R.A. Qureshi Vs. Xth Additional District Judge, Meerut and Others

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Court : Allahabad

Decided On : Sep-26-1994

Reported in : AIR1995All345

Judge : S.K. Verma, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 13, 16(1), 21 and 21(1); Constitution of India - Article 226; Evidence Act, 1872 - Sections 114 and 115; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rules 17 and 19

Appeal No. : Civil Misc. Writ Petition No. 12067 of 1990

Appellant : R.A. Qureshi

Respondent : Xth Additional District Judge, Meerut and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Sanjay Misra, Adv.

Judgement :
ORDER

1. The dispute in both these writ petitions relates to accommodation, Old No. 400 and New No. 406, Shahpeer Gate, Meerut. In the writ petitionNo. 12067 of 1990 the decision in Prescribed Authority Case No. 228 of 1986 Nanhey Khan v. Dr. R.

A. Qureshi dated 1-4-1989 directing ejectment of the petitioner, substantially confirmed by the X Additional District Judge, Meerut in Misc. Appeal No. 136 of 1989 and No. 140 of 1989 vide order dated 5th April, 1990 has been challenged. In the writ petition No. 23246 of 1990 the order of the trial Court issuing Parwana dated 3-9-1990 for ejectment of the petitioner from the premises in dispute has been challenged. Both these petitions are being disposed of through this common order.

2. The respondents Nos. 3 to 6 of the writ petition No. 12067 of 1990 are the landlords of the disputed premises. They moved an application under Section 21(1)(a) of the U.P. Act XIII of 1972 (hereinafter called as the Act) before the Prescribed Authority for releasing the aforesaid accommodation on the ground of their bona fide need alleging that they had purchased the same on 13-6-1979 and had served the tenant with a notice through Registered Post which was refused by the tenant and the tenant therefore was liable to ejectment. The ground that thedisputed accommodation was in dilapidated condition as it was an old construction and it required demolition, was also taken by the landlords. The tenant-petitioner in both these writ petitions claimed that the need of the landlord was not genuine; that the notice dated 21-5-1986 under Section 21 of the Act was never served or refused by the tenant and the tenant did not have any alternative accommodation and he had acquired goodwill in the disputed accommodation which was used as a Clinic and the Release Application should have been dismissed.

3. The Prescribed Authority after considering submission of the parties and after discussing the evidence on record directed the ejectment of the petitioner from the entire accommodation except one room. Both the parties namely the landlords and the tenant filed Misc. Appeals Nos. 140 of 1989 and No. 136 of 1989 respectivley and the Xth Additional District Judge, Meerut allowed the appeal of the landlords and dismissed the appeal of the petitioner-tenant and directed ejectment of the tenant from the entire premises. The present writ petitions under Article 226 of the Constitution of India have been filed against the aforesaid orders as well as against the Parwana issued by the Court for eviction of the tenant.

4. The first point raised by the learned counsel for the petitioner is regarding presumption of service of notice under Section 114 of the Evidence Act. The notice was sent through registered post containing the correct address of the petitioner, it was received back after an endorsement of refusal. The tenant stated in his affidavit that this notice was never delivered to him and he never refused to accept the same and therefore this presump-tion stood rebutted. The landlords failed to examine the Postman and therefore the service of notice on the tenant-petitioner has not been proved. In this connection there is a finding by the Prescribed Authority as well as the Appellate Authority that on consideration of the entire facts and circumstances the service of notice by refusal has been proved.

5. The legal position in this respect may now be considered. In Anil Kumar v. NanakChandra Verma, 1990 Vol. II ARC 542, the Hon. Supreme Court while discussing this question referred to Shiv Dutt Singh v. Ram Das, AIR 1980 All 280 and Jagat Ram Khullar v. Battu Mai, AIR 1976 Delhi 111 and observed as follows :--

'The question considered in both the decisions was as to the statement on oath by the tenant denying the tender and refusal to accept delivery. It was held that the bare statement of the tenant was sufficient to rebut the presumption of the service. In our opinion, there could be no hard and fast rule on that aspect. Unchallenged testimony of a tenant in certain cases may be sufficient to rebut the presumption but if the testimony of the tenant itself is inherently unreliable, the position may be different. It is always a question of fact in each case whether there was sufficient evidence from the tenant to discharge the initial burden.'

6. The same question arose in Ram Naresh Pathak v. Smt. Shyam Kunwar, 1983 (II) ARC 440 and this Court held that upon the denial by the defendant of the receipt of the notice by the defendant, the presumption which initially attached stood rebutted. But whether the denial ought to be believed or not is another matter. Whether there are circumstances on account of which the bare denial of the defendant ought to be accepted is for the trial Court to consider and if the trial Court comes to the conclusion that on the circumstances of the present case bare denial of the defendant is not worthy of reliance, the trial Court would reject that

denial and hold that the notice must be deemed to have been duly served on the defendant and the denial by him was not worthy of credence.

7. In Ram Kishan v. Smt. Shanti Devi, 1986 (I) ARC 315 the same question along with the question of examination of the postman was considered and it was held as follows :--

'The clear intendment of these observations is that as a matter of law it is not always necessary that where the defendant denies the fact of having refused the notice tendered to him by the postal authorities, the postmanshould necessarily be examined to rebut thatdenial of the defendant. The question whetherthe denial of the defendant was acceptable onthe face of it was belied by some othermaterial on the record was a question whichhad to be gone into by the Court of factwithout being oppressed by the circumstancethat the postman was not examined. It is true,as canvassed by Sri R. P. Goyal, appearingfor the defendant-respondent, that theseobservations do not imply that the Courtcannot ever rely upon the circumstances ofthe failure of the plaintiff to examine thepostman, yet the non-examination of thepostman, by itself, cannot furnish adequateground in law to negate the case set up by theplaintiff.'

8. Learned counsel for the parties have also cited the decisions in Smt. Bachchi Devi v. Ist Addl. District Judge, 1983 (I) ARC 849; S. A. Alvi v. A. R. Khan, 1974 ALJ 597 : (AIR 1974 All 354) and Mahabir Prasad Agarwal v. Brijnath Gigras, 1989 (I) ARC 413: 1989 All LJ 546). In all these cases relerred to above the same question was examined, However, in view of the clear decision in Anil Kumar case (supra) the legal position stands finally settled that :--

'a bare statement of the tenant was not sufficient in each case to rebut the presumption of service and it is always a question of fact in each case which has to be considered by the trail Court.'

9. In the present case the trial Court as well as the appellate Court have considered the attending circumstances and the conduct of the parties and have come to the finding after appraisal of facts that the denial of the tenant is not sufficient to rebut the presumption about service by refusal. The finding cannot be

challenged in writ jurisdiction unless it is shown that reliance has been placed on misreading of evidence or there is no evidence and yet findings have been recorded. In this case nothing has been pointed out to indicate absence of evidence or misreading of evidence. Hence the impugned orders cannot be challenged on this ground.

10. The next point urged on behalf of the petitioner is that the averments made in theapplication of the landlords reveal that the case was filed under Section 21(1)(b) of the Act on the ground that the house in question was in a dilapidated condition and is required for demolition and reconstruction but the landlords did not comply with the provisions of Rule 17 of the Rules framed under the Act.

11. It is true that the landlords have mentioned in paragraph 20 of the application before the Prescribed Authority that the house is in dilapidated condition and the landlords would reconstruct according to their own need. However, this averment alone cannot convert an application under Section 21(1)(a) of the Act into a petition under Section 21(1)(b) of the Act.

12. Section 21(1)(a) permits the landlord to say that the building is bona fide required either in its existing form or after demolition and a new construction by the landlord for occupation by himself or any member of his family or any person for whose benefit it is held by him, either for residential purposes or for the pruposes of any profession, trade or calling etc. Rule 17 of the Rules framed under the Act is not applicable in cases covered by Section 21(1)(a) of the Act. Had the application been moved under Section 21(1)(b) of the Act the petitioner could have insisted that the court should have taken into account the provisions of Rule 17 framed under the Act. This plea is therefore without force and has been rightly rejected by the appellate Court.

13. The third ground of attack as urged by the learned counsel for the petitioner is that the petitioner does not have alternative accommodation. Findings to this effect are necessarily findings of fact and the same cannot be challenged in writ petition unless the findings are perverse. The learned appellate Court has discussed the matter and has found that there are two accommodations already in possession of the petitioner. It was also urged as an additional point by the learned counsel for

the petitioner that because of communal riots one of the accommodations available to the petitioner has been sold by the petitioner during the pendency of these petitions. It was therefore argued that in view of the changed circumstances the Courtshould take notice of the same. To my mind such a plea should not be allowed to be raised during pendency of the writ petition because it is the volition of the tenant to go on puchasing and selling houses after entering into litigation. The position as it obtained on the date of the decision by the trial Court has to be considered and has been considered by both the Prescribed Authority as well as the appellate authority. There is no scope for interference in those findings in writ petition as the findings are besed on facts and are not perverse.

14. Lastly the question of comparative hardship of the parties have also been raised I during arguments. To my mind even this question depends on facts and circumstances, of each case and in the present dispute comparative hardship of the parties have been considered by the Courts below. After appreciation ot the evidence available both the Courts namely the Prescribed Authority and the Appellate Authority have come to the conclusion that the hardship of the landlords in much greater. These findings are again based on facts and there is no perversity pointed out against the same. Hence the findings cannot be disturbed while exercising jurisdiction under Article 226 of the Constitution of India.

15. In writ petition No. 23246 of 1990 the Parwana issued by the learned lower Court had been challenged on the ground that Rule 19 of the Rules framed under the Act has not been complied and it requires fifiteen days notice before the Parwana could be issued. This plea is patently misconceived because Rule 19 of the Rules framed under the Act applies where eviction of the occupation is required under Section 16(1) of the Act on the ground of deemed vacancy or under Section 13 of the Act against an unauthorised occupant. The facts of the present case are totally different.

16. For the reasons stated above both the writ petitions namely Civil Misc. Writ petition No. 12067 of 1990 and Civil Misc. Writ petition No. 23246 of 1990 stand dismissed.

There is no order as to costs.

17. Petition dismissed.