
(2006) 11 AHC CK 0041
In the Allahabad High Court

Union of India (UOI) and Another

APPELLANT

Vs

Smt. Jagdish Kaur

RESPONDENT

Date of Decision : 10-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Constitution of India, 1950 — Article 226, 227

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15

Transfer of Property Act, 1882 — Section 106, 108, 111

Citation : (2006) 10 ADJ 254

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—The petitioners have challenged the validity and correctness of Judgments and orders dated 11-8-2005 and 13-2-2006 (appended as Annexures 7 and 9 respectively to the writ petition) passed by Judge, Small Causes Court, Meerut and Additional District Judge, Court No. 5 Meerut respectively.

2. Facts of the case, as have been disclosed in the writ petition, are that registered Rent lease/agreement dated 20-1-2000 regarding premises No. 212 Arvindpuri, Meerut was executed between the petitioners and the predecessor-in-interest of the respondent-landlady for a period of five years and onwards commencing from 1-7-1999 to run the Post Office on a monthly rent of Rs. 1250/-.

3. As per Clauses 2, 14 and 15 of the agreement dated 20-1-2000, tenancy of the petitioners was to continue even after expiry of initial period of five years for future period on yearly basis and in the event of any dispute concerning the subject-matter and agreement, the matter was to be referred to an Arbitrator appointed by Government of India for decision under the provisions of Arbitration Act, 1940.

4. It is claimed that the petitioners received notice dated 21 -4-2004 from Smt.

Jagdish Kaur, widow of late Sardar Gurdeep Singh through her counsel Sri Harcharan Singh Sarang on 22-4-2004 demanding vacant possession of the tenanted premises and arrears of rent up to 30-6-2004. It was also stipulated in the notice that in case of failure to comply with the terms of notice, landlady shall file a suit for ejectment and arrears of rent together with mesne profits/damages at the rate of Rs. 2500/- per month.

5. Thereafter, J.S.C.C. Suit No. 56 of 2004 was filed by the landlady in the Court of Judge, Small Causes Court, Meerut for ejectment and recovery of arrears of rent on the grounds mentioned in the notice dated 21-4-2004.

6. The suit was contested by the petitioners by filing written statement denying the plaint allegations inter alia that the notice dated 21-4-2004 was illegal; that they offered rent for month of June 2004 to the landlady, who refused to accept, as such, it was sent through Money Order, which too was refused; that entire rent from June to August 2004 together with interest @ 9% per annum was deposited by the tenants on the first date of hearing before the trial Court, that the suit was based on false and frivolous grounds and it was barred by the provisions of Section 15 of the Public Premises (Eviction of Unauthorized Occupant) Act, 1971 and that in view of specific Clause 15 of the rent lease deed, the Court had no jurisdiction to try the suit.

7. Landlady, in support of her case, filed affidavit of Sri Rajeev Singh under Order XVIII, Rule 4 of the Code of Civil Procedure, who was also cross-examined as P.W. 1. He, in his cross-examination, admitted that he was not authorized by the landlady to submit any affidavit/statement but as she was suffering from knee pain, she was unable to appear before the Court and that the premises, in dispute, was needed by the landlady for members of her family. He also admitted that the building, in dispute was constructed in 1970.

8. The petitioners, in support of their case, filed affidavit of one Sri R. K. Rana who proved the rent lease and stated that construction of the building, in dispute, was about 50 years old and that due rent was offered to the landlady, who refused to accept the same.

9. After hearing the parties and considering the materials available on record, the trial Court framed the following issues:

(i) Whether the defendant had not complied with the terms of lease deed due to which he is liable for ejectment from the disputed premises ?

(ii) Whether the suit was barred under the provisions of Public Premises (Eviction of Unauthorized Occupant) Act, 1971 ?

(iii) Whether the present suit is barred by provisions of Arbitration Act ? and

(iv) Relief for which the plaintiff is entitled.

10. Trial Court decreed the suit vide impugned judgment and decree dated 11-8-2005 directing the petitioners to handover vacant possession of the premises,

in dispute to the landlady within 30 days from the date of Judgment and to pay Rs. 1250/-per month from 1-6-2004 till the delivery of possession as arrears of rent and mesne profit to the landlady.

11. On issue No. (i), the trial Court held that the rent lease was operative only for a period of five years w.e.f. 1-7-1999 to 3-6-2004 and since the petitioners were continuing their possession even after expiry of lease period, their possession was illegal. On issue No. (ii), it was held that since the lease period of five years had already expired on 30-6-2004, tenancy should be extinguished and suit of the landlady was not barred by Section 15 of the Public Premises (Eviction of Unauthorized Occupant) Act, 1971. On issue No. 3, it was held that after expiry of period of five years, Clause 15 of the agreement dated 20-1-2000 was not available to be invoked.

12. Aggrieved by the impugned judgment and decree dated 11 -8-2005 passed by the trial Court, the petitioners preferred S.C.C. Revision No. 64 of 2005 in the Court of District Judge, Meerut on 9-9-2005 on the grounds, inter alia, that as the agreement dated 20-1 -2000 was subsisting, the landlady having not invoked the arbitration clause, her suit was not legally maintain-able, that the provisions of Section 15 of Public Premises (Eviction of Unauthorised Occupant) Act, 1971 were fully applicable, as such, notice served upon them was illegal and that the landlord neither appeared before the trial Court nor authorized Sri Rajeev Singh to make any statement on her behalf nor was a witness of lease agreement, the judgment rendered by the trial Court was patently illegal and suffered from jurisdictional error. It was also claimed that the petitioners had deposited rent up to July 2005.

13. The revision filed by the petitioners was dismissed by the revisional Court vide judgment and order dated 13-2-2006.

14. Aggrieved by the impugned judgments passed by the Courts below, the petitioners have invoked the writ jurisdiction under Articles 226 and 227 of the Constitution by means of the instant writ petition.

15. Counsel for the petitioners vehemently urged that the impugned judgments cannot be sustained in law on the following grounds:

(i) that there is no condition of re-entry of landlord in the disputed premises by terminating the lease agreement executed between the parties on 1-7-1999 for the initial period of five years including the renewal clause, as such, notice dated 21 -4-2004 was wholly illegal and unwarranted;

(ii) that it is settled law that notice u/s 80 of the CPC neither defines the rights of parties nor confers any legal right on parties. It only provides mode of procedure for getting the relief in respect of the cause of action, as such, the suit filed by the landlady against the petitioners for ejectment and recovery of damages etc., cannot be based on the said notice;

(iii) that notice of three months prior to expiry of term of the lease is applicable

only in the matter of desire of grant of new lease by the landlady regarding the disputed premises and it is not applicable in the case of continuance of possession of the tenants on the same terms and conditions of the lease agreement for a further term of one year commencing from the date of expiry of the initial term of the lease agreements. The Courts below have misread the terms and conditions of the lease agreement and passed the impugned judgments;

(iv) that the landlady is interested only to enhance the rent as she did not appear before the Courts below to prove her case regarding relief of ejectment.

16. Per contra, it has been contended by counsel for the respondent-landlady that the agreement dated 1-7-1999 specifically provided the tenancy of the petitioners for a period of five years and on expiry of period of five years, it automatically came to an end. He submitted that the petitioners illegally inducted another Post Office in the name and style of Patel Puri Post Office" in the premises, in dispute without consent of the landlady, which was clear breach of the terms of agreement dated 1-7-1999 and in violation of the provisions of Section 108 of the Transfer of Property Act.

17. He urged that the petitioners were under legal obligation to vacate the accommodation, in dispute as their tenancy stood expired by efflux of time and their present status was that of unauthorized occupant. According to counsel for the respondent-landlady, the landlady being 80 years" old and ailing lady suffering from acute knee pain, was not able to attend the Court proceedings but she proved her case through the statement of Sri Rajeev Singh, P.W. 1. As regards Clauses 2 and 14 of the rent agreement, he submitted that the option referred to in the said clauses was never exercised by the petitioners, as such, there was no occasion to extend the benefit of aforesaid clauses to the petitioners. It is vehemently urged that the Courts below have recorded concurrent findings of fact, which should not be interfered in the writ jurisdiction.

Conclusion

18. After hearing counsel for the parties and perusal of record, the following points emerge for consideration in this case:

(A) Whether the suit filed by the landlady was bad for want of notice u/s 106 of the Transfer of Property Act ?

(B) Whether the suit was bad in view of the arbitration clause contained in Clause 15 of the agreement dated 1-7-1999 ? and

(C) Whether the tenants were entitled to retain possession of the accommodation-in-dispute, in view of Clause 14 of the agreement dated 1-7-1999 for a further period of one year ?

19. On point (A), suffice it to say that a, bare perusal of agreement dated 1-7-1999 shows that the lease was for a fixed term of five years which was to

expire on 30-6-2004. Clause 14 of the agreement clearly stipulated that the extension of lease could be granted by mutual agreement between the parties. There is no material available on record indicating that the petitioners sought consent of the landlady for continuance of tenancy after expiry of period of five years. Hon''ble the Apex Court in Smt. Shanti Devi v. Amal Kumar Banerjee AIR 1981 SC 1550 has held that where a lease is for a definite term, it expires by efflux of time by reason of Section 111(a) of the Transfer of Property Act, as such, service of a notice u/s 106 of the said Act is not necessary for determination of lease. To the same effect is the decision of Hon''ble the Apex Court in M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property, wherein it has been held that (para 17):

It is easy to visualize that covenant mentioned in paragraph 2 of the pLaint regarding the appellant's liability to hand over vacant and peaceful possession of the suit property to the plaintiff lessor would come into operation only after the period of lease is over. Therefore, it cannot be said that the said covenant would not remain effective and pending between the parties after the lease gets determined by efflux of time. To that extent the extreme contention of Dr. Singhvi that this part of the cause of action did not arise out of the contract of lease cannot be accepted.

20. Thus, in view of settled position of law, no notice was required to be given to a tenant in case of expiry of lease by efflux of time. Notice dated 21-4-2004 served upon the petitioners by the landlady was statutory notice u/s 80(1) of the CPC and it was not a notice u/s 106 of the Transfer of Property Act. The notice dated 21-4-2004 was valid notice and concurrent finding of fact recorded by the Courts below call for no interference in the writ jurisdiction.

21. On point (B), it appears from Clause 15 of the agreement that it provided for arbitration. The suit was instituted by the landlady on 1 -7-2004 after expiry of term of agreement. Courts below have rightly held that after expiry of five years, the agreement was non-existent and the arbitration clause was not applicable. This view finds support from the law Lald down by Hon''ble the Apex Court in The Union of India Vs. Kishorilal Gupta and Bros.,

22. As regards point (C), from the record, it is evident that the petitioners never raised such objection before the Courts below nor any issue, in this regard, was framed by the trial Court. On the other hand, landlady had specifically stated in her plaint that the petitioners had to exercise their option at least three months before the expiry of period of lease and no such option having been exercised, they were estopped from raising this plea. The petitioners, in their written statement, have not stated that they exercised the option as per Clause 14 of the lease agreement and in the absence of such pleading, they cannot raise the issue for the first time in the writ petition. This view is supported by the decision of Hon''ble the Supreme Court in Polymat India Pvt. Ltd. v. National Insurance Co. Ltd. 2005 (1) AWC 36 : 2005 All LJ 206.

23. A perusal of plaint allegations clearly shows that in paragraph 14, the landlady had specifically stated that she required the accommodation, in dispute, for her son's personal use and occupation. Her son Sri Rajeev Singh, for whose need, the accommodation, in dispute, was needed, appeared before the trial Court as P.W. 1.

24. There is no illegality or infirmity in the judgments impugned warranting interference in the writ jurisdiction.

25. For the reasons stated above, the writ petition is dismissed. The petitioners shall vacate and handover peaceful possession of the accommodation, in dispute, to the landlady and also make payment of arrears of rent, if any, to the landlady within a period of two months from today failing which they shall be evicted by coercive process in accordance with law with the aid of local police and the arrears of rent shall be recoverable as arrears of land revenue. No order as to costs.