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Ansar Mehdi and anr. Vs. iind Additional District Judge and ors.

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Court : Allahabad

Decided On : Aug-07-2002

Reported in : 2002(4)AWC3099

Judge : S.N. Srivastava, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 43; Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947; [Transfer of Property Act, 1882](#) - Sections 106

Appeal No. : C.M.W.P. No. 11497 of 1987

Appellant : Ansar Mehdi and anr.

Respondent : iind Additional District Judge and ors.

Advocate for Def. : B.D. Mandhyan and ;Satish Mandhyan, Adv. and ;S.C. Mandhyan, S.C.

Advocate for Pet/Ap. : M.A. Quadeer, Adv.

Disposition : Petition dismissed

Judgement :

S.N. Srivastava, J.

1. By way of this writ petition, the petitioner prayed for quashing the judgment and decree dated 19.9.1986 passed by Judge, Small Causes Court, Amroha, decreeing the suit for ejectment and for arrears of rent, and revisional court's judgment and decree dated 25.4.1987, dismissing the revision.

2. The facts borne out from the record are that one Sayed Nishar, the landlord filed an application for seeking permission to file a suit for ejectment against tenant in respect of the house in question, i.e., 64/74 Mohd. Jafri, Amroha, district Moradabad. This application under Section 3 of the U. P. (Temp. Control) of Rent and Eviction Act, 1947, was allowed by the Rent Control and Eviction Officer, Moradabad by the order dated 3.6.1970.

3. The Rent Control and Eviction Officer granted permission to file a suit after recording clear cut finding in the said order that landlord, who is 74 years of age and after his retirement is residing in a Imambarah, i.e., a charitable Institution having no other accommodation, his need is bona fide and genuine. The Rent Control and Eviction Officer granted three months' time to petitioners to shift to their own house or they may find out suitable accommodation for their residence as back as on 3.6.1970. The order passed by Rent Control and Eviction Officer was confirmed by Commissioner in Revision No. 217 of 1970 filed by petitioner vide order dated 25.2.1971 and also by the State of U. P. by order dated 20.7.1971.

4. A Civil Suit No. 208 of 1971 was filed in Court of Munsif, Amroha, for ejectment and for arrears of rent. The suit was decreed by the judgment and decree dated 30.11.1972 by Munsif Amroha. Civil Appeal No. 535 of 1972 preferred by tenant in the Court of District Judge, Moradabad, was transferred to Additional Civil Judge, Moradabad for disposal. The petitioner raised an objection that Judge, Small Causes Court, has jurisdiction to decide the suit. This contention of tenant was accepted by judgment and decree dated 24.8.1973. The appeal was allowed and judgment and decree of trial court was set aside. The case was remanded back to transfer the case to the Court of Judge, Small Causes Court having Jurisdiction.

5. On remand Judge, Small Causes Court again decreed the suit by judgment and decree dated 19.6.1986 for ejectment and for arrears of rent. This decree was

confirmed on 12.4.1987 in Revision No. 34 of 1986.

6. Aforesaid two judgments are impugned in the present writ petition.

7. Heard learned counsel for the parties.

8. Sri M. A. Quadeer, learned counsel for the petitioner, urged that the suit for eviction on the ground of default was not maintainable as there was a default of less than four months and no decree for eviction could be passed for default of less than four months. He further urged that the service of notice under Section 106 was not made and, therefore, entire proceedings for eviction was vitiated. Learned counsel further urged that the permission was granted under Section 3 of the Rent Control Act, 1947 and, therefore, the suit could not be filed before Judge, Small Causes Court but an application should have been filed before the Prescribed Authority under Section 43 (rr) of U. P. Act No. 13 of 1972. The entire decree is without Jurisdiction.

9. In reply to the same, Sri B. D. Mandhyan, learned counsel for the opposite party urged that none of arguments raised by learned counsel for the petitioner is sustainable as both Courts have recorded finding of fact that the notice was sufficiently served. He pointed out that the petitioner never raised any question relating to the maintainability of suit/ application before prescribed authority before the courts below. Originally, the suit was in regular side before Munsif in 1971. The tenant raised a question of jurisdiction before the appellate court that the suit is cognizable by Judge of Small Causes Court only and on his raising this plea, case was sent to Judge, Small Causes Court. He further urged that permission was granted by competent authority under Section 3 of the U. P. (Temp.) Control of Rent and Eviction Act, 1947, in favour of the landlord on 3.6.1970 to file suit for eviction on bonafide and genuine personal need. Suit was rightly filed mentioning this fact also in para 2 of the plaint, therefore, the suit is not for arrears of rent only but on personal ground also and was rightly filed before enforcement of U. P. Act No. 13 of 1972 in the appropriate court. The decree of court below was rightly passed and writ petition is liable to be dismissed with cost.

10. So far as the argument of the learned counsel for the petitioner, that the suit was filed only for the arrears of rent on the ground of default is incorrect. Permission was granted to file suit on personal bonafide and genuine need of landlord by Rent Control Officer. The suit was filed not for the arrears of rent only but on the ground of personal bona fide and genuine need also. Suit was rightly filed on both the grounds on the basis of permission granted by the Rent Control and Eviction Officer under Section 3 of U. P. (Temp.) Control of Rent and Eviction Act 1947 confirmed by the order of Commissioner and the State of U. P. suit was rightly decreed by the courts below. This argument of the learned counsel for the petitioner fails.

11. The argument of learned counsel for the petitioner that notices were not served and the entire proceeding is initiated under law. The trial court has rightly recorded a finding of fact on the basis of the evidence on record that notices were duly served on the tenant which was rightly affirmed by the revisional court. I also perused the order passed by court below, I am of the view that finding of fact recorded by the court below does not suffer from any infirmity.

12. The last argument of learned counsel for the petitioner is also not acceptable. He never raised plea before courts below that application should have been filed before the prescribed authority under Section 43 (rr) of U. P. Act No. 13 of 1972. To the contrary, the only objection of the petitioner in the suit filed in regular court was that Judge, Small Causes Court has jurisdiction to decide the case, which was accepted by appellate court and matter was sent to the Judge, Small Causes Court on the plea raised by the tenant.

13. It is not open to the petitioner to raise such contradictory pleas of jurisdiction at different and subsequent stages of the same proceedings, once he raised the plea that Judge, Small Causes Court has jurisdiction to entertain the suit. It is not open to him now to raise the question that Judge, Small Causes Court has no jurisdiction and only prescribed authority under Section 21 of U. P. Act No. 13 of 1972 has jurisdiction to entertain the application for release.

14. Section 43 (r) of U. P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972, are relevant for the purpose of present case which runs as

follows :

'(r) any suit for the eviction of a tenant instituted with the permission referred to in Section 3 of the old Act or any proceeding arising out of such suit pending immediately before (the commencement of the U. P. Civil Laws Amendment Act, 1972 (U. P. Act No. 37 of 1972) may be continued and concluded (in accordance with the old Act which shall, for that purpose, be deemed to continue to be in force) ;

15. From the perusal of the aforesaid provisions, it is clear that the suits already filed in pursuance of the permission granted by the Rent Control and Eviction Officer on 3.6.1970 much before the commencement of U. P. Act No. 13 of 1972 or U. P. Civil Laws Amendment Act, 1972 (U. P. Act No. 37 of 1972) shall be allowed to continue and concluded (in accordance of old Act) which shall for that purpose deemed to continue by the virtue of Section 43 (r) of the said Act.

16. Section 43 (r) of U. P. Act No. 13 of 1972 will not come in the way of eviction of the appellant.

17. The order dated 3.6.1970 passed under Section 3 of the U. P. Act No. 3 of 1947, has already become final and it was held that the need of the petitioner is bona fide and genuine. The landlord does not require to have re-establish the need afresh. The order passed under Section 3 of the U. P. Act No. 3 of 1947, is final and conclusive.

18. Considering the facts and circumstances of the case, the tenant succeeded to remain in possession of the building in question inspite of a final and conclusive finding on the point of bona fide and genuine need recorded in the order dated 3.6.1970 passed under Section 3 of the U. P. Act No. 3 of 1947, on one ground or other. It will be appropriate to award a cost of Rs. 15,000.

19. With the result, the writ petition fails and dismissed with the cost of Rs. 15,000.

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