Rs. 5,000/- against the petitioners.