
(2006) 12 AHC CK 0177
In the Allahabad High Court

United Bank of India

APPELLANT

Vs

Achintya Kumar Lahiri

RESPONDENT

Date of Decision : 01-12-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2006) 12 AHC CK 0177

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Misra, J.—Heard Sri K.M. Asthana, earned Counsel for the petitioner and Sri Arvind Srivastava, earned Counsel appearing on behalf of the respondent landlord.

2. This writ petition arises out of proceedings u/s 21(8) of U.P. Act No. 13 of 1972 wherein the rent of the building under tenancy of the petitioner has been enhanced from Rs. 8000 per month to Rs. 15000. The petitioner seeks to challenge the said orders passed by the Rent Control and Eviction Officer, Gorakhpur as also the appellate courts order whereby the petitioners appeal has been rejected. With consent of earned Counsel for the parties this petition having been heard at length is being disposed of at this stage itself.

3. The question raised by the petitioner is as to whether with the enforcement of Section 2(1)(g) in U.P. Act No. 13 of 1972 (U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 by the Amending Act being U.P. Act No. 5 of 1995 w.e.f 29.9.1994, the provision of Section 21(8) of the Act would cease to apply to buildings whose rent was in excess of Rs. 2,000 per month.

4. Learned Counsel for the petitioner has placed reliance on a decision of the Hon"ble Supreme Court in the case of Parripati Chandrasekharrao and Sons Vs. Alapati Jalaiah, and submits that the law is settled that the landlords normal rights vested in him by the general law continue to exist till and so long as they

are not abridged by a special legislation and in the case of a tenant the protective shield extended to him survives only so long as and to the extent the special legislation operates. The Hon''ble Supreme Court while considering the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 held that with the issue of a notification granting exemption from the provisions of the Act to buildings whose monthly rent exceeded Rs. 1,000 the tenant lost the protection of the Act the moment the protection was taken away. Therefore, even though the application of the tenant for fixation of fair rent had been made prior to the notification of exemption and its date of enforcement he lost his rights and remedies under the Act the moment such protection was taken away since the rights and remedies were not vested ones.

5. In the case of Vishwant Kumar Vs. Madan Lal Sharma and Another, the Hon''ble Supreme Court held the right of a tenant to get the standard rent fixed under the Act are protective rights and not vested rights. It was held that although the application made by the tenant was prior to the coming in force of the amended provision exempting buildings having a monthly rent exceeding Rs. 3,500 the same was lost since the protection was taken away.

6. Learned Counsel for the respondent landlord has relied on a Full Bench decision of this Court in the case of Sheo Narain Chowdhury v. District Judge 1982 ARC 441. By the amending U.P. Act No. 28 of 1976 Clauses (ii) and (iv) of Section 21(1) of U.P. Act No. 13 of 1972 were omitted and Section 21(8) was introduced in the Act. The Full Bench held that the first part of Section 21(8) prohibits an application for release being filed against buildings let out to the State Government or to a local authority or to a public sector corporation or to a recognized educational institution, whereas the proviso is different from the first part inasmuch as it deals with enhancement of rent of such buildings on the application of the landlord. The Full Bench was considering the effect of deletion of Clauses (ii) and (iv) from Section 21(1) of the Act in relation to Section 21(8) of the Act. The issue that a building is exempted from operation of the Act was not before the Full Bench nor it considered such an issue. The decision has, therefore, to be read as relating to buildings upon which the Act is applicable.

7. There can be no dispute that the buildings mentioned u/s 21(8) are exempt from proceedings u/s 21(1)(a) of the Act and there cannot be a dispute that an application for enhancement of rent can be made by the landlord with respect to such buildings. The issue raised by the petitioner is quite different whereas the contention of learned Counsel for the respondent is that even though the building in question is exempt from the applicability of the Act an application for enhancement of rent under the proviso of Section 21(8) of the Act would be maintainable since the petitioner has submitted to the jurisdiction of the Court.

8. The rights of a landlord recognized under the Law of Contract and Transfer of Property Act are vested rights which would be suspended with the enforcement of the Special Act and as soon as the Special Act is withdrawn the suspended rights of the landlord would revive. Under U.P. Act No. 13 of 1972, the landlords

right to evict tenants of buildings mentioned in Section 21(8) of the Act only for the reasons given in Section 21(1)(a) of the Act were suspended and he was given the right to apply for enhancement of rent. As soon as such restriction is withdrawn and the building goes outside the purview of the Act the vested rights of the landlord under the General Law would revive. Therefore when the building whose rent is more than Rs. 2000 per month stood exempted from the applicability of the Act by virtue of Section 2(1)(g) then the rights of the landlord under the general law stood revived.

9. Section 21(8) of the Act reads as follows:

Nothing in Clause (a) of Sub-section (1) shall apply to a building let out to the State Government or to a local authority or to a public sector corporation or to a recognized educational institution unless the prescribed authority is satisfied that the landlord is a person to whom Clause (ii) or Clause (iv) of the Explanation to Sub-section (1) is applicable:

Provided that in the case of such a building the District Magistrate may, on the application of the landlord, enhance the monthly rent payable therefore to a sum equivalent to one twelfth of ten per cent of the market value of the building under tenancy, and the rent so enhanced shall be payable from the commencement of the month of tenancy following the date of the application:

Provided further that a similar application for further enhancement may be made after the expiration of a period of five years from the date of the last order of enhancement.

10. It is clear that apart from the provisions of Section 21(1)(a) of the Act relating to release of the building on the ground of bona fide need there is no other restriction upon the landlord to evict such a tenant under the other provisions of the Act on other grounds. In case the other provisions of the Act continue to apply to such buildings and tenants then such application of the Act has to be for buildings not exempted by virtue of the various clauses given in Section 2 of the Act. When any building is exempted from the operation of the Act none of the provisions as to Letting, Rent or Eviction as contained in the Act would apply.

11. Learned Counsel for the respondent has argued that the conduct of the petitioner as detailed in various paragraphs of the counter-affidavit disentitled him to any discretionary relief. This Court is of the view that the occasion for granting or not granting any discretionary relief does not arise in this writ petition since the jurisdiction of the Courts to enhance the rent of a building exempted from the applicability of the Act is to be considered and there can be no element of any discretion of the Court while considering such issue.

12. Learned Counsel for the respondent has submitted that since the issue of jurisdiction had not been raised by the petitioner before the courts below hence he cannot raise the same for the first time before this Court and also that having

acquiesced to the jurisdiction of the courts below the petitioner had waived his rights and the question of jurisdiction is not open to judicial review. He has placed reliance on the decisions of the Hon''ble Supreme Court in the cases of R.C. Ardawattya v. Anil Panjwani 2003 (4) ST 27 : 2003 (3) AWC 2511 ; Seth Hiralal Patni Vs. Sri Kali Nath, Martin and Harris Ltd. Vs. VIth Additional District Judge and Others, and Sri M.L. Sethi v. R.P. Kanpur (1972) 2 SCC 434, and has argued that objections as to jurisdiction of the Court have to be taken at the commencement of the proceedings and once having acquiesced to the jurisdiction of the Court he cannot raise the question. The rights under U.P. Act No. 13 of 1972 are personal rights and can therefore be waived and once waived the position changes irretrievably.

13. In the case of M.L. Sethi (supra), the Hon''ble Supreme Court while considering Section 115, C.P.C. had held that "jurisdiction originally means the entitlement to enter upon the enquiry in question. If there is an entitlement to enter upon an enquiry into the question, then any subsequent error can only be regarded as an error within the Jurisdiction".

14. In the case of Hira Lal (supra), the Court was considering the question of territorial jurisdiction and held that "it is settled that the objection as to local Jurisdiction of a Court does not stand on the same footing as an objection to the competence of a Court to try a case". It was held that competence of a Court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction.

15. In the case of Martin and Harris Ltd. (supra), the Hon''ble Supreme Court held that where a purchaser moved a release application u/s 21(1)(a) of U.P. Act No. 13 of 1972 before the expiry of three years it could be entertained only when on the date of consideration on merits by the prescribed authority at least three years had elapsed since the date of purchase. It was with reference to the first proviso of Section 21(1)(a) of the Act that it was held that the protection given to the tenant of six months notice was a breathing time which he can avail or waive the beneficial provision himself.

16. The case of R.C. Ardawatiya (supra) related to civil suit for possession of immovable property based on possessory title. The defendant claimed title by a contract of sale but the averments made in the plaint had gone uncontroverted and un rebutted. The plaintiff was therefore held entitled to the decree prayed for. It was in this context that the Hon''ble Supreme Court held that since at no stage of the proceedings the defendant had taken objection to the jurisdiction therefore it would be too late in the day to permit such objection at the stage of hearing.

17. Jurisdiction of a Court is the authority possessed by a Court to decide matters that are litigated before it. The authority can be conferred by a statute and limits to such authority can also be imposed by statute under which it was conferred the authority or under which the Court was constituted. Such authority may be extended or restricted and if no restriction or limit is imposed the

Jurisdiction is unlimited. When a limitation has been provided as to the kind and nature of the subject matter for exercise of Jurisdiction then the Jurisdiction depends on the existence of particular facts which have to be inquired to decide whether the Court had Jurisdiction.

18. Proceedings under the U.P. Act No. 13 of 1972 can be initiated before the authority only when the subject matter of the proceeding is within the jurisdiction of the authority and the provisions of the Act are applicable to the building. In such a proceeding the authority under the Act would exercise its jurisdiction. In case the Act does not at all apply to the building then the authority under the Act would lack jurisdiction. It is settled law that Inherent lack of jurisdiction renders the decree by such a Court a nullity. Where a Court exercises a jurisdiction which it does not possess its decision amounts to nothing. It is only when there is irregularity in jurisdiction that the parties could waive the irregular exercise of jurisdiction or it could be ignored at the appellate or revisional stage when no objection was taken at the first opportune moment. Unless on the date of passing of a decree the Court is possessed of jurisdiction it could not have passed the decree. Jurisdiction must be acquired before judgment is given. Where the Court is without jurisdiction to entertain any matter, neither acquiescence nor the express consent of parties can confer jurisdiction upon the Court.

19. This Court is of the view that when the rights under the Act, whether they were personal rights or statutory restrictions and rights, did not come into being or they existed but were withdrawn by the statute subsequently, then the question of waiving such non existent rights could not in any manner confer jurisdiction on an authority or Court where there was inherent lack of jurisdiction. The submission to the jurisdiction of a Court where such submission or waiver would bring the issue within jurisdiction of the Court is quite different from submitting to the jurisdiction of the Court or waiving the rights and even then the issue in suit would not come within the jurisdiction of such Court. Mere appearance of a party and answering to the claim cannot give jurisdiction to a Court having limited jurisdiction. Therefore, in the present case when there was inherent lack of jurisdiction in the courts below then any waiver or acquiescence or non raising of objection at the first moment by the petitioner, even if accepted, would not bring the building under the purview of the Act nor the Courts could adjudicate on the issue in exercise of their jurisdiction which is confined/ limited under the provisions of the Act. Any such act of the parties would not bring the issue in suit within the jurisdiction of the Court even after waiver of personal rights under the Act or by acquiescence due to the conduct of the parties. The Act has provided limited jurisdiction to the Courts to adjudicate only with respect to those buildings whose rent is less than Rs. 2000 per month with the insertion of Section 2(1)(g) w.e.f. 29.9.1994. There is no enabling provision in the Act to enable the parties to extend the jurisdiction by any consent.

20. For the reasons stated above the question raised in this petition has to be answered in the affirmative by holding that with the enforcement of Section 2(1) (g) in U.P. Act No. 13 of 1972 w.e.f. 29.9.1994 the provisions of Section 21(8) of the Act would cease to apply to those buildings whose rent was in excess of Rs. 2000 per month. Consequently the proceedings initiated by the respondent landlord under the proviso to Section 21(8) of the Act for his building the monthly rent of which was admittedly more than Rs. 2000 (it is Rs. 8000 per month) were not within the jurisdiction of the authority/Court, constituted under the Act and who exercises a limited authority conferred by the Act. This writ petition has therefore to be allowed and the impugned order dated 6.9.2003 passed by the Rent Control and Eviction Officer, Gorakhpur in Case No. 9 of 2001 as also The impugned judgment and order dated 17.7.2006 passed by the appellate court in Misc. Appeal No. 9 of 2003 have to be set aside.

21. The writ petition is allowed and the impugned orders are set aside. No order is passed as to costs.