

R.M. Gupta Vs. ii Additional District Judge, Lucknow and ors.

R.M. Gupta Vs. ii Additional District Judge, Lucknow and ors.

SooperKanoon Citation : sooperkanoon.com/457976

Court : Allahabad

Decided On : May-20-1977

Reported in : AIR1977All431

Judge : T.S. Misra, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 - Sections 2, 21 and 21(1)

Appeal No. : Writ Petn. No. 1871 of 1976

Appellant : R.M. Gupta

Respondent : ii Additional District Judge, Lucknow and ors.

Advocate for Def. : Umesh Chandra, ;S.P. Pathak and ;A. Bannerji, Advs.

Advocate for Pet/Ap. : R.N. Trivedi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

T.S. Misra, J.

1. On 1st June, 1965 the petitioner was let out house No, 90-A Mahanagar, Lucknow by the opposite party No, 2 acting for himself and the opposite parties

Nos. 3 and 4 who are his brothers, at a monthly rent of Rs. 250/-. The rate of monthly rent was thereafter increased from time to time and it was finally enhanced to Rs. 425 with effect from 1st of August, 1972. The opposite parties 2 to 4 filed an application against the petitioner under 3, 27 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short, the Act) on the ground, inter alia, that the house was required for the residence of opposite party No. 2. Eviction of the petitioner was accordingly sought for from the said house. The application was resisted by the petitioner pleading, inter alia, that his need was more genuine and pressing than that of opposite parties 2 to 4. On 19-10-1973, an application was made on behalf of the petitioner to the effect that opposite party No. 2 had not disclosed to the petitioner that he was not the real owner of the premises and that the petitioner had then learnt that the house really belonged to the Improvement Trust from whom the respondent had taken it on hire-purchase basis. It was, therefore, urged that the application by opposite parties 2 to 4 under Section 21 of the Act was not maintainable. A copy of the application dated 19-10-1973 is Annexure No. 6 to the writ petition. The petitioner asserted that the fact of ownership of the premises vesting in the Improvement Trust, Lucknow was not known to the petitioner till 19-10-1973. In para 13 of the writ petition it is stated that the opposite parties 2 to 4 purchased the premises by a sale deed dated 10-4-1974. In para 14 of the writ petition it is, therefore, maintained that the provisions of the Act were not applicable in view of the provisions contained in Section 2 (a) of the Act; hence the application under Sections 21 of the Act was incompetent. The Prescribed Authority, Lucknow however, by its order dated 25-11-1975 allowed the application of opposite parties 2 to 4 under Section 21 of the Act and directed the eviction of the petitioner from the premises in suit. The petitioner preferred an appeal against that order which was rejected. True copies of the orders of the Prescribed Authority and the learned Addl. District Judge, Lucknow made in appeal are Annexures 8 and 10 respectively. It is stated on behalf of the petitioner in para 17 of the writ petition that before the learned 2nd Addl. District Judge it was urged that on 27-7-1973 when the application under Section 21 of the Act was made, the premises vested in and belonged to a local authority and as such the application was not maintainable. In this connection reference to grounds 1 and 2 in the memo of

appeal filed before the learned District Judge, Lucknow, a true copy of which is Annexure 9 to the writ petition, was made. The learned Judge did not take notice of these grounds and rejected the appeal by his order dated 20-2-1976, a copy of which is Annexure 10 to the writ petition. The petitioner has, therefore, moved this petition under Article 226 of the Constitution for a writ of certiorari to quash the said order of the learned II Addl. District Judge, Lucknow and for a writ of mandamus commanding the opposite parties not to give effect to the said order.

2. The opposite parties 2 to 4 have resisted this petition, Manmohan Batra, Opposite party No. 2, has deposed in his counter affidavit that the house in question was taken on hire purchase basis under an agreement dated 29-2-1960 made between the Governor of Uttar Pradesh through the Nazul Officer of the Improvement Trust and Mr. Gur Sharan Lal Srivastava, a retired Judge of Allahabad High Court. Under the terms of that agreement the lessee was entitled to transfer his rights and the hire-purchase money was to be paid in instalments extending to a period of thirty years. Mr. Gur Sharan Lal Srivastava executed a sale deed on 26-6-1962 in respect of his rights in the said hire purchase agreement in favour of opposite parties 2, 3 and 4. It is stated that all the rent, taxes and assessments due in respect, of the said premises up-to 30-6-1962 were paid by Mr. Gur Sharan Lal Srivastava and the liability of the opposite parties 2 to 4, for payment of rent, taxes and assessments of the opposite parties commenced from 1-7-1962. The opposite parties subsequently paid all the instalments due under the said hire-purchase agreement and thereupon the Governor of U. P. executed a sale deed on 10-4-1974 in their favour on payment of Re 1/- in accordance with the terms and conditions of hire-purchase agreement dated 29-2-1962 making them absolute owners. The contesting opposite parties, therefore, contended that so far as the petitioner was concerned, he being their tenant in the said premises could be evicted by them by commencing action under Section 21 of the Act. It was also contended by them that the house in question was not a 'public building' and, therefore, the provisions of the Act were applicable to it.

3. In view of these averments the principal question for consideration in the instant case is whether the application filed by opposite parties 2, 3 and 4 on 27-7-1973 under Section 21 of the Act was competent. The contention of the petitioner is that

on 27-7-1973 when the application was moved under Section 21 of the Act the house in question was a 'public building' and therefore, was not governed by the said Act.

4. Prior to the, enforcement of U. P Act 28 of 1976 Section 2 of the Act was as follows:--'Nothing in this Act shall apply to:--

(a) Any building belonging to or vested in the Government of India or the Government of any state or any local authority; or,

(b)

The said Sub-clause (a) of Sub-section (1) of Sections 2 of the Act was deleted and substituted by the following Sub-clause (a) by U. P. Act 28 of 1976:

'(a) any public building or by the same Act 28 of 1976 the definition of the term 'public building' was also inserted in Sections 3 of the original Act as under:--

'(3) (o) 'public building' means any building belonging to or taken on lease or requisitioned by or on behalf of the Central Government or a State Government (including the Government of any other State) and includes any building belonging to or taken on lease by or on behalf of any local authority or any public sector corporation.'

Thus it has always been the position that the provisions of the U. P. Act XIII of 1972 did not apply to a building belonging to a State Government or local authority.

5. A perusal of Annexure 1 to the writ petition which is a copy of the agreement executed between the Governor of U. P. through the Nazul Officer and Sri Gur Sharan Lal Srivastava discloses that the Government had built the house on plot no. 98 in Mahanagar, Lucknow under a Housing Scheme and Mr. Gur Sharan Lal. Srivastava had taken it on rent under rent-purchase (hire purchase) scheme on the terms and conditions stipulated in the said agreement. Para 4 of the said agreement provides that if the lessee pays regularly to the lessor or the Nazul Officer the reserved rent and faithfully observes and performs all the other acts

and obligations covenanted then at the end of the term of thirty years the lease would come to an end and the lessor shall be bound within a reasonable time to execute for a consideration of rupee One only a proper sale deed of the said house with all rights, easements and liabilities attaching or appurtenant thereto in favour of the lessee at the cost of the lessor provided that if the lessee takes advantage of the First Proviso to para 1 so as at any time to pay up at once the amount of rent in advance up to the end of the full term of thirty years, then the lease will terminate on the date of such full payment of the amount of rent and thereupon the lessor shall be bound within a reasonable time to execute for a consideration of rupee one only a proper sale deed of the said premises with all the rights, easements and liabilities attaching or appurtenant thereto in favour of the lessee at the cost of the lessee. Mr. Gur Sharan Lal Srivastava transferred his rights under the said agreement by a sale deed dated 26-6-1962 in favour of opposite parties 2, 3 and 4, a copy of which is Annexure 2 to the writ petition. The ownership of the said house however, remained with the State Government. That Was transferred by the State Government in favour of opposite parties 2, 3 and 4 on 10-4-1974 by a sale deed, a copy of which is Annexure 7 to the writ petition, and a perusal of the same would disclose that opposite parties 2, 3 and 4 availed of the option of payment of advance rent and paid Rs. 16118.25 vide Nazul Receipt D/- 18-3-1974 towards rent thereof as also the advance rent for the remainder term of thirty years in full and got the sale deed executed in consideration of the price of Re 1/- only. By the said transaction the opposite parties 2, 3 and 4 were made absolute owners of the said premises. It is thus quite manifest that prior to 10-4-1974 when the sale deed was executed the opposite parties 2, 3 and 4 held that said premises on hire-purchase basis the ownership of the premises vesting, till then in the State Government. They became absolute owners of the said property when the said sale deed dated 10-4-1974 was executed by the Governor of the State in their favour, The premises in question was, therefore, a 'public building' prior to 10-4-1974 and it became a private premises only on 10-4-1974. The provisions of the Act, therefore, came to apply to the said premises only on 10-4-1974. They did not apply to the said premises prior to 10-4-1974 in view of the provisions of Sections 2 of the Act, aforesaid. Hence on 27-7-1973 the provisions of the Act could not be invoked so far as this

premises was concerned inasmuch as it was not governed by the Act on 27-7-1973. It was, however, urged that during the pendency of the application the said premises ceased to be a 'public building' inasmuch as opposite parties 2, 3 and 4 purchased it on 10-4-1974 from the State Government and became absolute owners thereof, hence the provisions of the Act applied to it.

6. It is well settled that the rights of parties must be determined when they seek justice and as pointed out in *P, Venkateswarlu v. Motor & General Traders*, (AIR 1975 SC 1409) it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. In other words, the right of the party is determined by the facts as they exist on the date the action is instituted. Subsequent events, however, sometime have their own impact and their cognizance cannot wholly be ruled out. Dealing with the subject, the Supreme Court in *M/s Laxmi & Co. v. Dr. Anant R. Deshpande* (1973) 1 SGG 37: (AIR 1973 SC 171) laid down:--

'It is true that the court can take notice of subsequent events. These cases are where the court finds that because of altered circumstances like devolution of interest it is necessary to shorten litigation. Where the original relief has become inappropriate by subsequent events, the Court can take notice of such changes. If the court finds that the judgment of the Court cannot be carried into effect because of change of circumstances the Court takes notice of the same. If the Court finds that the matter is no longer in controversy the Court also takes notice of such event. If the property which is the subject matter of suit is no longer available the court will take notice of such event. The court takes notice of subsequent events to shorten litigation, to preserve rights of both the parties and to subserve the ends of justice.'

In *P. Venkateswarlu v. Motor and General Traders*, (AIR 1975 SC 1409) it was held:--

'It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental

impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice--subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad, We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceedings provided the rules of fairness to both sides are scrupulously obeyed.'

Again, in *Rameshwar v. Jot Ram*, (AIR 1976 SC 49), the Supreme Court held that where the right to the remedy depends under the statute itself on the presence or absence of certain basic facts at the time the relief is to be ultimately granted the Court even in appeal, can take note of such supervening facts with fundamental impact. Where a cause of action is deficient but later events have made up the deficiency the Court may, in order to avoid multiplicity of litigation, permit amendment and continue the proceeding provided no prejudice is caused to the other side.

7. In the instant case the premises in question being a 'public building' on 27-7-1973 did not fall within the ambit of the Act on that date when the application under Section 21 was filed. The said premises, however, ceased to be 'public building' on 10-4-1974 when the State Government sold it to opposite parties 2, 3 and 4. It then became a private building and the provisions of the Act then applied to it. The said application under Section 21 of the Act had not till then been disposed of and was pending before the Prescribed Authority for disposal. The parties were aware of this subsequent event. The objection raised on behalf of the petitioner before the Prescribed Authority to the effect that the premises in question was a 'public

building' as defined in the Act, ceased to have any efficacy. This subsequent event of sale of the said premises by the State Government to opposite parties 2, 3 and 4 was, therefore, to be taken cognizance of because the matter was no longer in controversy. In *Laxmi & Co.* (AIR 1973 SC 171) (supra) the Supreme Court has ruled that if the Court finds that the matter is no longer in controversy the Court also takes notice of such event. The aforesaid supervening event has to be taken notice of in the instant case, because that would 'shorten litigation' and 'subserve the ends of justice.' It was not disputed that after the said premises ceased to be a public building it came to be governed by the provisions of the Act, hence the provisions of that Act will have to be invoked if eviction of the petitioner was sought for from the said premises. The contention that the application under Section 21 of the Act was not maintainable when it was filed and should therefore be rejected and the opposite parties may again move, if they so like, another application under Section 21 of the Act for seeking the same relief, if accepted would not shorten litigation but would result in multiplicity of proceedings, That course, if to be adopted, wilt not subserve the ends of justice. Equity, therefore, justifies taking cognizance of the subsequent event aforesaid and in doing so fair play would not be violated. Under the circumstances, the order passed by the Prescribed Authority as also the order passed by the learned Addl. District Judge cannot be said to be without jurisdiction.

8. It was next urged that in view of the first proviso to Section 21 of the Act no petition could be moved under that section before the expiry of three years from the date of the purchase of the premises in question by opposite parties 2, 3 and 4. Section 21, so far as material to this case, reads:

'(1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely:--

(a) that the building is bona fide required either in its existing form or after demolition and 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 purposes of any profession, trade or calling, or where

the landlord is the trustee of a public charitable trust, for the objects of the trust;

(b) that the building is in dilapidated condition and is required for purposes of demolition and new construction;

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds mentioned in Clause (a), unless a period of three years has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years.'

The first proviso obviously applies to such a person who becomes landlord after purchasing the property. In the present case the premises in question was originally held by Mr. Gur Sharan Lal Srivastava under a hire purchase agreement. He had transferred his right, title and interest in the said premises to opposite parties 2, 3 and 4 by a sale deed dated 26-6-1962. Thus the opposite parties 2, 3 and 4 came to hold the said property on hire purchase basis with effect from 26-6-1962. They let out the same to the present petitioner on 1-6-1965. The opposite parties 2, 3 and 4 were thus the landlords of the present petitioner with effect from 1-6-1965. True it is, that the said opposite parties became the absolute owners of the said property on 10-4-1974 but so far as the petitioner was concerned, he was their tenant with effect from 1-6-1965 the application under Section 21 of the Act was filed on 27-7-1973, Thus the petitioner obviously was not hit by the provisions of the first proviso to Section 21 (1) of the Act.

9. No other point was urged or pressed before me.

10. In the result, the petition fails and is dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com