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Court : Allahabad

Decided On : Oct-13-1976

Reported in : AIR1977All72

Judge : N.D. Ojha, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 30, 30(2) and 30(5)

Appeal No. : Civil Misc. Writ No. 923 of 1975

Appellant : ibrat Husain

Respondent : The 4th Additional District and Sessions Judge, Kanpur and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : K.L. Grover, Adv.

Disposition : Petition allowed

Judgement :

ORDER

N.D. Ojha, J.

1. Respondents 4 to 7 are tenants of a building in the City of Kanpur. They were paying rent to the petitioner. Subsequently, they made an application under Section 30 (2) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 for permission to deposit the rent in Court on the assertion that a notice given by respondents 2 and 3 had been received by them whereby they were required to pay rent of the tenement under their tenancy to respondents 2 and 3 and as such a bona fide doubt or dispute had arisen as to the person who is entitled to receive rent in respect of the building in their occupation. Certain rent was also deposited by respondents 4 to 7 under the said Sub-section (2) of Section 30. Thereafter a notice was issued to the petitioner as contemplated by Sub-section (5) of Section 30. On the receipt of the notice, it was contended on behalf of the petitioner that he was the landlord of the building in Question, that it was he who had let out the accommodation to respondents 4 to 7 and that respondents 2 and 3 had no concern with the said building. The Munsif accepted the contention of the petitioner and dismissed the application under Section 30- Since respondents 4 to 7 had made separate applications under Section 30, they filed four different revisions before the District Judge against the order of the Munsif. The Fourth Additional District Judge, to whom these revisions appear to have been transferred for disposal, allowed these revisions on September 18, 1974, It is this order of the Additional District Judge which is sought to be quashed in the present writ, petition.

2. In view of the submissions made by counsel for the parties the following points arise for consideration:--

1. Whether any inquiry is contemplated by Section 30 of the aforesaid Act to find out if a bona fide doubt or dispute as to the person who is entitled to receive the rent has arisen or the mere assertion of the tenant in this behalf is conclusive.

2. Whether the Additional District Judge has decided the case in accordance with the requirements of Section 30 afore said.

Having heard counsel for the parties, I am of opinion that the submission made by counsel for the petitioner that the order of the Additional District Judge deserves to be quashed is well founded. By Section 43 (1) of the U. P. Urban Buildings

(Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the new Act), the U. P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to as the old Act) was repealed. Section 7-C of the old Act with the exception to be taken notice of subsequently was almost in pari materia to Section 30 of the new Act. The provision contained in Section 7-C has been interpreted by this Court in several decided cases and in my opinion they would be useful for the determination of the first point referred to above.

3. In *Fateh Ohand v. S. B. Goel*, (1967 All LJ 979) which was a case arising out of proceedings under Section 7-C (1) of the old Act, a similar submission was made before a Division Bench of this Court as has been made by counsel for respondents 2 to 7 before me, namely, that after notices had been served on the landlord, under Sub-section (4) of Section 7-C of the old Act it was not open to the Munsif to decide the question as to whether the landlord has refused to accept any rent lawfully paid to him by the tenant even though such question had been raised by the landlord. This contention was repelled by the Division Bench. Agreeing with the decision of S. D. Singh, J. in an earlier case it was held,

'Suffice it to say that we are in full agreement with his view that two facts, viz., whether the person who made the deposit was a tenant and that the landlord has refused to accept rent lawfully paid to him were jurisdictional facts which must exist to entitle a tenant to take recourse to Clause (1) of Section 7-C of the Act. Before issuing notice to the landlord under Clause (4) of Section 7-C of the Act the learned Munsif will no doubt satisfy himself as to whether these two facts were prima facie made out by the application made by the tenant, but when notice to the landlord is issued under Clause (4) and the landlord appears before the Munsif and files an objection questioning the existence of any of the two jurisdictional facts, it will not only be within the powers of the learned Munsif but indeed the duty of the learned Munsif to go again into the question as to whether or not the jurisdictional facts necessary to enable him to act under Clause (1) of Section 7-C of the Act exist.'

4. Counsel for respondents 2 to 7 tried to distinguish that case on the ground that it was a case under Section 7-C (1) of the old Act which was analogous to Section

30 (1) of the new Act and not a case under Section 7-C (2) of the old Act which is analogous to Section 30 (2) of the new Act. Reliance in support of this submission was placed on the following observations in Fateh Chand's case (1967 All LJ 979) (supra) :--

'We desire to avoid being understood as expressing any opinion in regard to the correctness or otherwise of the aforesaid decisions relating to a deposit under Clause (2),'

5. The words 'aforesaid decisions' used in the above quotation referred to certain cases decided by this Court under Section 7-C (2).

6. In my opinion the law laid down in Fateh Chand's case (1967 All LJ 979) (supra) will apply to the facts of the instant case also. It would be seen that if a deposit of rent was made by the tenant under Section 7-C (2) of the old Act on the ground that a bona fide doubt or dispute had arisen as to the person who is entitled to receive rent, no notice to the person concerned was contemplated to be issued. The new Act has made a departure from the provisions of the old Act. Now in view of Sub-section (5) of Section 30 of the new Act a notice has to be served on the person or persons concerned of a deposit being made under Sub-section (2). Referring to the distinction between the legal position in regard to the cases falling under Sections 7-C (1) and 7-C (2) of the old Act as pointed out by a learned single Judge in an earlier decision the Division Bench in Fateh Chand's case held :--

'the learned Judge has given excellent reasons for distinguishing between, the jurisdiction exercised by a Munsif under Clause (1) and Clause (2) of Section 7-C of the Act. The learned Judge has pointed out that as regards the deposit under Clause (1), Clause (4) provides for the issuance of a notice to be served on the landlord, whereas no such provision is to be found in respect of a deposit made under Clause (2) in regard to which the only provision, to be found in Clause (5) is that such deposit shall be held by the Court for the benefit of the person who may be entitled to it and the same shall be payable to such person.'

7. In view of a specific provision having been introduced in Section 30 of the new Act being Sub-section (5) of the said section for a notice being issued to the

person or persons concerned even if deposit of rent has been made by the tenant on the ground that any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent in respect of the accommodation occupied by the said tenant, in my opinion the law laid down by the Division Bench in Fateh Chand's case (1967 All LJ 979) (supra) would now equally apply even in respect of deposits made by tenants on the ground that a bona fide doubt or dispute had arisen as aforesaid, As such the fact whether any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent in respect of the building in question as well as the fact whether the person who made the deposit was a tenant would be jurisdictional facts which must exist to entitle the tenant to take recourse to Sub-section (2) of Section 30 of the Act. Before issuing notice to the person or persons concerned under Sub-section (5) of Section 30 of the new Act the Munsif would have to satisfy himself as to whether the jurisdictional facts were prima facie made out by the application made by the tenant. Further, when notice to the person or persons concerned has been issued under Sub-section (5) and anyone of those persons appears before the Munsif and files an objection questioning the presence of the jurisdictional facts it will not only be within the power of the Munsif but the duty of the Munsif as pointed out by the Division Bench in Fateh Chand's case (Supra) to go again into the question as to whether or not the jurisdictional facts necessary to enable him to act under Sub-section (2) of Section 30 of the new Act exist. I am further of opinion that the cases decided under Section 7-C (2) of the old Act in so far as they lay down that no enquiry on the question as to whether a bona fide doubt or dispute has arisen as to the person who is entitled to claim rent was contemplated by the said Sub-section would, in view of the provision about notice being issued under Sub-section (5) of Section 30, not be applicable to a deposit made under Sub-section (2) of Section 30 of the new Act. As pointed out in Fateh Chand's case (supra), the only distinction between Sub-section (1) and Sub-section (2) of Section 7-C of the old Act was that whereas in cases governed by Sub-section (1) issuance of a notice to be served on the landlord was necessary there was no such provision in respect of cases under Subsection (2) thereof. Since such a provision has now been made in Sub-section (5) of Section 30 of the new Act the distinction which existed between Sub-sections (1) and (2) of Section 7-C of the old Act does not exist between Sub-

sections (1) and (2) of Section 30 of the new Act.

8. Coming to the second point it was urged by counsel for respondents 2 to 7 that a perusal of the order of the Additional District Judge would indicate that he has recorded a finding that bona fide doubt or dispute had arisen as to the person who was entitled to receive rent in respect of the accommodation occupied by respondents 4 to 7 and that in view of the said finding respondents 4 to 7 have been rightly permitted to deposit the rent under Sub-section (2) of Section 30 of the new Act. I am, however, unable to agree with this submission. The Additional District Judge in the impugned order while dealing with the respective cases of the parties has stated :--

'In the papers of Kanpur Nagar Mahapalika Chhanggi Lal and Ibrat Hussain opposite party No. 3 were recorded as owners. Kamal Kishore and Raj Kishore opposite parties Nos. 1 and 2 are grandsons and heirs of Chhanggi Lal. Kamal Kishore and Raj Kishore gave notices to the revisionists in the months of October and November, 1972, asking them to make payment of the rent to them alleging that they are co-owners of the house in question along with Ibrat Hussain.'

It is on this premise that the Additional District Judge has proceeded to consider the case of respondents 4 to 7 that a bona fide doubt or dispute had arisen as to the person who was entitled to receive the rent. The distinction between a landlord and owner of the property for purposes of the U. P, Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972, is apparent. The rent of a building is payable by a tenant to the landlord and not to the owner of the building. 'Landlord' has been defined in Section 3 (j) of the new Act According to the definition 'landlord', in relation to a building, means a person to whom its rent is or if the building, were let would be, payable, and includes, except in Clause (g), the agent or attorney, of such person. The words 'where any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent in respect of any building' in Sub-section (2) of Section 30 have to be read in this context. The question of bona fide doubt or dispute has to be considered with reference not only to the person who is entitled to receive the rent but also with reference to the person who is seeking to make the deposit under the said Sub-section. Normally the owner would also be

the landlord but not always. In cases of co-owners all of them may not necessarily be the landlords. Only one of them who may have entered into the contract of tenancy with the tenant seeking to make the deposit under Section 30 (2) may be the landlord. The other co-owners may be entitled to claim their share of rent from the co-owner who is the landlord vis a vis the tenant but will not be entitled to claim rent directly from the tenant, there being no privity of contract between them and such tenant. It will depend on the facts of each case as to who is the person at whose intervention it may be said that a bona fide doubt or dispute has arisen as to the person who is entitled to receive the rent from the tenant who seeks to make the deposit under Section 30 (2). It is true that the question as to who is the real person who is entitled to receive the rent in case there are rival claimants in this behalf cannot be decided by the Munsif in proceedings under Section 30 of the Act. It can be decided only by a 'competent court'. But the question whether a bona fide doubt or dispute has arisen as to who is the person entitled to receive rent from the person seeking to make the deposit under Section 30 (2) will have to be decided by the Munsif and it would be his duty to be satisfied before permitting a deposit to be made under the said subsection that such a dispute has indeed arisen. A landlord is normally entitled to continue to receive rent directly from the tenant till the tenancy subsists. He can be deprived of this right by permitting deposits to be made under Sub-section (2) of Section 30, not at the whims or caprices of the tenant but on the satisfaction of the Munsif that a bona fide doubt or dispute has arisen as to the person who is entitled to receive the rent. Otherwise any tenant who, for some reason, may be in a mood to harass his landlord may get a faked notice served on him and stop paying rent to the landlord and start depositing the same under Section 30 (2) in the Court of the Munsif. If he is permitted to do so it would cause great hardship to the landlord and in some cases the landlord may even be put to starvation if the rent received from the tenant is his only source of livelihood for in that event he will not be in a position to get a penny towards rent till he gets a determination in respect of his title from a competent Court. On the other hand the view which I am taking is not likely to prejudice either the tenant or the person claiming an interest in the property let out to such tenant. If the Munsif finds that no bona fide doubt or dispute has arisen as aforesaid the tenant will continue to pay rent to the landlord and the person

claiming an interest in the property will not be able to eject him for non-payment of rent there being no privity of contract or relationship of landlord and tenant between them. Likewise the person claiming an interest in the property will be put to no prejudice inasmuch as he can always get his title determined by filing a suit in a competent Court notwithstanding the fact that the tenant may not have been permitted to deposit the rent under Section 30 (2).

9. Even without attempting to lay down all the contingencies in which a bona fide doubt or dispute may be said to have arisen as to the person who is entitled to receive the rent the matter may be clarified by giving some illustrations. There may be a case where the landlord has died and there is a dispute as to who is the heir of the landlord. There may also be a case where a person may be asserting to be the transferee or assignee of the rights of the landlord and the landlord may be contesting the validity of the alleged transfer or assignment. Or there may be a case where the agent or attorney referred to in the definition of the term 'landlord' in Section 3 (j) of the new Act may be claiming to be entitled to receive the rent and the principal may be asserting that the agency has been or stands terminated or the person claiming to be the attorney is no more his attorney and the stand taken by the principal is being contested by the agent or the attorney as the case may be. There may yet be a case where rent is received by a person in the capacity of a trustee, Mutwalli, Shebait or Sarbarakar and a dispute has arisen about the capacity of such person. What I have pointed out above are not exhaustive but only illustrative instances where a bona fide doubt or dispute can be said to have arisen as to the person who is entitled to receive the rent from the tenant seeking to make the deposit under Section 30 (2). The question will have to be decided on the facts of each case. Since the Additional District Judge has not decided the case from this aspect but has been guided only by the fact that respondents 2 and 3 were claiming the rent on the ground that they were co-owners of the property his order cannot be sustained.

10. In the result the writ petition succeeds and is allowed. The order of the IVth Additional District Judge dated September 18, 1974, is quashed and he is directed to decide the revisions filed by respondents 4 to 7 afresh in accordance with law keeping in mind the observations made above. In the circumstances of the case

the parties will bear their own costs.

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