

(2003) 05 AHC CK 0176
In the Allahabad High Court
Case No : C.M.W.P. No. 7008 of 1984

Yogesh Chandra Rajvedi

APPELLANT

Vs

IInd Additional District Judge and Others

RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 18

Citation : (2003) 4 AWC 2641

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Navin Sinha and Vipin Sinha, for the Appellant; P.N. Saxena and S.K. Chaturvedi and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard the learned counsel for the parties and perused the records.

2. The petitioner has filed the present writ petition challenging the judgments and order dated 18.6.1983 and 15.2.1984, Annexure-3 and Annexure-4 to the writ petition passed by respondent Nos. 2 and 1 respectively. By the aforesaid order dated 18.6.1983 the Addl. City Magistrate held that :

^^mHk; i{kksa ds fo}kuksa odhyks dh cgl rFkk i=koyh lk{; ds vk/kkj ij eSa bl fu"d"kZ ij igqapk gwa fd izkFkhZx.k ;ksxs"kpUnz vkfn ds fo}ku odhy dk ;g rdZ fjohtu esa ftyk tt egksn; us dksbZ LislhfQd vkns"k fn;k Fkk ftldk vuqikyu fcuk fdLh vkif?k vkfn dks lqus Hkh gq;s bl U;k;ky; dk drZO; gS A ekuus ;ksX; ugha gSa A tSlk fd ekuuh; mPp U;k;ky; us vius vkns"k fnukad 27-1-83 esa Li"V dj fn;k gS A ;ksxs"kpUnz ds izkFkZuk i= ds leFkZu esa dsoy blh ,d rdZ ij cy fn;k tk jgk Fkk A tks ekuuh; mPp U;k;ky; ds foLrfr ds vkns"k ds ckn fcYdqy ekuus ;ksX; ugha izrhr gksrk A vc u ;g ykbZlsUlh gS okn u fdjk;s nkj gS A vkSj u lg xzgLokeh gS A bl lECU/k esa fd mudks fdl gSfl;r ls dCtk okil fnyk;k tk; mUgksaus u rks dksbZ lk{; fn;k gS vkSj u rks dkuwu fn[kk;k gS A /kkjk 18@3 ij vkns"k ikfjr djus

dk vf/kdkj bl U;k;ky; dks gh gS A

vr% ;ksxs"kpUnz vkfn dks /kkjk 18@3 dk izkFkZuk i= fujLr fd;k tkrk gS A

g- ts- Mh- JhokLro

vfr- uxj eft- rrh;@fd- fu- v-

dkuiqj A fnukad 18-6-83**

By order dated 15.2.1984 it has been held that:

"I have gone through these two pronouncements and I am not to agree with the learned counsel that this Court after issuing order for restitution on 7.7.1978 can again pass an order for restitution specially when the R.C. & E.O. acting on the guideline laid down by the Hon"ble High Court in the writ petition decided on 17.1.1983 has chosen to reject the same. The application to my mind is, not maintainable. It has therefore, to be rejected as not maintainable.

Order

The application is accordingly rejected as not maintainable. The parties are left to bear their own cost.

Sd. D. C. Srivastava

IIInd Additional District Judge, Kanpur

Dated 15.2.1984."

The prayer for restoring possession over the premises in dispute has been rejected.

3. The brief facts of the case are that the house in dispute was purchased by the father of the petitioner, Satish Chandra, since deceased, benami in the name of his wife Smt. Saraswati Devi, respondent No. 5. After the death of the father, the petitioner and his mother were residing in the aforesaid premises. Respondent No. 5 sold the property to respondent No. 3 through sale deed dated 23.11.1976 and handed over the possession of that premises, which was in her occupation.

4. Respondent No. 3 after purchasing the property and taking over the possession of the portion of respondent No. 5 moved the release application u/s 16 (1) (b) of U. P. Act No. XIII of 1972 against the petitioner on the ground that he was an unauthorised occupant. The vacancy in the aforesaid premises was notified by the Rent Control and Eviction Officer and the application for releases was allowed on 13.4.1977. Subsequently an order for delivery of possession was passed on 11.5.1977 and the petitioner was dispossessed from the disputed house.

5. Aggrieved the petitioner moved an application u/s 16 (5) of the Act for review of the order dated 13.4.1977, which was dismissed by the Rent Control and Eviction Officer III vide order dated 16.6.1977. The petitioner preferred a

revision u/s 18 (1) of U. P. Act No. XIII of 1992, which was allowed and the order dated 16.6.1977 u/s 16 of the Act was set aside and a finding was recorded that the petitioner was not an unauthorised occupants as he was a member of the family and was in possession from before, the revisional authority had not directed the Rent Control and Eviction Officer (R.C. & E.O.) to restore the possession of the disputed portion to the petitioner vide Annexure-1.

6. The Court below relied upon the admission of Smt. Saraswati Devi in the sale deed that the petitioner occupied the portion on her behalf without any payment of rent and is not a tenant and held that this admission is binding upon her successor-in-interest and as such Section 12 (1) (c) of the Act did not apply to the case. The operative portion of the order passed by the IInd Additional District Judge, Kanpur in Revision No. 99 of 1977, Yogesh Chandra Rajvedi v. Lal Chand and Ors., is as follows :

"Revision allowed. Order of the Tribunal dated 16th June, 1977, is rescinded. Review application of Yogesh Chandra is allowed. Order of the Tribunal releasing the premises in occupation of Yogesh Chandra is cancelled. Now the Tribunal has ceased. Hence the Rent Control and Eviction Officer shall proceed u/s 18 (3) for placing the parties back in the position which they could have occupied but for orders dated 13th April and 16th June, 1977.

Since the case involved complicated questions of law and jurisdiction I would leave the parties to all own through costs bear

Sd. S. R. Bhargava IInd Additional District Judge, Kanpur. Dated 7.7.1978."

7. Respondent No. 3 challenged the validity and correctness of the order dated 7.7.1978 passed by the revisional court in Writ Petition No. 5590 of 1978, which was dismissed by Judgment and order dated 30.6.1980. He filed SLP before the Hon"ble Supreme Court, which was also dismissed by judgment and order dated 19.2.1981.

8. After dismissal of the SLP by the Apex Court, respondent No. 3 filed a civil suit in the Court of Munsif, Kanpur, arraying Rent Control and Eviction Officer as defendant No. 2. In the said suit an application for interim injunction was made restraining the petitioner, which was dismissed by the trial court. Aggrieved, he filed an appeal, which was also dismissed by the Ist Additional District Judge, Kanpur, vide order dated 18.8.1982. The petitioner again filed another Writ Petition No. 10427 of 1982, Lal Chand v. Yogesh Chand and Ors., challenging the judgment dated 18.8.1982 of the Additional District Judge, Kanpur. The aforesaid writ petition was dismissed with the observation that the petitioner should move an application for restoration of possession before respondent No. 2. His application u/s 18 (3) of the Act was dismissed by Rent Control and Eviction Officer-III, Kanpur, after making enquiry regarding restitution of possession and set aside the findings recorded by respondent No. 1. By order dated 15.2.1984, petitioner"s application against the order dated 18.6.1983 was also dismissed by respondent No. 1.

9. The contention of the counsel for the petitioner is that once the orders dated 13.4.1977 and 16.6.1977, passed u/s 16 of U. P. Act No. XIII of 1972 were set aside by the revisional court u/s 18 (1) of the Act by order dated 7.7.1978, the District Magistrate has no power to review the order u/s 18 (1) and set aside, the findings. It is further submitted that the District Magistrate u/s 18 (3) has a power like executing court, but it cannot set aside the order passed u/s 18 (1) of the Rent Control Act. It is also submitted that the District Magistrate u/s 18 (3) of the Act implements and enforce the order made u/s 16 of the Act. Once the District Judge has rescinded the order and has directed the applicant to be put back in possession, the District Magistrate while enforcing the said order cannot go beyond the order and sit in appeal over the same. Reliance has been placed in this regard in Dr. Smt. Keshav Devi Vs. The Addl. District Magistrate (Civil Supplies) and Another, .

10. From the above narration of facts, it is crystal clear that respondent No. 3 has been making attempt to thwart the proceedings as contemplated u/s 18 (3) of U. P. Act No. XIII of 1972.

11. It appears from the record that in the sale-deed it was recited that Smt. Saraswati Devi had delivered possession of her portion to the purchaser and other family members including Yogesh Chandra Rajvedi would vacate the other portion of the house, which was in their respective possession. It has also mentioned in the sale-deed that in the event her family members do not vacate their portion, it would be open to respondent No. 3 to get vacated the said portion through Court or in any other manner.

12. The only short question involved in this writ petition is whether in the facts and the circumstances of the case stated above, respondent No. 3 could get the house vacated now.

13. It is contended by respondent No. 3 that Smt. Saraswati Devi was owner of House No. 119-69-A Nasimabad, Kanpur and this question had attained finality and cannot be re-agitated in the writ petition. It is submitted that Smt. Saraswati Devi was residing as owner in a portion of the house in question and Yogesh Chandra Rajvedi and Smt. Shakuntala were residing in ground floor portion and in first floor portion respectively of the house in dispute. Even if the petitioner was occupying any specific portion in the house in dispute, he was only the licensee of Smt. Saraswati Devi. and this question has already been decided finally between the parties.

14. It is submitted that the notice of the release proceeding was duly served upon the petitioner, but he did not appear to contest the same and as such he was in unauthorised possession of the portion of the house in dispute and had no right to move any application u/s 16 (5) of the Act for restoration of possession. The fact that the petitioner was a licensee, has also been confirmed by the revisional court. It is stated that the question of restoration of possession to the petitioner whose licensee was revoked, was not considered by this Court nor the

question of jurisdiction of the revisional court to pass an order for restoration of possession for which only the District Magistrate had been authorised u/s 18 (3) of the Act.

15. Admittedly the order dated 13.4.1977 and 16.6.1977 passed u/s 16 of the Rent Control Act, were set aside by the revisional court u/s 18 (1) of U. P. Act No. 13 of 1972 by order dated 7.7.1978. As such the District Magistrate had not power to review its own order u/s 18 (3) of the Act are analogous to the executing court and it can only execute, implement and enforce the order by which an order of release or allotment u/s 16 of the Act is rescinded. Once the District Judge has rescinded the order and has directed the applicant to be put back in possession, the District Magistrate while enforcing the aforesaid order, cannot go beyond it and sit in appeal over it. Under the scheme of the Act the powers exercised by the District Magistrate are subject to the powers of supervision given to the District Judge u/s 18 (1) of the Act. The District Magistrate while exercising power u/s 18 (3) of the Act to that of executing court, cannot go beyond the terms of the order sought to be enforced and he cannot enter into the merit or de-merit of the case. The same view has been held by this Court in *Dr. Smt. Keshav Devi Vs. The Addl. District Magistrate (Civil Supplies) and Another*, and *Abdul Ghafoor v. Rent Control and Eviction Officer/ D.S.O., Saharanpur* and Anr. 1984 (1) ARC 327.

16. For the aforesaid reasons, the writ petition is allowed. The impugned orders 18.6.1983 and 15.2.1984 are quashed. The matter is remanded back to the court below for fresh decision in accordance with law in the light of observations made above.