
(2016) 01 AHC CK 0256

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 60604 of 2011

Vijay Kumar Chaudhary

APPELLANT

Vs

A.D.J./Special Judge (S.C./S.T. Act), Gorakhpur and Others

RESPONDENT

Date of Decision : 27-01-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 37
Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 10
General Clauses Act, 1897 — Section 3(17)
Uttar Pradesh Urban Buildings (Regulation of Let

Citation : (2016) 2 ADJ 616 : (2016) 4 AILLJ 204 : (2016) 2 AllWC 2161 :
(2016) 115 ALR 691 : (2016) 1 ARC 614

Hon'ble Judges : Sunita Agarwal, J.

Bench : Single Bench

Advocate : Arvind Srivastava, for the Appellant; M.K. Jain, A.K. Gupta, Atul Dayal and P.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Sunita Agarwal, J.—1. Heard Sri Arvind Srivastava, learned counsel for the petitioner, Sri Tarun Verma and Sri Atul Dayal learned counsel for the respondents. The orders of release passed by the Courts below under Section 21(1)(a) of U.P. Act No. 13 of 1972 (hereinafter referred to as the "1972 Act") are challenged in the present writ petition.

2. The release application was filed by respondent No. 3 Vilash Chandra Srivastava in the year 2008 for the need of his son.

3. The ground taken was that the younger son of the landlord namely Ashok Chandra Srivastava was doing his business in Delhi but he had suffered financial loss and as such he wanted to shift to Gorakhpur to establish his business in the shop in question. The applicant and his wife had grown old and their son wanted to live with them so that he may look after them.

4. The release application was contested on the ground that the landlord was

bent upon to evict the opposite parties. Earlier a Release Application was filed in the year 2001 which was registered as P.A. Case No. 27 of 2001 (Vijay Kumar Chaudhary v. Additional District Judge, Gorakhpur and others). The need set up therein was that the applicant needed the shop in question for his lawyer's office as he started practice after retirement from Railways. In the said case, a compromise has been arrived between the parties and a portion of the shop in question was vacated and in lieu thereof, another portion of the property was handed over to the tenant.

5. The submission is that the need for younger son is the creation of the mind of the applicant-landlords in order to evict the petitioner. The son of the applicant-landlord was doing business at a large scale in Delhi and he had purchased a commercial and residential accommodation therein. His children were studying there in good schools and he had no intention to shift to Gorakhpur leaving his established business in Delhi.

6. Both the Courts below on the affidavits filed by the parties found that the applicant-landlord bona fide required the shop in question. His son had filed affidavits before the Prescribed Authority and Appellate Court stating therein that he suffered losses in the business which he was carrying on in Delhi. Most of his savings had gone in paying the losses and he was planning to sell his properties in Delhi and shift to Gorakhpur.

7. On comparative hardship, it was found that the tenant did not make any effort to get an alternative accommodation. The affidavits of some neighbours were filed in evidence before the Courts below by the landlords to prove that there exist vacant shops in the vicinity which could have been taken on rent by the tenant but he did not want to vacate the shop in question.

8. Challenging these findings, the main contest of learned counsel for the petitioner is on the validity of the order of release passed by the Prescribed Authority. The submission is that Pawan Kumar Tiwari, Judge Small Causes Court, was designated as Prescribed Authority by the Incharge District Judge on 17.12.2009. The Incharge District Judge was authorized to discharge, the judicial and financial powers of the District Judge, however, the administrative powers of the District Judge to designate "Prescribed Authority" under Section 3(e) of the 1972 Act could not have been exercised by him.

9. In support of this submission, reliance has been placed upon the Division Bench judgement of this Court in Northern Coalfields Ltd., Singrauli (M.P.) v. Aluminium Industries Ltd., Kundara (Kerala), , 2013(6) ADJ 104, wherein an earlier judgment of a learned Single Judge in M/s. ITI Ltd., Alld v. District Judge Alld and others, AIR 1988 Alld 313(1), has been approved.

10. The Judicial Officer who was designated as a Prescribed Authority, therefore, was lacking in jurisdiction to decide the release application. This fact came to the knowledge of the petitioner only when an information under RTI Act was received by him. Plea of lack of jurisdiction of the Prescribed Authority was taken before

the Appellate Authority but was wrongly rejected.

11. Elaborating his submissions, reference is made to Section 3(e) of 1972 Act, to submit that the word "District Judge" has been used in sub-section (e) of Section 3 of 1972 Act which means that a Judicial Officer authorized by the District Judge only could perform powers, functions and duties of the "Prescribed Authority" under the Act.

12. The definition of "District Judge" as provided under Section 3(17) of the General Clauses Act, 1897 (hereinafter referred to as the "1897 Act") does not include any Additional District & Sessions Judge as the Principal Civil Court.

13. Referring to the judgment of this Court in Hari Shankar Mishra Advocate v. Prescribed Authority, Allahabad and others, 1988(2) ARC 266, learned counsel for the petitioner submits that the powers given to the District Judge to designate a Judicial Officer as Prescribed Authority under Section 3(e) of the 1972 Act has been recognised as the administrative powers of the District Judge. The District Judge being a Principal Civil Court of original jurisdiction and having control over all the Civil Courts in his jurisdiction has been conferred upon the power to designate a Prescribed Authority.

14. A combined reading of the provisions of Section 3(17) of the 1897 Act and Section 3(e) of the 1972 Act, it is clear that only the District Judge was empowered to designate a Prescribed Authority under Section 3(e) of the 1972 Act. Admittedly, on 17.12.2009 the office of the District Judge was vacant and the Incharge District Judge cannot be said to be the Principal Civil Court having control over all the Civil Courts within the meaning of Section 3(17) of 1897 Act. The Incharge District Judge, therefore, was not empowered to appoint/authorize the Judicial Officer as a "Prescribed Authority" under Section 3(e) of the 1972 Act.

15. A Notification issued by the High Court dated 4.11.2009 has been brought on record by way of a Supplementary-affidavit dated 16.1.2014 to submit that only the financial powers of the District Judge have been delegated to Sri Deepak Kumar, the then Additional District and Sessions Judge, Gorakhpur till the new District and Sessions Judge, Gorakhpur, assumed charge of his office.

16. Hence, the authorisation by the High Court, Allahabad vide Notification dated 4.11.2009 was not with respect to the administrative powers of the District Judge under Section 3(e) of the 1972 Act.

17. Repelling these submissions, learned counsel for the respondents with reference to Section 10 of Bengal, Agra and Assam Act, 1887 (hereinafter referred to as the "1887 Act") contends that the Incharge District Judge, who was holding the office of the District Judge, was having power to discharge all the functions and duties and exercise all the powers of the District Judge as soon as he assumed charge of the office of the District Judge, in addition to his ordinary duties. The temporary arrangement for the office of District Judge was made as per Section 10 of the 1887 Act subject to the rules made by the High

Court, if any. There are no rules to the contrary and, therefore, the administrative powers under Section 3(e) of 1972 Act were rightly exercised by the District Judge.

18. Further, the order of the "Prescribed Authority" on the merits of the release application has been examined in appeal. The Appellate Court recorded its independent finding on the merits of the need of the landlord. The order of the "Prescribed Authority" had merged in the order of the Appellate Court, who was admittedly having jurisdiction to decide the appeal.

19. Even if it is accepted for a moment that the "Prescribed Authority" was wrongly designated by the Incharge District Judge, the defect, if any, in the decision of the "Prescribed Authority" was cured by the decision of the Appellate Court on merits.

20. Reliance has been placed upon the judgment of this Court in Abdul Hameed v. VII Additional District & Sessions Judge, Kanpur and others, 1976 ALJ 421.

21. As this question has been raised as a preliminary issue and the learned counsel for the petitioner laid much stress on this point, this issue is decided first before examining on the merits of the case.

22. It is not a case where a dispute is raised that the Judge, Small Causes Court/ concerned Judicial Officer could not have been designated as "Prescribed Authority" or he was incompetent to act as a "Prescribed Authority" even in case he was designated as such by the District Judge. Rather the dispute raised is regarding the powers of the Officer who had designated him as the "Prescribed Authority".

23. The office of the District Judge was vacant on 17.12.2009 and the Additional District & Sessions Judge, Gorakhpur, Sri Deepak Kumar was already designated as Incharge District Judge. He was authorized to hold the office of District Judge temporarily, till the new District & Sessions Judge, Gorakhpur, assumed charge of his office. This arrangement was purportedly made under Section 10 of 1887 Act which reads as under :

"Temporary charge of District Court.--(1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not present at that place, the senior Subordinate Judge present thereat, shall, without relinquishing his ordinary duties, assume charge of the office of the District Judge, and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer appointed thereto.

(2) While in the charge of the Office of the District Judge, the Additional Judge or subordinate Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge.""

24. Sub-section (2) of Section 10 of 1887 Act states that the Officer/Additional District and Sessions Judge, while in the charge of the office of District Judge, may exercise any of the powers of the District Judge subject to any rules made by the High Court in this behalf. The words used in subsection (2) of Section 10 of 1887 Act are "exercise any of the powers of the District Judge."

25. Accordingly, Sri Deepak Kumar, Additional District & Sessions Judge, Gorakhpur, who had assumed the charge of the office of the District Judge, in addition to his ordinary duties, was empowered to exercise both judicial and administrative powers of the District Judge. The Notification dated 4.11.2009 was issued to delegate the financial powers of the District Judge, in addition to his judicial and administrative powers.

26. The contention of the learned counsel for the petitioner, therefore, that Sri Deepak Kumar, Additional District & Sessions Judge was authorized only to exercise the judicial and financial power and not the administrative powers is without any substance. The use of words "any of the powers of the District Judge" makes the intention of the Legislature clear to include both judicial and administrative powers. The District Judge is the Principal Civil Court and is having administrative control over the Civil and Criminal Courts in the district. In the absence of the District Judge, the designated Incharge District Judge was assigned the duties and powers of the District Judge as this office cannot be kept vacant. There is no Rule to the contrary. Hence there was no defect in the appointment/designation of the Judge, Small Causes Court as the "Prescribed Authority".

27. Moreover, the challenge is not on the ground of incompetence of the Judicial Officer, i.e. the Judge, Small causes Court, who was designated as the "Prescribed Authority" rather the challenge is to the powers of the Officer who had designated him and, therefore, the Judge, Small Causes Court/Prescribed Authority cannot be said to be lacking in its jurisdiction. The Appellate Court has rightly dealt with this issue.

28. In view of the above discussion, the challenge to the order passed by the Prescribed Authority on the ground of alleged fault in his appointment/designation cannot be sustained.

29. The judgments relied upon by the learned counsel for the petitioner are of no benefit to him inasmuch as in the case of Northern Coalfields (Supra). In the said case, the challenge was to the judicial powers of the Additional District Judge to decide an Appeal under Section 37 of Arbitration and Conciliation Act, 1996. The Additional District Judge therein, had entertained the appeal upon transfer of the appeal by the District Judge. It was held that the appeal could only be heard by the Principal Civil Court, which is the District Judge as per Section 3(17) of the 1897 Act and, therefore, the transfer by District Judge was bad and the Additional District Judge had no jurisdiction. The reliance placed upon the Division Bench judgment in Northern Coalfields (Supra) by the learned counsel

for the petitioner is, therefore, misconceived.

30. However, there is yet another angle, the order of the Prescribed Authority is challenged on the ground that the concerned Judicial Officer was not properly appointed and as such he had no jurisdiction to decide the release application. The learned counsel for the petitioner urged that as the order of the Prescribed Authority without jurisdiction, the entire proceedings are illegal and both the orders of release against the petitioner are liable to be set aside. Similar issue come up for consideration before this Court in *Abdul Hameed v. VII Additional District & Sessions Judge, Kanpur and others*, 1976 ALJ 421. The question in the said case was whether a defect in the judgment of the Prescribed Authority was cured by the fact that the same had been taken up in appeal and the Appellate Court decided the same on merits.

31. Placing reliance upon the judgment of the Apex Court in *Janardhan Reddy and others v. The State of Hyderabad and others*, , AIR 1951 SC 217 and Division Bench judgement of this Court in *Purshottam v. Sheo Prasad and others*, 1972 ALJ 742, it was held in paragraph 10 and 11 of the judgment in *Abdul Hameed (Supra)*

".....Applying the law in the instant case it appears to me that although the judgment of the Prescribed Authority was without jurisdiction but as the District Judge to whom the appeal was filed was competent to decide the same, the judgment given by the appellate Court is binding.

11. It would have altogether been different if the learned District Judge would have allowed the appeal filed against the judgment of the Prescribed Authority on the ground that the judgment rendered by it was without jurisdiction and would have thereafter directed for the case to be decided by a proper authority. But where, as here, the appellate Court the course mentioned above and adjudicates on merits, the finding recorded by the appellate Court could not be said to be without jurisdiction. The infirmity in the order of the Prescribed Authority was cured and can no longer be a ground for setting aside the judgment of the Prescribed Authority as well as that of the appellate authority. Hence the submission of Sri S.N. Verma, counsel for the petitioner, that when the order of the Prescribed Authority was a nullity, the order of appeal therefrom could not be of greater validity must be held as unsound."

The contest in *Abdul Hameed* was that as the judgment of the Prescribed Authority was without jurisdiction and was a nullity, therefore, the same would not merge with that of the Appellate Court. Placing reliance upon the view taken by the two Division Benches of this Court in *Purshottam (Supra)* and another Division Bench judgment in *Man Singh v. Beer Singh*, , AIR 1973 ALL 435, it was held that the jurisdictional defect stands cured even if the Appellate Court decided wrongly that the Trial Court had jurisdiction. The decision of the Appellate Court not being nullity, is binding on the parties in subsequent litigation is *res judicata*. As the judgment of the Appellate Court has attained finality and

there is no dispute that the Appellate Court had jurisdiction to decide the appeal on merits, it cannot said that the jurisdictional defect in the judgment of the Prescribed Authority will render the judgment of the Appellate Court on merits, a nullity.

32. Following the law laid down in the Division Benches judgment of this Court in Purshottam (Supra) and Man Singh (Supra) followed in Abdul Hameed (Supra), it is held that even if it is accepted for a moment that there was defect in the appointment of the Prescribed Authority resulting in the lack of his jurisdiction, it would not render the judgment of the Appellate Court on merits, a nullity. The infirmity in the judgment of the Prescribed Authority stands cured and can no longer be a ground for setting aside the judgment of the Prescribed Authority as well as that of the Appellate Authority.

33. Thus, from each angle, the orders of release passed by the Prescribed Authority and the Appellate Authority cannot be said to be defective.

34. Now on the merits, the Release Application has been filed in the year 2008 for the need of younger son of the landlord. It was specifically stated therein that the landlord's son was doing business in Delhi but he had suffered losses and wanted to settle at Gorakhpur to start his business. The son of the landlord namely Ashok Kumar also filed an affidavit before the "Prescribed Authority", which is Paper No. 22Ga and, another affidavit before the Appellate Authority which is Paper No. 30Ga. In the affidavit Paper No. 22Ga filed on 10.4.2009 before the Prescribed Authority, Sri Ashok Chandra Srivastava, categorically stated that he had suffered huge losses in business. One DDA Flat which was purchased by him, seven-eight years back wherein he was running his office, was to be sold. The advertisements in this regard were issued in the newspapers. He was looking for the purchasers who could offer him good price. After winding up his business in Delhi he wanted to shift to Gorakhpur. His office was also sealed in 2007 under a drive in Delhi. He could somehow managed to pay some amount from his savings, but still there were outstanding debts. He has not able to meet out the expenditures for living in a metropolitan city like Delhi. Again in the year 2010 in an affidavit filed before the "Prescribed Authority", he had reiterated that the advertisement was issued on 8.5.2010 for sale of the property.

35. In view of these categorical submissions of the son of the applicant-landlords on oath, the assertion of the tenant that Sri Ashok Chandra Srivastava had a huge business in Delhi and he had no intention to shift to Gorakhpur is without any substance. The attention of the Court has been drawn to the extracts of the Bank Account Statement of Sri Ashok Chandra Srivastava to submit that there were no losses. A finding has been recorded by the Appellate Court that even the bank statement shows that with the passage of time, the deposits in the Account of Sri Ashok Chandra Srivastava had reduced. In any case, barring few occasions, not more than Rs. 1.5 Lakhs were deposited by Sri Ashok Chandra Srivastava in his Account. In an affidavit Paper No. 30Ga filed by landlord's son, which remained un rebutted, the categorical statement is that he had taken loan

from ICICI Bank. Thus, it cannot be accepted that the landlord's son namely Sri Ashok Chandra Srivastava was running a big business in Delhi and did not intend to shift to Gorakhpur. In a metropolitan city like Delhi, it is not easy to survive and moreover the Court cannot guide the landlord to choose his place of business.

36. There is nothing on record to prove otherwise. Accordingly, on the submissions made by the learned counsel for the petitioner, there is no perversity in the findings recorded by the Appellate Court on the bona fide need of the landlord.

37. On comparative hardship, affidavits 62Ga, 64Ga and 68Ga were filed by the landlord before the "Prescribed Authority" to urge that one shop on the Main Road near the shop in question was vacant and available on rent but the tenant did not make any effort to get it. These affidavits remained un rebutted and, therefore, it is evident that the tenant made no effort to search an alternative accommodation. Merely because he occupied the shop in question for a long period would not mean that he was under no obligation to look for an alternative accommodation after the release was filed by the applicant-landlord.

38. In a feeble attempt, learned counsel for the petitioner challenged the maintainability of the release application at the instance of the applicant-landlord namely Sri Vilash Chandra Srivastava. On the basis of one document Paper No. 54Ga/1, he submits that in a family arrangement between the landlord and his sons, the shop in question was handed over to the landlord's elder son Alok Chandra Srivastava who was authorised to receive rent. The rent receipts were issued by Sri Alok Chandra Srivastava from 1.1.1992 till 31.3.2000. However, from April 2000, the applicant-landlord namely Vilash Chandra Srivastava was collecting rent on behalf of his elder son.

39. The applicant-landlord not being the owner was not entitled to maintain the release application for the need of his younger son.

40. On this dispute raised by the petitioner, issue No. 2 was framed by the Appellate Court which has been decided in favour of the landlord. After analysis of the contention of the tenant and the evidence on record it was found by the Appellate Court that on 1.1.2003, an agreement had been arrived between Sri Vilash Chandra Srivastava the landlord and Sri Vijay Kumar Chaudhary, the Opposite Party in P.A. Case No. 27 of 2001 with respect to the shop in question. The release application filed by Vilash Chandra Srivastava for his need was decided by the Prescribed Authority on 6.8.2003 on the basis of this agreement. The Opposite Party, i.e. the tenant did not object to the ownership of the applicant-landlord therein rather admitted him as the landlord. Now he cannot turn around to dispute the ownership of the applicant-landlord, in the present proceeding.

41. Looking to this finding and the receipts issued by Sri Alok Chandra Srivastava under his signature, it appears that the landlord's elder son namely Alok

Chandra Srivastava was collecting rent on behalf of his father. The genuineness of the alleged family partition which has been brought on record as Paper No. 54Ga/1 is doubtful inasmuch as it is an undated document and does not bear the signature of the landlord's son Alok Chandra Srivastava.

42. In the light of the above discussion, this Court does not find any merit in the submissions of the learned counsel for the petitioner to challenge the orders of release, no interference is required.

43. Lastly, learned counsel for the petitioner requested that some reasonable time may be provided to the tenant to shift his belongings.

44. To this submission, no objection was taken by the learned counsel for the respondents.

45. It is, therefore, directed that the petitioner shall file an undertaking within a period of four weeks before the Court below that he will vacate the shop in question on or before 1.10.2016. In case the petitioner fails to furnish the undertaking or vacate the shop in question within the time given above, proceedings for his eviction may be initiated. With the above observations/directions, the writ petition is dismissed.