

Raj Kumar Chaddha Vs. Xviith Additional District Judge and ors.

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Court : Allahabad

Decided On : Feb-07-2003

Reported in : 2003(2)AWC861

Judge : S.P. Mehrotra, J.

Acts : Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1) and 22

Appeal No. : C.M.W.P. No. 51168 of 2002

Appellant : Raj Kumar Chaddha

Respondent : Xviith Additional District Judge and ors.

Advocate for Def. : P.K. Jain, Adv.

Advocate for Pet/Ap. : R.C. Singh, Adv.

Judgement :

S.P. Mehrotra, J.

1. This writ petition has been filed by the petitioner, inter alia, praying for quashing the order dated 16.11.2002 (Annexure-3 to the writ petition) passed on the application Nos. 114 Ga-2 and 117 Ga-2, the order dated 29.7.2002 (Annexure-1A to the writ petition) passed on the application No. 91Ga, the order dated

19.10.2002 (Annexure-1B to the writ petition) passed on the review application, and the order dated 22.5.2002 (Annexure-SA-3 to the third supplementary-affidavit sworn on 15th December, 2002).

2. The petitioner has inter alia, filed the following supplementary-affidavits in this writ petition :

(1) First Supplementary Affidavit sworn on 7th December, 2002.

(2) Second Supplementary Affidavit sworn on 12th December, 2002.

(3) Third Supplementary Affidavit sworn on 15th December, 2002.

(4) Fourth Supplementary Affidavit sworn on 25th January, 2003.

3. The dispute relates to a shop bearing No. 269B, Abu-Lane, Meerut Cantt. The said shop has hereinafter been referred to as 'the disputed shop'.

4. From the allegations made in the writ petition as well as various supplementary-affidavits filed on behalf of the petitioner, it appears that the respondent Nos. 2 to 4 filed a release application under Section 21 (1) (a) of the U. P. Act No. XIII of 1972 (in short the 'the Act') against the petitioner in respect of the disputed shop.

5. It further appears that the learned Prescribed Authority by the order dated 18.1.2000 dismissed the said release application filed by the petitioner.

6. Thereupon, it appears, the respondent Nos. 2 to 4 filed an appeal under Section 22 of the Act which was registered as Misc. Appeal No. 53 of 2000.

7. During the pendency of the said appeal, it appears that the respondent Nos. 2 to 4 filed an application for issuance of commission. The Appellate Authority by the order dated 31.4.2001 allowed the said application for commission filed by the respondent Nos. 2 to 4.

8. Against the said order dated 31.1.2001 passed by the Appellate Authority, the petitioner filed a writ petition being Civil Misc. Writ Petition No. 4372 of 2001.

9. By the order dated 13.2.2001 passed by a learned Single Judge of this Court the said Writ Petition No. 4372 of 2001 was dismissed as premature. A copy of the said order dated 13.2.2001 has been filed as Annexure-1 to the third supplementary-affidavit sworn on 15th December, 2001. The relevant portion of the said order dated 13.2.2001 is quoted below:

'Be that as it may be, it is always open to petitioner-tenant, if so advised to plead and prove that respondent landlord has resorted to create evidence as alleged above but this does not give him a right to approach this Court under Article 226 of the Constitution of India particularly when the main petition under Rent Control Act is still pending.

It is clear that the petitioner-tenant shall have right to raise his objection before the Court below as may be available under law.

In view of the above, I do not propose to adjudicate the issue raised in the writ petition.

The writ petition is misconceived being premature and consequently dismissed in limine.'

10. Thereafter, it appears, the Commissioner submitted his report dated 17.2.2001, copy whereof has been filed as Annexure-SA-2 to the first supplementary-affidavit sworn on 7th December, 2002.

11. It further appears that the petitioner filed objection dated 19.3.2001 in the form of affidavit, copy whereof has been filed as Annexure-SA-3 to the first supplementary affidavit sworn on 7th December, 2002.

12. It further appears that the respondent Nos. 2 to 4 filed application No. 6Ga along with additional evidence before the Appellate Authority in the said Misc. Appeal No. 53 of 2000. Copies of the additional evidence (excluding the said application No. 6Ga.) filled by the respondent Nos. 2 to 4 have been filed and collectively numbered as Annexure-SA-2B to the third supplementary-affidavit sworn on 15th December, 2002.

13. It further appears that by the order dated 24.4.2002, the Appellate Authority allowed the said application No. 6Ga filed on behalf of the respondent Nos. 2 to 4 and took additional evidence filed along with the said application No. 6Ga on record. By the said order dated 24.4.2002, it was further directed that the documents in rebuttal would be filed by 3.5.2002. Copy of the said order dated 24.4.2002 has been filed as Annexure-SA-2A to the third supplementary-affidavit sworn on 15th December, 2002.

14. It further appears that against the said order dated 24.4.2002. the petitioner filed a writ petition being Civil Misc. Writ Petition No. 18093 of 2002.

15. By the order dated 1.5.2002, a learned single Judge of this Court dismissed the said Writ Petition No. 18093 of 2002. A copy of the said order dated 1.5.2002 has been filed as Annexure-4 to the third supplementary-affidavit sworn on 15th December, 2002. The relevant portion of the said order dated 1.5.2002 is quoted below :

'Learned counsel for the petitioner has not been able to demonstrate that unless the appeal is decided, how he will be prejudiced by the order impugned. I am therefore, of the opinion that it is not the stage when this order should be interfered with. The impugned order in the present writ petition is an order passed during the pendency of the appeal. Admittedly this order is interlocutory in nature and normally this Court in exercise of its powers under Article 226 of the Constitution of India does not interfere with the interlocutory order. Without entering into the merits of the case or otherwise of the order impugned, since the petitioner can challenge this order in case the appeal is ultimately decided against him, this writ petition, therefore, deserves to be dismissed and is accordingly dismissed. The interim order, if any, stands vacated. However, there will be no order as to costs.'

16. It further appears that against the said order dated 1.5.2002 passed in Writ Petition No: 18093 of 2002, the petitioner filed Special Leave Petition being Special Leave Petition No. 11456 of 2002 before the Supreme Court. The said Special Leave Petition was dismissed by their Lordships of the Supreme Court on 8.7.2002.

17. It further appears that the petitioner filed an application (No. 78 Ga-1) dated 14.5.2002 before the Appellate Authority, inter alia, stating that the petitioner had filed a Special Leave Petition in the Supreme Court against the order dated 1.5.2002 passed in Writ Petition No. 18093 of 2002, and praying for time for filing rebuttal evidence till the Special Leave Petition was heard by the Supreme Court. A copy of the said application dated 14.5.2002 (No. 78 Ga-1) has been filed as Annexure SA-1 to the fourth supplementary affidavit sworn on 25th January, 2003.

18. It further appears that the petitioner again moved an application (No. 81Ga-1) dated 21.5.2002, infer alia, reiterating the fact regarding filing of the Special Leave Petition before the Supreme Court and praying for time for filing evidence in rebuttal. A copy of the said application dated 21.5.2002 (No. 81 Ga-1) has been filed as Annexure-SA-2 to the fourth supplementary affidavit sworn on 25th January, 2003.

19. It further appears that by the order dated 22.5.2002 the Appellate Authority rejected the said application No. 81 Ga-1 filed on behalf of the petitioner for time for filing evidence in rebuttal. A copy of the said order dated 22.5.2002 has been filed as Annexure-SA 3 to the third supplementary-affidavit sworn on 15th December, 2002.

20. It further appears that after the dismissal of the said Special Leave Petition by the Supreme Court on 8.7.2002, the petitioner filed an application (No. 91Ga) dated 20.7.2002, inter alia, praying that the evidence in rebuttal filed along with the said application be taken on record. A copy of the said application dated 20th July, 2002 (No. 91Ga) has been filed as Annexure-SA-3 to the fourth supplementary affidavit sworn on 25th January, 2003.

21. It is alleged in paragraph 14 of the first supplementary affidavit sworn on 7th December, 2002 that along with the said application dated 20th July, 2002, the petitioner filed affidavit and other documents as evidence in rebuttal, copies whereof have been filed as Annexure-SA-6 to the said first supplementary affidavit sworn on 7th December, 2002.

22. It further appears that by the order dated 29th July, 2002. the Appellate Authority rejected the said application dated 20th July, 2002 (No. 91 Ga) seeking time to file evidence in rebuttal.

23. It was, inter alia, held in the said order dated 29th July, 2002 that by the order dated 22.5.2002, the opportunity given to the petitioner for filing evidence in rebuttal had been closed, therefore, no evidence in rebuttal could now be filed on behalf of the petitioner. A copy of the said order dated 29th July, 2002 has been filed as Annexure-1A to the writ petition.

24. It further appears that the petitioner filed a review petition dated 30th September, 2002 before the Appellate Authority, inter alia, praying for review of the said order dated 29th July, 2002 passed by the Appellate Authority. A copy of the said review petition dated 30th September, 2002 has been filed as Annexure-SA-5 to the first supplementary affidavit sworn on 7th December, 2002.

25. It further appears that by the order dated 19th October, 2002, the said review petition dated 30th September, 2002 filed on behalf of the petitioner was rejected by the Appellate Authority. A copy of the said order dated 19th October, 2002 has been filed as Annexure-1B to the writ petition.

26. It further appears that the petitioner filed an application dated 11.11.2002 (No. 114-Ga-2), inter alia, praying for taking on record subsequent events stated in the affidavit accompanying the said application. A copy of the said application (No. 114 Ga-2) (excluding enclosures thereto) has been filed as Annexure-2A to the writ petition.

27. It further appears that the petitioner filed another application dated 11.11.2002 (No. 117 Ga-2), inter alia, praying for summoning certain map from 'Shivlr Palika Meerut Cantt.' A copy of the said application dated 11.11.2002 (No. 117 Ga-2) has been filed as Annexure-2B to the writ petition.

28. It further appears that by the order dated 16.11.2002, the said application Nos. 114 Ga-2 and 117 Ga-2 filed on behalf of the petitioner were rejected by the Appellate Authority. A copy of the said order dated 16.11.2002 has been filed as

Annexure-3 to the writ petition.

29. Thereafter, the petitioner has filed the present writ petition seeking reliefs mentioned above.

30. I have heard Sri Kr. R. C. Singh, learned counsel for the petitioner and Sri Pramod Kumar Jain, learned counsel for caveator-respondents Nos. 2 to 4.

31. Let us first take up the order dated 16.11.2002 passed by the Appellate Authority on application Nos. 114 Ga-2 and 117 Ga-2.

32. It is submitted by the learned counsel for the petitioner that the application No. 114 Ga-2 sought to bring on record various relevant subsequent events, and the Appellate Authority has acted illegally in rejecting the application No. 114 Ga-2. It is further submitted by the learned counsel for the petitioner that the summoning of map from 'Shlvir Palika Meerut Cantt', was necessary for disposal of the appeal, and the Appellate Authority has illegally rejected the said application No. 117 Ga-2.

33. In reply, the learned counsel for the caveator-respondent Nos. 2 to 4 submits that no interference is called for with the said order dated 16.11.2002 passed by the Appellate Authority at this stage. It is submitted that the order dated 16.11.2002 is an interlocutory order, and, therefore, no interference is called for with the said order on the same reasoning as mentioned in the order passed by this Court in earlier writ petitions. It is submitted that as in the earlier writ petitions filed by the petitioner, this Court declined to interfere on the ground that the orders challenged in the said writ petitions were interlocutory orders, no interference is called for with the said interlocutory order dated 16.11.2002 impugned in this writ petition as it would be open to the petitioner to challenge the said interlocutory order dated 16.11.2002 in case, the appeal is ultimately decided by the Appellate Authority against the petitioner.

34. I have considered the submissions made by the learned counsel for the parties. As noted above, the said Civil Misc. Writ Petition No. 4372 of 2001 filed by the petitioner was dismissed by this Court by the order dated 13.2.2001 on the

ground that the said writ petition was premature. Similarly, Civil Misc. Writ Petition No. 18093 of 2002 filed by the petitioner was dismissed by this Court by the order dated 1.5.2002 on the ground that the order impugned in the said writ petition was an interlocutory order and it would be open to the petitioner to challenge the said order in case, the appeal was ultimately decided against him by the Appellate Authority.

35. The said order dated 16.11.2002 passed by the Appellate Authority rejecting the said application Nos. 114 Ga-2 and 117 Ga-2, Is evidently an interlocutory order. It would be open to the petitioner to challenge the said order in case the appeal is ultimately decided against the petitioner by the Appellate Authority. Hence, following reasoning given by this Court in the earlier two writ petitions, I am of the opinion that no interference is called for in this writ petition with the said order dated 16.11.2002 passed on the said application Nos. 114 Ga-2 and 117 Ga-2 as it would be open to the petitioner to challenge the said order dated 16.11.2002 in case, the appeal is ultimately decided by the Appellate Authority against the petitioner. Hence, without going into merits of the order dated 16.11.2002 this writ petition, in so far as, it challenges the said order dated 16.11.2002 is dismissed on the ground that the writ petition is directed against an interlocutory order.

36. Let us now come to the order dated 22.5.2002 (Annexure-SA 3 to the third supplementary-affidavit sworn on 15th December, 2002), the order dated 29.7.2002 (Annexure-1A to the writ petition) and the order dated 19.10.2002 (Annexure-1B to the writ petition).

37. As noted above, by the order dated 22.5.2002, the application dated 21st May, 2002 (No. 81 Ga-1) filed on behalf of the petitioner praying for time for filing evidence in rebuttal was rejected by the Appellate Authority. Thereafter, by the order dated 29.7.2002, the application dated 20th July, 2002 (No. 91 Ga) seeking to file evidence in rebuttal was rejected, and the evidence filed along with the said application was declined to be taken on record.

38. It is submitted by the learned counsel for the petitioner that the order dated 24.4.2002 taking additional evidence on record was challenged by the petitioner in

Civil Misc. Writ Petition No. 18093 of 2002. On the dismissal of the said Writ Petition No. 18093 of 2002 by this Court by the order dated 1.5.2002 it is submitted, the said order dated 1.5.2002 passed by this Court was challenged by the petitioner in Special Leave Petition before the Supreme Court.

39. In the circumstances, it is submitted, the petitioner did not file evidence in rebuttal, and sought time for filing the same. Immediately after the dismissal of the said Special Leave Petition by the Supreme Court on 8.7.2002, it is submitted, the petitioner filed the said application dated 20.7.2002 (No. 91-Ga), inter alia praying that the evidence in rebuttal filed along with the said application be taken on record. It is submitted by the learned counsel for the petitioner that the appellate Authority acted illegally in passing the said order dated 22.5.2002 and the order dated 29.7.2002.

40. Learned counsel for the caveator-respondent Nos. 2 to 4, in reply, submits that the petitioner was given repeated opportunities for filing evidence in rebuttal, but the petitioner failed to file the same and, therefore, the Appellate Authority was justified in passing the order dated 22.5.2002 closing the opportunity given to the petitioner for filing evidence in rebuttal. It is further submitted that as by the order dated 22.5.2002, the Appellate Authority had already closed the opportunity of filing evidence in rebuttal given to the petitioner, the Appellate Authority rightly passed the order dated 29.7.2002 rejecting the application of the petitioner for taking on record the evidence in rebuttal.

41. I have considered the submissions made by the learned counsel for the parties. The above narration of facts would show that by the order dated 24.4.2002, the application No. 6Ga filed on behalf of the respondent Nos. 2 to 4, for taking additional evidence on record was allowed, and it was further directed that the documents in rebuttal would be filed by 3.5.2002. The petitioner challenged the said order dated 24.4.2002 by filing Civil Misc. Writ Petition No. 18093 of 2002. The said writ petition was dismissed by this Court on 1.5.2002. Thereafter, the petitioner filed Special Leave Petition before the Supreme Court challenging the said order dated 1.5.2002 passed in Writ Petition No. 18093 of 2002. The Special Leave Petition was dismissed by their Lordships of the

Supreme Court on 8.7.2002.

42. Thus, the correctness of the said order dated 24.4.2002 passed by the Appellate Authority taking additional evidence on record was subject-matter of writ petition before this Court, and, thereafter, the Special Leave Petition before the Supreme Court, as noted above, was ultimately dismissed on 8.7.2002. As the correctness of the said order dated 24.4.2002 was being impugned by the petitioner before the higher Courts, the petitioner was justified in seeking time for filing evidence in rebuttal before the Appellate Authority. In my opinion, the Appellate Authority acted illegally in passing the order dated 22.5.2002 closing the opportunity of filing evidence in rebuttal by the petitioner. The said order dated 22.5.2002 is, therefore, liable to be quashed.

43. The order dated 29.7.2002 passed by the Appellate Authority was passed on the ground that by the order dated 22.5.2002, the opportunity of giving evidence in rebuttal given to the petitioner had been closed. As the order dated 22.5.2002 is being quashed, the order dated 29.7.2002 based on the said order dated 22.5.2002 is also liable to be quashed.

44. Let us now come to the order dated 19.10.2002 rejecting the review petition dated 30.9.2002 filed on behalf of the petitioner. As noted above, by the said review petition, the petitioner sought review of the said order dated 29.7.2002.

45. It is submitted by the learned counsel for the petitioner that the Appellate Authority acted illegally in passing the said order dated 19.10.2002 rejecting the review petition filed on behalf of the petitioner.

46. In reply, the learned counsel for the caveator-respondent Nos. 2 to 4 submits that no ground for reviewing the order dated 29.7.2002 was made out and, therefore, the review petition was rightly rejected by the Appellate Authority by the said order dated 19.10.2002.

47. Without going into the question as to whether any ground for reviewing the order dated 29th July, 2002 was made out, I am of the opinion that as the order dated 29.7.2002 is being quashed, the said order dated 19.10.2002 passed on the

review petition is also liable to be quashed.

48. In view of the aforesaid discussion, this writ petition is allowed to the extent that the order dated 22.5.2002 (Annexure-SA-3 to the third supplementary affidavit sworn on 15th December, 2002), the order dated 29th July. 2002 (Annexure-1A to the writ petition) and the order dated 19.10.2002 (Annexure-1B to the writ petition) are quashed.

49. The matter is sent back to the Appellate Authority with the direction to decide the application dated 20th July, 2002 (No. 91 Ga) (Annexure-SA 3 to the fourth supplementary affidavit sworn on 25th January, 2003) afresh in the light of the observations made in this judgment.

50. The Appellate Authority will endeavour to decide the matter expeditiously.

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