

Pratap Narain Vs. Vth Addl. District Judge, Allahabad and Others

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Court : Allahabad

Decided On : Mar-25-1998

Reported in : 1998(2)AWC1451

Judge : J.C. Gupta, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 3, 20, 20 (2), 21, 21 (1) and 29A (1), (4), (5), (6) and (7); [Code of Civil Procedure \(CPC\), 1908](#) - Order 8, Rule 3;

Appeal No. : C.M.W.P. No. 8890 of 1987

Appellant : Pratap Narain

Respondent : Vth Addl. District Judge, Allahabad and Others

Advocate for Def. : S.C. ;and Sankatha Rai, Adv.

Advocate for Pet/Ap. : K.N. Tripathi and ;K.M. Dayal, Adv.

Judgement :

J.C. Gupta, J.

1. Heard Sri K. M. Dayal, Senior Advocate, appearing for the petitioner and Sri Sankatha Rai for the landlord-respondent No. 3.

2. This is tenant's writ petition. The dispute relates to a portion of Premises No. 272, Meerapur, Allahabad. Landlord-respondent No. 3 moved an application against the petitioner under Section 21 (1) (a) of the U. P. Act No. 13 of 1972, (hereinafter referred to as the 'Act') on the ground that the premises was genuinely required by the landlord society for running a school after constructing another floor. Though seven other tenants have agreed to vacate but the petitioner has refused to do so. Hence there arose the necessity for moving the release application. It was further alleged that the tenant-petitioner has in his occupation another House No. 145, situated in Mohalla Attarsuiya, Allahabad and he could shift his 'Atta Chakki' in that house without suffering any substantial loss. The petitioner contested the application on a number of grounds, one of them being that the application itself was not maintainable in view of Section 29A of the Act as only land was let out to the petitioner over which he with the consent of the landlord has erected permanent constructions at his own expenses.

3. The prescribed authority by its Judgment and order dated 18.1.1986 allowed the release application of the landlord. It, however, directed that in case the landlord constructed shops, at least three shops shall be let out to the petitioner at a reasonable rent and that if within two years from the date of getting possession, the landlord failed to establish any school, the petitioner would be entitled to get his possession restored. The prescribed authority, however, held that only land was let out to the petitioner for carrying on business of 'Atta Chokki' on monthly lease but at the same time opined that the provisions of Section 29A of the Act did not create any bar in moving an application under Section 21 (1) (a) of the Act.

4. Aggrieved from the order of the prescribed authority, the petitioner filed appeal which has been dismissed by the judgment dated 28.4.1987. Both the orders of the prescribed authority and of the appellate authority have been challenged in this writ petition.

5. Since the writ petition can be disposed of on a short question, it is not necessary to go into the merits of the landlord's need for the disputed premises. The question involved is whether the release application under Section 21

(1) (a) of the Act was not maintainable? Sri K. M. Dayal, petitioner's counsel argued that since only land was let out to the petitioner over which he has erected permanent structure with the landlord's consent and at his own expenses, the bar created under Section 29A of the Act comes in the way of moving release application. It was further argued that under Section 21 (1) (a) application can be moved only in respect of a 'building' as defined under Section 3 (f) of the Act which says that 'building' means a residential or non-residential roofed structure and includes any land (including any garden), garages and outhouses appurtenant to such building. It would thus follow that land alone will not be covered by the definition of building. It is included in the definition only when it is appurtenant to building. Sub-section

(1) of Section 29A of the Act provides that for the purposes of this Section, the expression 'tenant' and 'landlord' shall have the same meanings respectively assigned to them in clauses (a) and (j) of Section 3 with the substitution of the word 'land' for the word 'building'. Sub-section

(2) says that Section 29A applies to land let out, either before or after the commencement of the section, where the tenant, with the landlord's consent has erected any permanent structure and incurred expenses in execution thereof. Again sub-section

(3) provides that subject to the provisions of sub-sections (4), (5),

(6) and

(7) of Section 29A, provisions of Section 20 shall apply in relation to any land referred to in sub-section 20

(2) as they apply in relation to any building. It follows that excepting the cases falling under sub-section

(2) of Section 20, bar created for instituting suits for eviction shall also apply in relation to demised land as well over which permanent structure with the landlord's permission has been erected by the tenant at his own expenses. The Legislature in its wisdom has not made any reference to Section 21 of the Act, which applies

only to buildings and not land alone, obvious reason being that if only land is let out by the landlord to the tenant and he is permitted to erect permanent structure of considerable value at his own cost and soon thereafter if landlord is permitted to get the property released, the tenant would be placed in a very precarious and detrimental position. With this intent in mind. Section 29A does not make any reference to the word 'building' as used in Section 21

(1) (a) of the Act. Learned counsel for the landlord-respondent also did not dispute this legal position and agreed that an application under Section 21

(1) (a) of the Act would not be maintainable where only land was let out, as such an application can be moved in relation to building only. However, he stressed that in the case in hand, the land along with building was let out as at the time of letting in favour of the petitioner, there was a roofed structure verandah on the walls in the premises in question which was also included in the tenancy of the petitioner and so it was not correct to say that only open land was let out.

6. Therefore, the crucial and essential point for determining the controversy as regards the maintainability of the release application is whether only land was let out to the petitioner as is contended by him or building with appurtenant land was leased out to the petitioner as alleged by the landlord.

7. The prescribed authority recorded a clear finding that at the time when the petitioner was inducted as a tenant in the premises in question, only land was let out to him by the landlord and construction has been raised subsequently by the tenant himself. This finding of fact has been reversed by the lower appellate court. The petitioner's counsel argued that this reversal has been done arbitrarily on a misreading of the pleadings contained in the written statement filed on behalf of the petitioner. A perusal of the judgment of the lower appellate authority would show that it was of the view that since in paragraph 4 of the written statement, the petitioner has himself admitted that building was let out to him. there was no need to examine the 'Qabuliat' or other evidence. According to the lower appellate court paragraph No. 4 contained a clear admission of the petitioner that the building and not land alone was let out to him. Sri Dayal urged before the Court that paragraph No. 4 of the written statement did not contain any such admission and if read

along with paragraphs 16 and 17 of the written statement, no other Inference could be drawn that the petitioner's definite case was that only land was let out to him by the landlord.

8. Law relating to pleadings is very clear. They are not to be so strictly construed like a piece of legislation. In District Courts, pleadings are often loosely drafted as such a liberal construction has always to be given to such pleadings and the intention of the party should be gathered to. The Courts should look to the substance rather than the wordings of the pleading and the manner in which they have been placed. Pleadings should be read and construed as a whole and not in piece-meal. It would be a bad construction and may end in startling results if any particular word or sentence is picked up and used for or against the party pleading in isolation of other part of the pleading. The true import of the pleading can be ascertained only if it is read as a whole and it is not permissible to pull out a sentence or a passage to read it out of the context, in isolation See *Udhav Singh v. Madhav Rao Scindia*, AIR 1976 SC 744. The whole object of the pleadings is that the opposite party must know the case he has to meet and should not be taken by surprise. The Courts should look to the substance rather than to the loose words used here and there in other part of the pleadings. Rules of procedure are meant to subserve and not to govern the cause of Justice. When in a given case a question arises whether a party should be held bound by an admission contained in the pleadings in loose words or language, it is the duty of the Court to look to the pleadings as a whole and not to dissect a fact out of the pleadings.

9. In the present case, the landlord in paragraph No. 4 of the application moved under Section 21 (1) (a) stated 'That the opposite party occupies a portion of building No. 272. Mohalla Meerapur, Allahabad, on Rs. 33 per month rent together with proportionate water-tax of Rs. 4.20 per month.'

The reply to this paragraph in the written statement was 'It is admitted that opposite party pays Rs. 33 as rent per month which includes house and water-tax, if any. as under the agreement it is the liability of the applicant to pay taxes to Nagar Mahapalika and not to the opposite party.' On the basis of this part of the pleading, it was argued by the learned counsel for the landlord that Order VIII,

Rule 3. C.P.C. requires that every allegation, the truth of which is desired to be denied, should be denied specifically and if not so done, the fact shall be taken to be admitted in terms of Order VIII. Rule 5, C.P.C. This argument of the learned counsel loses all its strength if we go through paragraphs 16 and 17 of the written statement of which paragraph 4 is also a part. In paragraph 4, there was no such clear admission of the petitioner that the building and not the land alone was let out to him. From a bare reading of paragraphs 16 and 17. there could be no two opinions that the tenant has specifically pleaded therein that only open land with a negligible 'Khaprail' was let out to him and construction of permanent nature has been erected on the demised land by him at his own expenses with the landlord's consent for the purposes of running an 'Atta Chakki' therein. Paragraph 4 of the written statement cannot be read in isolation by ignoring the facts pleaded in paragraphs 16 and 17 of the same document. The lower appellate court has misdirected itself in not making any reference to paragraph Nos. 16 and 17 and in drawing inference merely on the basis of paragraph No. 4 of the written statement which also does not contain such an admission as has been deduced by the lower appellate court. Therefore, it cannot be said that there was no dispute between the parties on the question whether only land was let out as alleged by the petitioner or building with land was let out as was contended by the landlord. As already pointed out above, the prescribed authority on this Issue had recorded the finding in favour of the petitioner and the same has been reversed by the lower appellate court simply on the basis of the so-called admission of the petitioner by misconstruing the pleadings contained in the written statement of the petitioner. Unfortunately, because of the view taken by the appellate authority as regards the pleadings. It did not consider the evidence and other material on record for deciding the crucial and disputed fact on which the answer to the question of maintainability of the application hinges. The case, therefore, will have to be sent back to the lower appellate authority for a fresh decision.

10. For the above reasons, this writ petition succeeds and is allowed. The order of the lower appellate authority dated 28.4.1987 (Annexure-13 to the writ petition) is set aside and the case is remanded to the lower appellate authority with the direction to restore the appeal to its original number and decide the same afresh in accordance with law. preferably within a period of three months from the date a

certified copy of this order is produced.

11. In the circumstances, the parties are directed to bear their own costs.

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