

State of U.P Vs. 14th Addl. District Judge, Agra and Others

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Court : Allahabad

Decided On : May-11-2001

Reported in : 2001(2)AWC1578

Judge : B.K. Rathi, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 2 and 2(1); [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 43774 of 2000

Appellant : State of U.P

Respondent : 14th Addl. District Judge, Agra and Others

Advocate for Def. : B.D. Mandhyan, Adv.

Advocate for Pet/Ap. : S.C.

Judgement :

B. K. Rathi, J.

1. The premises in dispute is number 3/50 (new) 165/1 (old) is five storied building with land underneath, known as Bharatpur House, Kandhari, Agra, owned by Bharatpur Royal Family Religious and Ceremonial Trust, a public religious trust. The ground floor of the said premises was reported to be vacant by the Rent

Control Inspector as the premises was vacated by District Planning Officer. Notice was sent for consideration of vacancy. No objections were filed. Therefore, the vacancy was declared on 17.11.1997, and by order, dated 29.1.1998 the premises was allotted to the District Supply Officer, who has also obtained possession.

2. The respondent No. 3 moved an application for the review of allotment order, dated 29.1.1998. The application was moved on 19.7.1999, Annexure-3 to the petition. The review was requested on several grounds. The respondent No. 2 considered the review application and allowed it on 13.1.2000, by order Annexure-7 to the petition. Against that order, the petitioner preferred Revision No. 37 of 2000. which have been dismissed on 5.8.2000 by the Additional District Judge, Agra by order, Annexure-9 to the petition. The petitioner, therefore, has preferred this petition under Article 226 of [Constitution of India](#) invoking extraordinary jurisdiction of this Court.

3. I have heard learned standing counsel and Sri B. D. Mandhyan. learned counsel for the respondent No. 3.

4. The learned counsel for the petitioner has raised several points.

5. The first point raised is that the order of review of the allotment order has been passed by Sri A. K. Singh, Addl. District Magistrate (CityJ/Rent Control Officer. Agra. respondent No. 2, on 13.1.2000. It is contended that on that date, he was not vested with the powers of the Rent Control Officer. In this connection, the learned counsel for the petitioner has referred to orders regarding delegation of powers by the District Magistrate, which are annexures to the rejoinder-affidavit of Anil Kumar Sharma, dated 24.4.2001. Sri A. K. Singh (who passed the review order). Additional District Magistrate (City)/Rent Control Officer, by order, dated 16.5.1998 conferred the power of the Rent Control Officer by the District Magistrate, Agra. By another order, dated 18.6.1998 power was conferred on Sri R. K. Singh, then by order, dated 26.11.1998 on Smt. Sandhya Tiwari again on 2.1.1999 on Sri S. S. Ashutosh and again on 24.7.1999 on Sri R. K. Singh. It is contended that, therefore, the powers conferred on Sri A. K. Singh, Additional District Magistrate were withdrawn. The notifications do not say so. It appears that powers have also been conferred on other officers looking to the quantum of work.

The subsequent orders are in partial modification of the earlier orders conferring powers on previous officers. The earlier orders have not been superseded. Therefore, it cannot be accepted that power of Sri A. K. Singh, Additional District Magistrate (City) were withdrawn. Therefore, first argument that he had no power to review the order is not correct. In this connection, it may also be mentioned that this point was not raised before him when he heard the application for review. On the other hand, the petitioner submitted to his jurisdiction, therefore, in this petition it could not be held that he had no power to review the order.

6. The next argument of the learned standing counsel is that the Rent Control Officer has erred in recording the finding that U. P. Act XIII of 1972 does not apply to the premises in dispute.

7. The Additional District Magistrate (City) has recorded the finding for the reason that owner of the property is Bharatpur Royal Family Religious and Ceremonial Trust, Bharatpur. That, therefore, according to Section 2 (1) (bb) of the Act, the U. P. Act XIII, 1972 does not apply to the premises in dispute. Section 2 provides that nothing in this Act shall apply to the following, namely :

(bb) any building belonging to or vested in a public charitable or public religious institution.'

It is contended by learned standing counsel that the courts below have wrongly held that the owner is a religious institution.

8. The argument of the learned counsel for the petitioner is that no doubt Bharatpur Royal Family Religious and Ceremonial Trust was the owner of the property. However, the trust has executed a lease deed of the property in favour of the respondent No. 3, which is a Sahkari Awas Samiti, the copy of the lease deed has been filed, which is Annexure-8 to the petition. This is a permanent lease with all rights of enjoyment of the property which are available to any owner of property including the right to enjoy the same, transfer, lease and also right of demolition and reconstruction of property in dispute and to deal with the property as the lessee likes. A sum of Rs. ten lacs was obtained in advance and the nominal lessee rent has been fixed as Rs. 250 per year. It is contended that conditions of

this lease show that for all practical purposes, it was an out and out sale. That the court below has erred in not accepting it as sale, in view of the definition of sale and lease, as given in the Transfer of Property Act.

9. It is no doubt also true that according to the definitions given in Transfer of Property Act, the lease and sale are totally two different kind of transfers. The sale is exchange of ownership. The lease is only transfer of a right to enjoy the property. However, the material circumstances cannot be overlooked, which show that in fact it is a sale. This deed was executed with intention to defeat the provisions of law. The trust property cannot be sold by any person and, therefore, this deed was executed in the form of lease deed which as per terms of transfer is in fact out and out sale. No rights have been reserved by the lessor except that he will get a meagre sum of Rs. 250 per year and can never get the property. There was no right to terminate the lease. Even the lessee have been given the right to demolish and to reconstruct the building. Therefore, in fact, it is out and out sale deed. The lease deed has been executed to defeat the provisions of law as the property of trust cannot be sold.

10. Secondly, this lease deed also serves another purpose of the respondent No. 3 to protect a property with the mischief of U. P. Act. XIII of 1972. This lease deed is, therefore, also against the policy of the law and the deed which have been executed in order to defeat the provisions of law cannot be taken on its face value and the contents. In this background, I find that by virtue of this so called lease deed, the respondent No. 3 has become the absolute owner of the property in dispute and, therefore, exemption will not be applicable.

11. In this connection, it is not out of place to mention that the application for review of the allotment order was moved by respondent No. 3 and no application for review was moved by Bharatpur Royal Family Religious and Ceremonial Trust obviously for the reason that it had no interest in the property and have no concern as to how in what manner the same is used.

12. Therefore, it cannot be accepted that U. P. Act XIII of 1972 does not apply to the property in dispute.

13. The next ground on which the order of allotment has been recalled is that no notice before declaration of the vacancy was served by respondent No. 2 either on the respondent No. 3 or on the trust. There is concurrent findings of both the courts below that no notice was ever served.

14. The learned counsel for the petitioner could not show that the notice was ever served on the landlord before declaration of vacancy. Therefore, the vacancy was declared without any opportunity of hearing to the landlord and. therefore, the order was rightly set aside.

15. Under the circumstances, the order of recalling the allotment passed by the respondent No. 2 could not be interfered with.

16. The petition is. therefore, dismissed. However, it is made clear that the petition has been dismissed only for the reason that the vacancy was declared without notice of the landlord. Therefore, the Rent Control and Eviction Officer may again take steps for declaration of vacancy and allotment after giving opportunity of hearing to the landlord.

17. With the above observations, the petition is disposed of. Stay order, if any, stands vacated.