

Laxmi Narain and anr. Vs. Smt. Savitri Devi and ors.

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Court : Allahabad

Decided On : Jul-21-2004

Reported in : 2004(4)AWC3262

Judge : Tarun Agarwala, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 16 - Rules 8 and 9

Appeal No. : C.M.W.P. No. 15590 of 1984

Appellant : Laxmi Narain and anr.

Respondent : Smt. Savitri Devi and ors.

Advocate for Def. : R.P. Shastri, S.C.

Advocate for Pet/Ap. : W.H. Khan, ;Murli Dhar, ;R.P. Singh, ;K.M. Dayal, ;B. Malik and ;J.N. Mishra, Advs.

Judgement :

Tarun Agarwala, J.

1. The District Magistrate granted permission to the landlord Under Section 3 (1) (a) of U. P. Act No. 3 of 1947 to file a civil suit for ejectment of Sri Parag Das and Rama Shanker. Pursuant to this order, the landlord filed a civil suit for ejectment,

which was registered as Original Suit No. 117 of 1966 and was decreed. The tenant's appeal was dismissed and subsequently the decree for eviction was also upheld by the High Court. The landlord eventually got possession of the shop in dispute in execution proceedings. It transpires that the landlord applied for reconstruction of the shop and the plan was sanctioned by the Municipal Board on 7.1.1974 and thereafter, the shop of the landlord was demolished and a new shop was reconstructed in the year 1976. It transpires that Smt. Sukhrani applied for allotment of the shop in December, 1981 and fraudulently obtained an allotment order dated 4.3.1982. When the landlord came to know about the said allotment order, the immediately moved an application for review. Pending consideration of the review application, the Rent Control and Eviction Officer passed an order dated 9.3.1982 staying the operation of the allotment order and directed the Station Officer, Kotwali, Banda not to give possession to the allottee. However, it transpires that Smt. Sukhrani forcefully took possession of the premises in question on 8.3.1982. It also transpires that against the order dated 9.3.1982, Smt. Sukhrani filed Revision No. 32 of 1982 and against the allotment order dated 4.3.1982, the landlord filed a revision, which was numbered as 30 of 1982. The first Additional District Judge dismissed the Revision No. 32 of 1982 of Smt. Sukhrani and allowed the Revision No. 30 of 1982 of the landlord and set aside the allotment order. Smt. Sukhrani, thereafter, filed an application for setting aside the order of the Additional District Judge dated 21.5.1982, on the ground that the same order passed ex parte without hearing the allottee. The said application was rejected by the order dated 31.8.1982. Smt. Sukhrani, thereafter, filed a Writ Petition No. 10218 of 1982, which was dismissed by this Court vide judgment dated 19.11.1982. It transpires that Smt. Sukhrani filed a special leave petition before the Supreme Court, which was allowed and the judgment of this Court as well as of the Additional District Judge were set aside and the Supreme Court remanded the matter back to the revisional court with the direction that Civil Revision Nos. 30 and 32 of 1982 be decided on merits. The Supreme Court vide its judgment dated 26.9.1983 directed the parties to appear before the District Judge on 24.10.1983, who would then fix a date for hearing in both the revisions.

2. Pursuant to the direction of the Supreme Court, it is alleged by Smt. Sukhrani that she appeared before the District Judge on 24.10.1983, but was told by the

office of the District Judge that since the case has not been received in the Court, she would be informed subsequently through a notice. According to Smt. Sukhrani, she only came to know that some order was passed on 15.10.1984 and thereafter, she moved a restoration application, which was rejected by an order dated 18.10.1984. Smt. Sukhrani has now filed the present writ petition. It is relevant to state here that Smt. Sukhrani is the mother of the, original tenant, Rama Shanker, who was evicted in the decree passed in Original Suit No. 117 of 1976. During the pendency of the writ petition Smt. Sukhrani had died and her heirs were consequently substituted.

3. Heard Sri Murli Dhar, the learned senior counsel assisted by Sri R. P. Singh, advocate for the petitioner and Sri R. P. Shastri, the learned counsel for the landlord/opposite party.

4. The learned counsel for the petitioner submitted that the allotment order dated 4.3.1982 was validly passed and the same had wrongly been cancelled by the impugned order. The learned counsel for the petitioner further submitted that no opportunity of hearing was granted and that the impugned order was violative of the principles of natural justice. The learned counsel for the petitioner further submitted that the order dated 9.3.1982 could not have been passed nor any direction could be given to give back the possession of the premises to the landlord.

5. The contention of the learned counsel for the petitioners that no opportunity of hearing was given and the impugned order was violative of principles of natural justice is devoid of any merit. The order of the District Judge reveals that the petitioner did not appear before the District Judge on 24.10.1983 pursuant to the direction of the Supreme Court. It further transpires that the notices were issued by the District Judge by registered post, which was refused by the family members of the petitioner. Subsequently, notices were sent through the process of the Court, which was served by affixation in the presence of two witnesses and therefore, the services by affixation was held to be sufficient by the District Judge.

6. In my view, it cannot be said that the petitioners did not have sufficient notice. The petitioners deliberately chose not to appear before the District Judge and

therefore, it cannot be said that no opportunity of hearing was given to the petitioners. The petitioner had knowledge of the proceedings pending before the District Judge. The District Judge has passed the order after considering the merits of the case and has found that an allotment order was issued without compliance of Rules 8 and 9 of the Rules. It may be stated here that the notice to the landlord is mandatory before issuance of an allotment order. In the present case, the District Judge has given a finding that no notice was given to the landlord before issuance of the allotment order and therefore, the allotment order was violative of the principles of natural justice and, therefore, the allotment order was cancelled by the District Judge.

7. In my view, this a finding of fact, which cannot be interfered in a writ Jurisdiction. In any case, no allotment order could be issued without giving previous notice to the landlord. Since no notice was given to the landlord, the allotment order is wholly illegal and violative of the mandatory provision of Rules 8 and 9 of the Rules.

8. In so far as the order dated 9.3.1982 is concerned, it is submitted that the said order is only an interim order against which no revision could lie and, therefore, the District Judge had rightly rejected the revision as not maintainable.

9. The learned counsel for the petitioners submitted that the petitioners had been in possession of the shop from the last 20 years and, therefore, should be permitted to continue to run his business from the shop in question. This submission has been heavily opposed by the heirs of the landlord, who have been impleaded during the pendency of the writ petition and submitted that they require the shop for their own need.

10. From the record it also transpires that the petitioner after obtaining the allotment order also filed a suit and obtained an injunction restraining the landlord from evicting him. On the basis of this injunction the petitioner continued to remain in possession of the shop in question. In my view, the petitioner is not entitled to any relief on account of his conduct. The petitioner obtained an allotment order by playing a fraud upon the landlord and took forceful possession, which was against the provisions of the Act and Rules. Thereafter, the petitioner obtained an

injunction order by filing a suit, which was not maintainable. In this way, the decree, which the landlord had obtained in Original Suit No. 117 of 1966 was rendered nugatory. The petitioner, is therefore, not entitled to any discretionary relief under Article 226 of the Constitution of India.

11. In view of the aforesaid, the writ petition is dismissed with costs, which is assessed at Rs. 20,000. However, looking into the circumstances of the case that the petitioners had been carrying on their business for the last 20 years from the premises in question, I grant time till 31st December, 2005, to vacate and handover peaceful possession to the landlord, respondent No. 1. provided the petitioner gives an undertaking before the Rent Control and Eviction Officer, Banda, within six weeks from today stating therein that he will handover possession to the landlord on or before 31st December, 2005 and further pay the monthly rent. In addition to this undertaking the petitioner shall also pay a sum of Rs. 20,000 as cost, which has been assessed as aforesaid within six weeks from today to the landlord. In the event of non-compliance of the aforesaid directions, it will be open to the respondent No. 1 to evict the petitioner after the expiry of the six weeks.