
(2008) 08 AHC CK 0150

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44115 of 1998

Waqf Allal Aulad/Waqf Alkhair Allahtala, Bijnor and another	APPELLANT
Vs	
1st Additional District Judge, Bijnor and another	RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

Citation : (2008) 08 AHC CK 0150

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. This is landlord's writ petition. Landlord filed S.C.C. Suit No. 32 of 1995 against original tenant respondent No. 2 Desh Raj, since deceased and survived by legal representatives. The suit was filed on 19.5.1995. Tenancy had been terminated before filing of the suit. It was pleaded by the plaintiff that U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 was not applicable upon the building in dispute as it belonged to a waqf and by virtue of section 2 (1) (bbb) of the Act inserted by U.P. Act No. 5 of 1995 w.e.f. 26.9.1994. Act was not applicable to on any building belonging to or vested in a waqf including a waqfallalaulad. Property in dispute is a shop, rent of which is Rs. 600/ per month. J.S.C.C., Bijnor accepted the contention of the landlord and decreed the suit through judgment and decree dated 27.1.1998. Against the said judgment and decree, tenantrespondent No. 2 filed S.C.C. Revision No. 30 of 1998. The revision was allowed by 1st Additional District Judge, Bijnor through judgment and order dated 29.8.1998. Revisional Court set aside the decree passed by the Trial Court and dismissed the suit, hence this writ petition.

3. Trial Court had wrongly held that the suit was liable to be decreed on the ground of default, even according to the notice of demand, only one month's rent was due when notice was given. Accordingly, Lower Revisional Court rightly reversed the said finding of the Trial Court.

4. In Para10, Revisional Court further held that :

"It is concluded that waqf once created shall continue to be remained waqf it cannot change its character even, if waqf property is not taken use of for the purpose, the waqf was created. In the instant case as evident from the evidence on record that Dr. Ziyaul Haq created WaqfAllalAulad and his own children were made entitled to appoint as Mutwalli and also the beneficiary."

5. Even after recording the above findings, the Revisional Court allowed the revision on a very strange ground. Notice of termination of tenancy and demand of rent had been given on 6.12.1994 in which it was stated that rent since 1.11.1994 had not been paid. Revisional Court held that notice was not legal as tenant was not defaulter, when it was given.

6. If Rent Control Act does not apply, then tenant is liable to eviction simply after termination of tenancy. Default or no default is wholly immaterial. Revisional Court itself held that building in dispute belonged to waqfallalaulad and was beyond the purview of U.P. Act No. 13 of 1972. Thereafter, there was absolutely no sense in holding that the notice of termination of tenancy was invalid on the ground that tenant was not defaulter when notice was given. The view taken by the Lower Revisional Court is quite strange and utterly untenable. Even if Rent Control Act applies and in the notice wrong period of default and wrong rate of rent is mentioned, still notice does not become invalid vide Full Bench authority of Gokaran Singh v. 1st Additional District and Sessions Judge, Hardoi and others. 2000 (40) ALR 405 (FB)

7. Accordingly, writ petition is allowed. Judgment and order passed by the Revisional Court is set aside. Judgment and decree passed by the J.S.C.C. is restored.

8. Tenantrespondent is granted six months time to vacate provided that:

1. Within one month from today tenant files an undertaking before the J.S.C.C. to the effect that on or before the expiry of aforesaid period of six months he will willingly vacate and handover possession of the property in dispute to the landlordpetitioner.

2. For this period of six months, which has been granted to the tenantrespondent to vacate, he is required to pay Rs. 6,000/ (at the rate of Rs. 1,000/ per month) as rent/damages for use and occupation. This amount shall also be deposited within one month before the J.S.C.C. and shall immediately be paid to the landlordpetitioner.

3. Within one month from today tenant shall deposit entire decreetal amount due till date (after adjusting any amount already deposited) before J.S.C.C. for immediate payment to landlordpetitioner.

9. In case of default in compliance of any of these conditions tenantrespondent shall be evicted through process of Court after one month and shall also be liable

to pay damages at the rate of Rs. 2,000/ per month since after one month till the date of actual eviction.

10. Similarly, if after filing the aforesaid undertaking and depositing decreetal amount and Rs. 6,000/ the accommodation in dispute is not vacate on the expiry of six months then damages for use and occupation shall be payable at the rate of Rs. 2,000/ per month since after six months till actual eviction. It is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and execution application.