
(1973) 02 AHC CK 0008
In the Allahabad High Court
Case No : C.M.W. Petition No. 5279 of 1972

Vishwanath Misra

APPELLANT

Vs

The State Government of U.P. and others

RESPONDENT

Date of Decision : 27-02-1973

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 23, 43(rr)
Constitution of India, 1950 — Article 14
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 23, 43(rr)
Constitution of India, 1950 — Article 14
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 23, 43(rr)

Citation : (1973) 02 AHC CK 0008

Hon'ble Judges : H.N. Seth, J

Bench : Single Bench

Advocate : S.C. Khare, H.P. Dubey and K.N. Tripathi, for the Appellant; G.P. Bhargava and Fauzdar Rai for Opp. Parties., for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—By this writ petition Under Article 226 of the Constitution, Shri Vishwanath Misra, a tenant of house No. 23 Hewett Road, Allahabad prays for a writ; order or direction in the nature of, certiorari for quashing the orders dated 28th May, 1971 and 1st July, 1972 passed by the Rent Control and Eviction Officer Allahabad and the State Government, He also prays that the proceedings for his ejection pending before the Prescribed Authority initiated by Respondent No. 3 in pursuance of the aforementioned impugned orders, be quashed.

2. The Petitioner is a tenant of house No. 23, Hewett Road, Allahabad, of which

Sri Prem Mohan Aggarwal Respondent No. 3 if the owner-landlord. In the year 1967 Sri Prem Mohan Aggarwal made an application u/s 3 of the U.P. (Temp.) Control of Rent and Eviction Apt, 1847 (hereinafter referred to as the 1947 Act) for permission to file a suit for Petitioner's ejectment from the aforesaid house, which was rejected by the Rent Control and Eviction Officer by his order dated 20th of June, 1968. That order was ultimately upheld by the State Government which dismissed the revision application, u/s 7-F of the 1947 Act, filed by the landlord, on 30th of January 1969. Shortly thereafter, on 7th of October 1970, Sri Prem Mohan Aggarwal made another application u/s 3 of the 1947 Act, seeking permission to file a suit for Petitioner's ejectment. This time the Rent Control and Eviction Officer, by his order dated 29th of May 1971, allowed the application and granted the necessary permission to Sri Prem Mohan Aggarwal. Against this order the Petitioner went, up in revision before the Commissioner, Allahabad Division who by his order dated 4th of August, 1971, allowed the same and set aside the order of the Rent Control and Eviction Officer dated 28th of May, 1971. Sri Prem Mohan Aggarwal, the landlord, then approached the State Government u/s 7-F of the 1947 Act and the State Government by its order dated 11th of July 1972, allowed the revision and after setting aside the order passed by the Commissioner, Allahabad Division, it granted the necessary permission for filing a suit for Petitioner's ejectment to Sri Aggarwal.

3. Aggrieved by the order of the State Government the Petitioner has filed the present writ petition, claiming that in the circumstances of the case, the Rent, Control and Eviction authorities had no jurisdiction to entertain an application of the landlord, for permission to file a suit for Petitioner's ejectment and to grant the same.

4. It appears that before the landlord could avail of the aforementioned permission and file a suit for Petitioner's ejectment, the 1947 Act was repealed by the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the 1972 Act), which came into force with effect from 15th of July, 1972. According to the landlord, Sri Prem Mohan Aggarwal moved an application u/s 23 of the 1972 Act, praying for an order for Petitioner's ejectment on the basis of the permission already obtained by him. Subsequently, the Uttar Pradesh legislature passed the Uttar Pradesh Civil Laws Amendment Act, 1972 as a result of which certain amendments were made in Clause (r) to Section 43 and a new Clause (rr) was added thereto. According to the amended Section 43 if in a case where permission u/s 3 of the 1947 Act has been obtained on any ground specified in Sub-section (1) or Sub-section (2) of Section 41 of the 1972 Act and has become final either before the commencement of the Civil Laws Amendment Act, 1972, or in accordance with the provisions of this sub-section, after the commencement of this Act and a suit for the eviction of the tenant has not been instituted, the landlord is to apply to the prescribed authority for the ejectment of his tenant. Sub-section 21 of the Act. In view of these developments, the Petitioner got the writ petition amended and challenged the validity of the proceeding for his ejectment, initiated by the landlord, on the

basis of the permission obtained under the 1947 Act. He also questioned the validity of the provision contained in Section 43(rr) of the 1972 Act.

5. In support of the contention that in the circumstances of the case a fresh application for permission to file a suit for Petitioner's ejectment could not be entertained Sri S.C. Khare, learned Counsel for the Petitioner relied upon a decision of this Court in the case of Sardar Sampooran Singh v. Rent Control and Eviction Officer 1969 AWR 171 and urged that after landlord's application for permission to file a suit for Petitioner's ejectment, moved in the year 1967, had been rejected right upto the stage of the State Government, vide its order dated 30th of January, 1969, the application moved, by him on 7th of October, 1970, seeking permission on the same ground was not maintainable. The Rent Control and Eviction Officer and the State Government, therefore, had no jurisdiction to grant permission sought for. Learned Counsel, appearing for the landlord Respondent however, urged that since after filing the application for permission in the year 1967, the circumstances of the landlord and the tenant had changed, it was open to him to file an application seeking permission for filing a suit for the ejectment of his tenant even though the application moved by him in the year 1967, for a similar prayer had been rejected. Main question therefore that arises for consideration in this connection is whether the circumstances in which the landlord filed the application for permission to file a suit for Petitioner's ejectment in the year 1967, had since changed or whether the application dated 7-10-1970 seeking permission to file a suit for Petitioner's ejectment was based precisely on the same grounds on which the application moved by him in the year 1967 was based.

6. The Rent Control and Eviction Officer as also the State Government have proceeded to deal with the case on the footing that the application for permission to file a suit for Petitioner's ejectment moved in the year 1970 is based on circumstances which are not identical to those in which the application for such permission was moved in the year 1970. According to the Petitioner both the Rent Control and Eviction Officer and State Government have committed an error in this regard, which is apparent on the face of the record.

7. Copies of the applications filed by the landlord, seeking permission to file suits for Petitioner's ejectment in the years 1967 and 1970, have been filed as Annexures I and V, to the writ petition. According to the allegations made in Annexure I to the Writ Petition (application for permission moved in 1967), the landlord Sri Prem Mohan Aggarwal had been practising as an Advocate on income tax and Sales Tax side for the last seven years. On account of differences amongst the members there had been a partition in the family, as a result of which the residential houses of the family (No. 51, Chah Chand, Allahabad) fell into the exclusive share of his mother who did not allow any of her sons to reside there. The houses which fell in the shares of Prem Mohan Aggarwal, were situated in byelanes and were in the occupation of tenants. As Shri Prem Mohan Aggarwal was also forced to vacate the residential house (No. 51 Chah Chand),

he along with his family took temporary shelter in the house of a friend of his at 55 S.C. Basu Road, Allahabad. However, after resident there for about four months he was asked by his friend to vacate the same. Sri Prem Mohan Aggarwal therefore had to leave that house. He had absolutely no other alternative but to approach his mother, who agreed to accommodate him in 51 Chah Chand, for one year only. Ultimately the Applicant after spending a huge amount purchased the house in dispute so that he may be able to use it for his residential and professional purposes. According to him he required setae accommodation where he could reside and open a Chamber for receiving and consulting his clients. The house in dispute was quite suitable for these purposes. The tenant, Sri Vishwanath Misra, had already constructed his own house No. 607-A Kydganj, Allahabad and was receiving his clients there. Accordingly, the need of the landlord was genuine bonafide and pressing and he was entitled to get the permission sought for by him.

8. This application was rejected on, the finding that the accommodation in his occupation, in house No. 51 Chah Chand was sufficient for his residential purpose. He was working, as a junior to and received the clients in the Chamber of Shri Shambhoo Nath Advocate. In the circumstances, he did not require a independent Chamber for himself. If landlord's application for permission was to be allowed the interest of the tenant who had established a good twill and had been practising law in tile premises in dispute was likely to suffer irreparably.

9. In the application for permission moved in the year 1970 toe circumstances in which the partition in the family of the landlord tool place were restated. It was averred in the ; meantime the landlord had been able to set up his Chambers in the one room of the building at 23, Hewett Road, He was living in house no 51, Chah Chand which belonged to his moth, as, no other accommodation was available to him. His relations with his another had got strained Moreover, the accommodation available to him in house No. 51 Chah Chand was not adequate to accommodate his clients who came to consult him from out station and was not such in which a suitably arrangement for the tuition of his children could be made. He experienced great difficulty in residing at one place and maintaining his chamber at another place. It was averred that so far as the tenant was concerned he had shifted to the house constructed by him in Kydganj and that, he had been receiving his clients, there. Accordingly, if permission is, granted to evict him (tenant) from the accommodation in dispute he would not suffer any loss.

10. The Rent Control and Eviction Officer found that the landlord was no more working as junior to Sri Shambhoo Nath Agarwal and that he had already set up a Chamber in one room of house No. 23 Hewett Road Allahabad. He found that this accommodation available to the landlord at 51 Chah Chand was suitable neither foe lodging the orients who came to consult him nor for the tuition of his children. There was no other accommodation in possession of the landlord to which he could shift. He further found that the Petitioner did not actually reside

in the accommodation in dispute. Accordingly he came to the conclusion that balance of convenience lay in permitting the landlord to file a suit for Petitioners ejectment.

11. It is significant to note that aforesaid findings recorded by the Rent, Control and Eviction Officer indicate that there had been a change in the situation of both the landlord and the tenant. So far as the landlord was concerned, in the year 1967, he did not need any accommodation for his chamber as at that time he was merely attending the office of Shri Shambhoo Nath Agarwal as his junior. However, by the year 1970, the landlord had ceased to work as junior to Shri Shambhoo Nath Agarwal and had actually set up his Chamber and had started independent practice in a portion of house at 23 Hewett Road, Allahabad in the year 1970 there was no question of the landlord requiring any space for accommodating the clients who came to consult him whereas in the year, 1970 after the landlord had set up his independent practice required space for accommodating his out station clients which was not available to him in 51 Chah Chand. In the year 1967 it had not been claimed the landlord required any space for the tuition of his children whereas in the year 1970 such a requirement was there and accommodation in house No. 51 Chah Chand was not apt for that purpose. So far as the situation of the tenant is concerned, it is true that, the allegation made in both the applications moved by the landlord was that the tenant had started residing and practising, at Mohalla Kydganj. However in 1967 the Rent Control and Eviction Officer did not accept that the tenant had shifted to Kydganj, but the basis of evidence produced in the second case he concluded that he had, so shifted by the year 1970. It means that there had been a change in the situation of the tenant as well, inasmuch, as in the year 1970, he was actually not residing the premises in dispute,, In the circumstances, it cannot be said that the Rent Control and Eviction Officer entertained the application for permission to file a suit for Petitioner's ejectment and granted the same on the same ground and in the same circumstances in which the permission had been refused earlier.

12. Sri S.C. Khare then urged that the findings recorded by the Rent Control and Eviction Officer that the landlord had started using a part of accommodation in house No. 23 Hewitt Road as his Chamber and that he required some accommodation for lodging his out Station clients and for the tuition of his children are not borne out by the evidence produced in the case. According to him, these findings are patently erroneous and are liable to be quashed. He also urged that the finding that the tenant was not residing in the accommodation in dispute is also erroneous. He pointed out that the finding that the tenant was not using the accommodation in dispute was based on the fact that the electricity meter installed therein showed that no electricity had been consumed for quite some time. He explained that circumstances by contending that the meter was defective and as such it got stuck up. In support of the explanation the Petitioner filed certain documents before this Court and urged that the fact that the meter did not record any consumption of electricity could not, in the circumstances,

lead to an inference that the Petitioner was not residing in the accommodation in dispute the documents which the Petitioner has produced" before this Court, in this connection, were not before the Rent Control and Eviction Officer and as such the validity of Rent Control and Eviction Officer's finding cannot be tested on their basis. In a writ petition it is not for this Court to reassess the evidence produced in the case. It cannot interfere with an order on the ground that on the basis of evidence produced in the case it would have come to a different compulsion. Suffice it to say that the findings recorded by the Rent Control and Eviction Officer were based on evidence produced before him. They cannot be said to be patently erroneous. They are also not vitiated by any basic error of procedure. I am, therefore, unable to accept the argument that the impugned orders require any interference on the ground that the findings recorded by the Rent Control and Eviction Officer are erroneous.

13. Learned Counsel for the Petitioner then contended that a perusal of the order passed by the State Government Shows non application of mind and is therefore, liable to be set aside. I have gone through the order passed by the State Government. Although the State Government has not discussed the evidence of the parties in detail, yet lifter fairly stating the respective cases of the parties, it has concluded that the landlord had ho accommodation in which he could shift. According to it the circumstances indicated that the tenant wanted to reside in the house at Kydganj on payment of a nominal rent of Rs. 16/- on the other hand he wanted to get Rs. 90/- per month as rent from the house uninstructed by him. This did not appear to be fair. It observed that the needs of the landlord were more pressing and as such the order passed by the Commissioner was to be set aside. This indicates that on the question of the comparative needs of the landlord and the tenant, the State Government was inclined to accept the findings recorded by the Rent Control and Eviction Officer. In my opinion there is nothing in the order which shows non application of mind by the State Government. The order dated 11th July 1972 cannot be said to be vitiated on this account.

14. Shri S.C. Khare, learned Counsel for the Petitioner, then argued that in this case it was not possible for the landlord to initiate the proceedings for Petitioner's ejectment under the provisions of the 1972 Act. He urged that a reading of Sections 21 and 23 shows that steps to eject a tenant can be taken under the Act only where an order requiring the tenant to vacate the premises has been passed u/s 21 of the Act. The order u/s 3 of the 1947 Act, passed by the Rent Control and Eviction Officer and confirmed by the State Government, is not an order u/s 21 of the 1972 Act and therefore no steps to enforce the same under 1972 Act could be taken. He claims that u/s 43 Clause (r), which originally ran thus:

any suit for the eviction of a tenant instituted with the permission referred to in Section 3 of the old Act Or any proceeding arising out of such suit, pending immediately before the commencement of this Act may be continued and

concluded as if this Act had not been passed, likewise any suit for eviction with such permission referred to in Clause (1) Clause (m) or Clause (o) may be instituted after the commencement of this Act.

A permission obtained u/s 3 of the U.P. (Temp.) Control of Rent and Eviction Act, could be availed of only by filing a suit for tenant's ejectment and not by way of proceedings u/s 21 and 23 of the 1972 Act. Section 43 was amended by the Uttar Pradesh Civil Laws Amendment Act 1972 which came into force on 20th September 1972. By this Act, in Clause (r), the portion beginning with words "and likewise" and ending with the words "after the commencement of this Act" was to be omitted. The Amending Act added a new Clause (rr) after Clause (r) which reads thus:

Where any permission referred to in Section 3 of the old Act has been obtained on any ground specified in Sub-section (1) or Sub-section (2) of Section 21 and has become final, either before the commencement of this Act, or in accordance with the provisions of this sub-section, after the commencement of this Act and a suit for the eviction of the tenant has not been instituted, the landlord may apply to the prescribed authority for his eviction u/s 21 and thereupon the prescribed authority shall order the eviction of the tenant from the building under tenancy and it shall not be necessary for the prescribed authority to satisfy itself afresh as to the existence of any ground as aforesaid and such order shall be final and shall not be open to appeal u/s 22.

Learned Counsel contends that after the amendment made, in Clause (r) and insertion of Clause (rr), the position is that it is open to the landlord either to file a regular suit for the ejectment of the tenant on the basis of the permission obtained by him or to get him ejected as provided in Section 231 of the Act by filing an application u/s 21 of the Act. The two procedures namely one by way of suit and the other by way of application u/s 21 of the 1972 Act are materially different. The procedure provided under the Act is more onerous and disadvantageous so far, as the tenant is concerned. The provisions of Clause 45(rr) therefore contravened Article 14 of the Constitution and are as such invalid. In the result no proceedings under the 1972 Act for eviction of the tenant could be initiated.

15. I am unable to accept this submission. Section 20 of the 1972 Act lays down that save as otherwise provided in Sub-section (2) no suit for the ejectment of a tenant can be instituted notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner. However, so far as the present case is concerned it is not covered by the provision of Section 20(2) of the Act. Section 43(r) as it stood prior to its amendment further enabled a landlord in certain cases to file a suit for the ejectment of his tenant on the basis of permission obtained u/s 3 of the 1947 Act. But after the legislature amended Clause (r) and deleted the word beginning with "likewise" and ending with "this Act" it is no more possible for a landlord to file a suit for the ejectment of his tenant on the basis of permission

obtained u/s 3 of the 1947 Act. The legislature, did not intend that the long drawl) out proceedings for obtaining permission to file a suit for tenant's ejectment should become infructuous. Accordingly made a provision for taking notice of that permission in considering an application u/s 21. It also took, a note of the fact that in certain cases, as provided in Section 43(r) prior to its amendment, the landlords might already have instituted suits on the basis of, such permission and it did not intend to unsettle that position. Accordingly while inserting new Clause (rr) in Section 46 of the Act it laid down that in a case where permission referred to u/s 3 of the old Act has been obtained on any ground specified in Sub-section (1) or Sub-section (2) of Section 21 and the (?) become final, ad a suit for the eviction of the tenant has not been instituted, the landlord may apply to the Prescribed Authority for his eviction u/s 21 and thereupon the Prescribed Authority shall been the eviction of the tenant from the building, under tenancy. All that this clause lays down is that in a case where a permission under the old Act has become final and no suit has been filed, in certain cases it can be enforced by means of, an application u/s 21 of the 1971 Act. It nowhere lays down that on the" basis of a permission granted u/s 3 of the 1947 Act it is open to a landlord to file a regular suit for the ejectment of tenant. In the circumstances, it is not possible to say that Section 43(rr) postulates two alternative remedies for a landlord, one of which so far as a tenant is concerned, is more onerous. This provision therefore does not contravene the Article 14 of the Constitution. I am accordingly of opinion that as provided in Section 43(rr) of the 1972 Act, it is open to the landlord to initiate proceedings for Petitioner's ejectment u/s 21 of the. Act.

16. In the end it was contended that it is not open to the landlord to get the Petitioner's ejectment u/s 23 of the 1972 Act, directly on the basis of the permission obtained u/s 3 of the 1947 Act. An application for the ejectment of a tenant u/s 23 can be moved only for enforcing an order made u/s 21 of the Act. Since the grant of permission u/s 3 of the old Act does not amount to an order u/s 21 of the 1972 Act, it is not possible to enforce the same u/s 23 and the proceedings that are at present going on against the Petitioner are, without jurisdiction. Learned Counsel for the landlord conceded this position and stated that he would withdraw the proceedings instituted by him u/s 23 of the 1972 Act and instead he will proceed afresh by making an application for obtaining the orders for Petitioner's ejectment u/s 21 of the Act in accordance with law. In view of this undertaking, given by the counsel for the landlord, it is not necessary to issue a writ for quashing Section 23 proceedings pending against the tenant by the landlord.

17. No other point was canvassed before me. In the result the petition fails and is dismissed. In the circumstances of the case I direct the parties to bear their own costs.