
(2005) 08 UK CK 0038
In the Uttarakhand High Court
Case No : C.W.P. No. 1192 of 2002

Union of India (UOI)

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 31-08-2005

Acts Referred:

Cantonments (Extension of Rent Control Laws) Act, 1957 — Section 3
Civil Procedure Code, 1908 (CPC) — Section 80
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 1(3), 2, 2(1), 20, 21(8)

Citation : (2006) 1 AWC 726 : (2005) 2 UD 723

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Suresh Kumar Mishra, S.C, for the Appellant; V.K. Bist and A. Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—By means for this petition, moved under Article 227 read with 226 of the Constitution of India, the petitioner (tenant) has sought direction quashing the Judgment and order dated 23.11.2002 passed by respondent No. 1 and judgment and order dated 27.5.1999 passed by the respondent No. 2.

2. Brief facts of the case, as narrated in the petition, are that premises known as Ridgeway Bungalow in Cantonment Ranikhet, were initially owned by one Late Shri Ghasi Ram Kapoor, who died some more than 50 years back leaving behind his two widows and one daughter Smt. Beena G. Bansal (respondent No. 3). One of the widow Smt. Prakashwati Kapoor let out the said premises to the Divisional Organizer of the Special Service Bureau (petitioner) on 1.4.1966 on rent at the rate of Rs. 300 per month. Till March 1983, rent was regularly paid to the landlady, whereafter she refused to accept the same and petitioner started depositing the rent in the Court. Smt. Prakashwati Kapoor died in January 1991 and since then her daughter (respondent No. 3) is the landlady. The respondent

No. 3 served a notice u/s 80 of the Code of Civil Procedure, 1908 read with Section 106 of the Transfer of Property Act, 1882, which was suitably replied. The petitioner has alleged that provisions of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, are applicable to the premises in question but the respondent No. 3 instituted civil suit No. 32 of 1992 against the petitioner for ejectment and recovery of arrears of rent and mesne profits. A written statement was filed by the petitioner before the trial court, contesting the suit. Learned Civil Judge (Senior Division) Almora, the respondent No. 2, after recording the evidence and hearing the parties, decreed the suit on 27.5.1999 for ejectment of petitioner and also for mesne profits at the rate of Rs. 2,000 per month. Aggrieved by said judgment and decree, the petitioner preferred civil appeal No. 22 of 1999 (which was converted into Civil Revision No. 5 of 2002) before respondent No. 1, who after hearing the parties, dismissed the same on 23.11.2002. Hence, this petition on the ground that the impugned judgments and decree are passed in wrong exercise of jurisdiction.

3. A counter-affidavit has been filed on behalf of the respondent No. 3 in which it has been admitted that Smt. Prakashwati Kapoor, mother of the answering respondent, did let out the premises in question to the petitioner on 1.4.1966, on rent at the rate of Rs. 300 per month. It is also admitted that after March 1983, the petitioner started depositing the rent in the Court. However, it is alleged that after 9.12.1985 rate of rent was enhanced to Rs. 950 per month. It is further stated in the counter-affidavit that after, the respondent No. 3 made request to Union of India, through Prime Minister, and Union Minister Shri P. Chidambaram, in 1988, to vacate the premises, the answering respondent was assured that as soon as the new building for the Special Service Bureau, Ranikhet is constructed, the building in question would be vacated but when it was not done, the answering respondent after serving notice, instituted the suit for ejectment and for recovery of arrears of rent and mesne profits. It is denied that the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 was applicable to the building in question. In this connection, it is stated in the counter-affidavit, that no notification was issued by the Government of India making the aforesaid U. P. Act No. 13 of 1972 applicable to the Cantonment area of Ranikhet.

4. I heard learned Counsel for the parties and perused the record.

5. The only question involved in this case is, whether, provisions of the U. P. Act No. 13 of 1972 are applicable to the premises in question or not? Admittedly, the premises in question is situate in the Cantonment area of Ranikhet. From a plain reading of Sub-section (3) of Section 1 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, i.e., the U. P. Act No. 13 of 1972, it is clear that the Act is applicable to every city as defined in the U. P. Nagar Mahapalika Act, 1959 ; every municipality as defined in the U. P. Municipalities Act, 1916 ; every notified area constituted under said Act of 1916, every town area constituted under the U. P. Town Area Act, 1914 and the local area notified in the

Gazette. S.R.O. No. 47 dated 17th of February, 1982 read with S.R.O. No. 259 dated 1.9.1973 issued by Government of India, published in the Gazette, shows that the provisions of the U. P. Act No. 13 of 1972 were made applicable to the Cantonment area also. Said Notifications were issued under Cantonment (Extension of Rent Control Laws) Act, 1957.

6. Now the next question arises as to which buildings of Cantonment area are out of purview of the U. P. Act No. 13 of 1972. Learned counsel for the petitioner drew my attention to Clause (a) of Sub-section (1) of Section 2 of the said Act and argued that it is only the building of which Government is the landlord, which is exempted from operation of the Act. On the other hand, learned Counsel for the respondent No. 3 contended that even the building which is taken on lease by the Government is a "public building" as defined in Clause (o) of Section 3 of the Act. Now, both these provisions are required to be read harmoniously. History of the U. P. Act No. 13 of 1972 shows that Initially Clause (a) of Sub-section (1) of Section 2 was worded with expression "public building". Needless to say that said section pertains to exemptions from operations of the Act. The said expression was defined in Clause (o) of Section 3 and meant buildings belonging to "or taken on lease" by the Central or State Governments or local authority or public sector undertakings. The said definition still remains the same but Clause (a) of Sub-section (I) of Section 2 has been amended by the U. P. Act No. 17 of 1985, whereby word "public building" has been substituted in said Clause (a) and in its place expression "any building of which the Government or local authority or a public sector corporation is the landlord" has been substituted w.e.f. 15.8.1983. That being so, the premises taken on lease by the Government of India are no more exempted w.e.f. 15.8.1983 from the operation of U. P. Act No. 13 of 1972, even if such building is old. This view gets corroboration from the principle of law contained in Union of India and Anr. v. IXth Additional District Judge, Lucknow and Ors. 1987 (2) ARC 216 ; State of U. P. and Ors. v. District Judge, Jhansi and Ors. 1997 (1) ARC 126 and Cotton Corporation of India Ltd. v. Rent Control and Eviction Officer, Kanpur Nagar and Anr. 1994 (4) AWC 2817. In the present case before this Court, admittedly, the building was taken on lease by the Union of India (the petitioner) and it is not landlord of the building. As such, undoubtedly, the building was not outside the purview of the U. P. Act No. 13 of 1972, in the year 1992, when the suit was filed by the respondent No. 3 for ejectment of defendant/petitioner after serving notice Issued u/s 106 of the Transfer of Properties Act, 1882, and determining the lease. In other words, the lease could not have been determined in the manner done nor the simple suit for ejectment was maintainable for the reason that Section 20 of the U. P. Act No. 13 of 1972 bars such suit and it could have been maintained only on the grounds mentioned in Section 20.

7. On behalf of respondent No. 3, it is argued that S.R.O. No. 47 dated February 17, 1982 read with S.R.O. No. 259 dated 1.9.1973 Issued by Government of India u/s 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957, while making applicable provisions of the U. P. Urban Buildings (Regulation of

Letting, Rent and Eviction) Act, 1972, excludes the buildings appropriated by the Central Government on lease, by adding Clause (cc) after Clause (c) in Section 2 of the U. P. Act No. 13 of 1972. The said added Clause (cc) in aforesaid S.R.O., reads as under :

any building within Cantonment which is, or may be appropriated by Central Government on lease under the Cantonments (House of Accommodation) Act, 1923". There is no whisper either in Annexure-I (copy of notice dated 14.10.1991), or in Annexure II (copy of plaint), or in Annexure III (copy of written statement) that the building in question was appropriated under the Cantonments (House of Accommodation) Act, 1923. Since, there is no pleading from either side as aforesaid, in the opinion of the Court, both learned trial court (respondent No. 2) as well as learned appellate/revisonal court (respondent No. 1) have erred in law by holding that the suit for ejectment is maintainable. They have further committed illegality in decreeing the suit and confirming it treating the tenancy determined by notice issued u/s 106 of the Transfer of Property Act, 1882 as the provisions of the U. P. Act No. 13 of 1972 were applicable to the building.

8. In view of the above discussion of law, both respondent No. 1 and respondent No. 2 have committed jurisdictional error in law and their orders dated 23.11.2002 and 27.5.1999 are liable to be quashed.

9. Accordingly, the petition is allowed. Impugned order dated 23.11.2002 and 27.5.1999, passed by respondents No. 1 and 2 respectively, are quashed with the observation that respondent No. 3 is at liberty to avail remedies u/s 20 or 21(8) of the U. P. Act No. 13 of 1972 available to her. No order as to costs.