

(1982) 10 AHC CK 0029
In the Allahabad High Court
Case No : Civil Revision No. 270 of 1981

The Reserve Bank of India

APPELLANT

Vs

S.B. Srivastava

RESPONDENT

Date of Decision : 18-10-1982

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 15
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(3A), 2(1), 21(8), 3

Citation : (1982) AWC 884

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : N.B. Singh and Devendra Swarup, for the Appellant; Y.S. Saxena and S.M. Dayal, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—This is a Defendant's application in revision u/s 25 of the Provincial Small Cause Courts Act, directed against a decree passed by the courts below for the ejectment and recovery of arrears of rent and damages.

2. Shortly stated, the plaint case was that the Plaintiff was the owner and landlord of premises No. 111/272, Harsh Nagar, Kanpur of which the Defendant (Applicant herein) was the tenant in so far as the front ground floor portion of the said house was concerned on a monthly rental of Rs. 350/-. U.P. Act No. 13 of 1972 was not applicable to the premises in question as the same were a "public building" within the meaning of Section 2(1)(a) of the aforesaid Act. The tenancy of the Defendant has been terminated by means of a notice which was duly served on the Defendant. Despite that notice the Defendant has not vacated the premises and hence the suit.

3. The defence was that the said Act was not applicable to the building in

question. The suit was barred by Section 21(8) of the U.P. Act No. 13 of 1972 as well as U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

4. On the pleading of the parties various issues were framed. One of the issues was whether the premises in question were outside the purview of the U.P. Act No. 13 of 1972. Another issue framed was whether the jurisdiction of the court was barred by Section 15 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

5. Both the aforesaid issues have been answered against the Defendant. The suit has been decreed for the reliefs claimed by the Plaintiff-opposite party on the finding that a valid notice determining the tenancy of the Defendant and the Defendant having failed to vacate the premises, the applicant was liable to be evicted.

6. Two contentions have been raised by the learned Counsel for the applicant in support of this revision. The first contention was that it is only by virtue of the amendment introduced by the U.P. Act No. 28 of 1976 that the premises in question fell within the definition of "public building". The said Amending Act was not retrospective. The lease in question was executed in favour of the Defendant prior to the coming into force of the Amending Act, 1976. The contention was that even though the suit was filed after coming into force of the said Amending Act, the lease in question could not be covered by the definition of "public building" as defined under the various provisions of the said Act. It was urged that the Amending Act was not retrospective in its operation and it concerned itself only with the leases which were executed subsequent to coming into force of the aforesaid Act.

7. I cannot agree. There is no element of retrospectivity in the application of the Act to the premises in question which undeniably was a public building within the meaning of Act 13 of 1972 at the institution of the suit. The premises in question were hence clearly outside the purview of the said Act.

8. As regards the submission that the Act applied only to leases which were executed subsequent to coming into force of the U.P. Amending Act 28 of 1976, the same stands concluded by a decision of this Court reported in 1980 Allahabad Law Journal (Notes of Cases 8) in the case of State Sank of India, Faizabad v. Hari Narain. A learned Single Judge of this Court has occasion to consider an identical controversy and on an analysis of the applicable provisions the learned Judge held that u/s 3(o) all leases were covered, whether executed before or after the Act. I am in respectful agreement with the decision of that case. In my opinion the mere fact that the lease in question was executed prior to the coming into force of the Amending Act, 1976, will not take the premises in question outside the definition of a "public building" u/s 2(1)(a) read with Section 3(o).

9. Learned Counsel for the Petitioner, however, placed reliance on a Full Bench decision of this Court reported in 1980 AWC 97 in the case of Khubi Singh Yadav

v. District Judge, Allahabad. In that case the question which fell for determination was whether Section 12(3-A) (inserted by U.P. Act No. 28 of 1976) was retrospective in its operation. The Full Bench held that the said provision was not retrospective in its operation and that it would apply only where the offensive event, namely, the transfer has taken place after the coming into force of Section 12(3-A).

10. In my opinion the aforesaid Full Bench decision has absolutely no application to the controversy at hand. The Full Bench was concerned with an altogether different provision appearing in a different context. In the present case the controversy is whether the mere fact that the lease in question was executed before the coming into force of the Amending Act, 1976 would take the building out of the purview of the definition of "public building" as amended by the said Act of 1976. I see no warrant for making a distinction between public buildings where the leases may have been granted prior to the coming into force of the said Amending Act and those in which leases were granted after that Act. No such distinction is discernible having regard to the context of the relevant statutory provisions u/s 2(1)(a) and 3(o).

11. The second submission of the learned Counsel was that the building in question was in any case public premises to which U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 were applicable. That being so, it was urged that Section 15 barred the suit.

12. The submission is without any merit. The said Act is applicable only to public premises which are in occupation of unauthorised occupants. In my view, the Defendant cannot claim to have been unauthorised occupant within the meaning of Section 2(g) of the said Act. The Defendant in the present case was in lawful occupation of the premises in question under a valid lease granted to him by the landlord. The mere fact that the Defendant's lease may have been determined prior to the institution of the suit does not per se bring the Defendant within the mischief of the definition of unauthorised occupant u/s 2(g). The court below was, therefore, right in negating the contention of the Petitioner. further, Plaintiff has no remedy under that Act. The suit hence cannot be held to be barred by that Act. Moreover, the court below is right in taking the view that the Act has no application where the Government or Public Sector Corporation itself is being sought to be evicted.

13. No other point was urged in support of this revision.

14. In the result, the revision fails and is dismissed with costs.

15. The execution of the decree for ejectment of the applicant is however, stayed for a period of six months from today, provided the applicant shall hand over vacant possession of the disputed accommodation to the Plaintiff-opposite party within this period. The applicant shall also deposit the entire arrears of rent and damages due upto date together with damages for the next six months in the trial court within a period of two months from today. If the applicant has already

made any deposit in the court below the same shall be taken into consideration. In the event of the applicant failing to make the deposit, as directed herein, the decree for the ejectment shall liable to be executed forthwith.