

**Nutan Kumar and ors. Vs. Iind Additional District Judge and ors.**

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**Court :** Allahabad

**Decided On :** Apr-29-2004

**Reported in :** 2004(3)AWC2459

**Judge :** Tarun Agarwala, J.

**Acts :** Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972; [Transfer of Property Act, 1882](#) - Sections 106

**Appeal No. :** C.M.W.P. No. 12384 of 1987

**Appellant :** Nutan Kumar and ors.

**Respondent :** Iind Additional District Judge and ors.

**Advocate for Def. :** W.H. Khan, ;J.H. Khan and ;Raghvendra Dwivedi, Advs. and ;S.K. Tripathi, S.C.

**Advocate for Pet/Ap. :** P.N. Saxena, ;Amit Saxena, ;S.K. Shukla and ;R.K. Pandey, Advs.

**Disposition :** Writ petition allowed

**Judgement :**

**Tarun Agarwala, J.**

1. The petitioners are the landlord and had filed a suit for arrears of rent and for the ejectment of respondent No. 3, who was a tenant in the premises in dispute. The Judge Small Cause Court after determining the points in issue, recorded a finding that the tenant was in arrears of rent and that he had committed a default and further held that the notice issued under Section 106 of the Transfer of Property Act, was a valid notice determining the tenancy. The Judge Small Cause Court, however, dismissed the suit on the ground that the landlord had entered into a contract of tenancy with the tenant and this contract of tenancy was void and was in violation of the provisions of U. P. Act No. 13 of 1972.

2. Aggrieved by the decision of the Judge Small Cause Court, the petitioners filed a revision before the District Judge, which was also dismissed on the same point. The revisional Court, however, affirmed the finding with regard to the validity of the notice and also with regard to the default in the payment of rent. The petitioners thereafter filed the present writ petition challenging the orders of the court below. Before this Court, the learned single Judge referred the matter to a Full Bench of this Court, referring two substantial questions of law, namely :

'(1) Whether an agreement of lease between the landlord and the tenant for letting and occupation of a building in contravention of the provisions of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is void?

(2) Whether the said agreement is enforceable in law and a decree for ejectment of the tenant can be passed in favour of the landlord on the basis thereof?'

3. The Full Bench gave its opinion dated 20.5.1993, answering the aforesaid two questions as under :

'(1) An agreement of lease between the landlord and the tenant for letting and occupation of a building in contravention of the provisions of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is void.

(2) The said agreement is unenforceable in law and no decree for ejectment of the tenant can be passed in favour of the landlord on the basis thereof.'

4. The opinion of the Full Bench is reported in AIR 1994 All 298.

5. On the basis of the opinion given by the Full Bench, this writ petition was dismissed by judgment dated 20.9.1993 holding that the contract of tenancy was void and that the suit was not maintainable.

6. The petitioners, thereafter, filed a Special Leave Petition before the Supreme Court of India, challenging the decision of the Full Bench dated 20.5.1993 as well as the order dated 20.9.1993 dismissing the writ petition. The Supreme Court vide judgment dated 27.9.2002 has set aside the decision of the Full Bench in Nutan Kumar's case as well as the judgment dated 20.9.1993 passed in the writ petition. The Supreme Court held that unless the statute specifically provides that a contract contrary to the provisions of the statute would be void would remain binding between the parties and would be enforced, between the parties themselves. The Supreme Court, vide its judgment remanded the matter back to the High Court to decide the same in accordance with law.

7. I have heard Sri P. N. Saxena, the learned senior counsel appearing for the petitioners assisted by Sri Amit Saxena, Advocate. Sri Raghvendra Dwivedi, the learned counsel has filed his appearance on behalf of respondent No. 3.

8. The Judge Small Cause Court as well as the revisional court had dismissed the suit of the petitioners on the sole ground that the contract of tenancy entered between the landlord and the tenant was in violation of the provisions of U. P. Act No. 13 of 1972 and therefore, the suit was not maintainable. This view has been set aside by the Supreme Court vide its judgment dated 22.9.2002 in the case of Nutan Kumar and Ors. v. IInd Additional District Judge and Ors., (2000) 8 SCC 31. There is no provision in U. P. Act No. 13 of 1972, which specifically bars the landlord and the tenant to enter into a contract of tenancy. In the absence of any provision, the findings of the court below that the contract of tenancy was void and the suit was not maintainable cannot be upheld in view of the law laid down by the Supreme Court in this case itself. Thus, I hold that the contract of tenancy entered between the landlord and the tenant was not a void contract and that the suit filed by the petitioners was maintainable.

9. From the perusal of the record, I find that the trial court has given a finding that the respondent No. 3 was in arrears of rent and had committed a default. Further

finding has been given that the notice issued under Section 106 of the Transfer of Property Act was a valid notice and that the tenancy was validly determined. These findings were affirmed by the revisional court.

10. In view of the concurrent findings of fact given by the courts below, the writ petition is allowed. The judgment and order dated 30.9.1985 passed by the Judge Small Cause Court and the order dated 25.4.1987 passed by the revisional court are set aside and the suit of the petitioners is decreed with costs.

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