

Ram Kumar and anr. Vs. Union of India (Uoi) and anr.

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Court : Allahabad

Decided On : May-12-2004

Reported in : 2004(4)AWC3482

Judge : Tarun Agarwala, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 2(1), 3 and 39; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976 - Sections 2(1)

Appeal No. : Civil Revision No. 689 of 1984

Appellant : Ram Kumar and anr.

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : Shishir Kumar, Adv.

Advocate for Pet/Ap. : B. Dayal, ;M.K. Sharma, ;B.D. Mandhyan, ;S.C. Mandhyan, ;Satish Mandhyan and ;Vishnu Sahai, Adv.

Disposition : Revision allowed

Judgement :

Tarun Agarwala, J.

1. The revisionist is the landlord of the premises in question, which was taken on a lease by the defendant postal authorities by a registered lease deed dated 31.10.1972 for a period of five years. After the expiry of the lease period, no fresh lease deed was executed between the parties. The landlord served a composite notice Under Section 106 of the Transfer of Property Act and Under Section 80, C.P.C. determining the tenancy. In spite of receiving the notices, the opposite parties did not hand over vacant possession of the premises in question. Accordingly, the landlord filed a suit for ejectment of the opposite parties and for possession. The landlord further prayed that the rent and damages for use and occupation of the premises be also decreed against the defendants. The landlord alleged that the premises in question is a public building and is exempted from the operation of U. P. Act No. 13 of 1972.

2. The defendants resisted the suit and contended that the rent had been paid and that there was no default in the payment of rent. The defendants alleged that the tenancy could not be determined and the defendants could not be ejected from the premises in question.

3. The trial court, after determining the points in issue, dismissed the suit of the plaintiff/landlord. The trial court held that the composite notice issued Under Section 106 of the Transfer of Property Act and Under Section 80, C.P.C. was a valid notice determining the tenancy. The trial court, however, held that the defendants are entitled to claim the benefit of Section 39 of the U. P. Act No. 13 of 1972 in view of the amendment made in the Act by U. P. Ordinance No. 28 of 1983. The trial court found that in view of the amendment vide Ordinance No. 28 of 1983, the building comes under the purview of U. P. Act No. 13 of 1972 and therefore, the defendants could not be evicted. The trial court further found that even though the suit was filed in 1982, the Ordinance No. 28 of 1983 would be applicable in view of the judgment of the Supreme Court in Vineet Kumar v. Mangal Sain Wadhera, 1984 ARC 265. The trial court therefore, held that since the defendants had deposited the arrears of rent, cost and interest Under Section 20 (4) of the Act, they are entitled to the benefit of Section 39 of the Act and are not liable for ejectment.

4. Aggrieved by the judgment of the trial court, the landlord has filed the present revision Under Section 25 of the Provincial Small Cause Courts Act.

5. Heard Sri B. Dayal, the learned counsel for the revisionist and Sri Shishir Kumar, the learned counsel appearing for the opposite parties,

6. Before advertng to the arguments raised by the counsel for the parties, it is essential to consider the provisions of the Act and the amendments made in Section 2 (1) of the Act from time to time.

7. Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) was enacted and came into force w.e.f. 15.7.1972. Section 2 of the Act excluded certain buildings from the operation of the Act. Section 2 (1) (a) and 2 (1) (b) as it originally stood and brought into force on 15.7.1972 reads as under :

'Section 2 (1). Nothing in this Act shall apply to :

(a) any building belonging to or vested in the Government of India or the Government of any State or any local authority ; or

(b) any tenancy created by grant from the State Government or the Government of India in respect of a building taken on lease or requisitioned by such Government.'

8. Section 2 (1) was amended by U. P. Act No. 28 of 1976 w.e.f. 5.7.1976. The amended Section 2 (1) of the Act reads as under :

'Section 2 (1). Nothing in this Act shall apply to :

(a) any public building ; or'

9. By U. P. Act No. 28 of 1976, Section 3 (o) was inserted which reads as under :

'Section 3 (o) 'public building', means any building belonging to or taken on lease or requisitioned by or on behalf of the Central Government or a State Government (including the Government of any other State), and includes any building belonging to or taken on lease by or on behalf of any local authority or any public

sector corporation.'

10. Thus, prior to the amendment of Section 2 (1) of the Act by Amendment Act No. 28 of 1976, the U. P. Act No. 13 of 1972 was not applicable to a building, which belonged to or vested in State Government, Central Government or a local authority. The Act also did not apply to a building, which was taken on a lease or requisitioned by the Central Government, State Government or a local authority.

11. After the 1976 Amendment, the Act was not applicable to a building, which belonged to or taken on lease or requisitioned by the Central Government or a State Government or a local authority or any public sector corporation. This position continued till the next amendment was made by the U. P. Ordinance No. 28 of 1983 promulgated on 18.5.1983. The amendment of Section 2 (1) (a) sought by this Ordinance reads as under :

'Section 2 (1).-Nothing in this Act shall apply to the following, namely :

(a) any building of which the Government or a local authority or a public sector corporation is the landlord ; or'

12. This amendment was kept alive by a series of Ordinances, namely. Ordinance No. 43 of 1983, 6 of 1984, 8 of 1984, 20 of 1984 and 9 of 1985. Eventually, U. P. Act No. 17 of 1985 was enacted on 20.8.1985 regularising the aforesaid Ordinances and this Act No. 17 of 1985 was made effective from 18.5.1983.

13. The result of this amendment was that w.e.f. 18.5.1983, the Act was not applicable to a building of which the Central Government, State Government local authority or a public sector corporation was the landlord.

14. In the light of the aforesaid amendment, the learned counsel for the revisionist submitted that the amendment made in Section 2 (1) of the Act w.e.f. 18.5.1983 was only prospective in nature and would not apply to a suit filed in 1982. The learned counsel for the revisionist submitted that the amendment made in Section 2 (1) in the year 1976 was applicable in the suit which was filed in the year 1982 and therefore, the Act was not applicable to a public building leased out by a landlord to the Central Government. The learned counsel further submitted that

Section 39 of the Act had no application and that the benefit of Section 39 granted by the court below was wholly erroneous.

15. On the other hand, the learned counsel for the defendants submitted that by virtue of the Ordinance 28 of 1983, the Act became applicable and the defendants could not be evicted except on the grounds mentioned in Section 20 of the Act. The learned counsel for the defendants further submitted that they had deposited the entire arrears of rent, damages and interest and therefore, they are entitled for the benefit available Under Section 39 of the Act. In support of this submission the learned counsel for the defendants have relied upon a decision of the Supreme Court in Vineet Kumar v. Mangal Sain Wadhera, AIR 1985 SC 817.

16. Admittedly, in the present case, two facts are not disputed namely, that the suit was filed in 1982 and that the building was more than 10 years old at the time when the suit was filed.

17. The question that arises for consideration are two folds, namely :

(a) Whether Ordinance No. 28 of 1983 is applicable to the present case?

(b) Whether the defendants are liable to get the benefit of Section 39 of the Act after the promulgation of Ordinance No. 28 of 1983?

18. In Vineet Kumar's case (supra), the Supreme Court held that since the building completed 10 years of its existence during the pendency of the suit, the Act became applicable and therefore, the tenant was entitled to seek the protection of the Act. The Supreme Court held that the tenant could not be evicted from the premises in question except on the grounds mentioned In Section 20. Since the tenant had deposited the arrears of rent, damages and interest, the benefit of Section 39 was available to the tenant.

19. In Nand Kishore Marwah and Ors. v. Samundri Devi, (1987) 4 SCC 382, the Supreme Court dissented with its earlier judgment in Vineet Kumar's case (supra) and held that the rights of the parties will be determined on the basis of the rights available to them on the date of the suit. The Supreme Court further held that Section 39 of the Act would be applicable to those suits, which were pending on

the date of the commencement of the Act, i.e., 15.7.1972. If the suit was pending on 15.7.1972, only then the benefit of Section 39 of the Act was available to the tenant.

20. Similar view was again expressed by the Supreme Court in *Atma Ram Mittal v. Ishwar Singh Punia*, AIR 1988 SC 2031, impliedly overruling Vineet Kumar's case, and in *Suresh Chand v. Gulam Chisti*, 1990 (1) ARC 233 and in *Ramesh Chandra v. Illrd ADJ and Ors.*, (1992) 1 SCC 751, and again by the Supreme Court in *Bhola Nath Varshney v. Mulk Raj Madan*, (1994) 2 SCC 127. The Supreme Court in *Kishan alias Krishan Kumar v. Manoj Kumar*, AIR 1988 SC 999, overruled Vineet Kumar's case and held that a suit instituted during the period of exemption could be continued and a decree passed therein could be executed even though the period of exemption come to an end during the pendency of the suit.

21. In *State of U. P. and Ors. v. Malik Zarid Khalid*, (1988) 1 SCC 145, the Supreme Court held that the amendment in Section 2 (1) of the Act by U. P. Ordinance No. 28 of 1976, was intended to be effective between 5.7.1976 and 18.5.1983 and that the amendment made by Ordinance No. 28 of 1983 was not intended to be read back. The Supreme Court held that the Government who are tenants will be in position to claim all the immunities available to other tenant under the Act after 18.5.1983 when Ordinance No. 28 of 1983 came into force.

22. In view of the decisions given by the Supreme Court, the position that emerges is that the benefit available Under Section 39 of the Act is only applicable to those suits, which were pending on the date of commencement of the Act, i.e., 15.7.1972. If the suit was pending on 15.7.1972, only then, the benefit of Section 39 of the Act was available to the tenant. It is also clear that the amendment made in Section 2 (1) by U. P. Act No. 28 of 1976 was effective between the period 5.7.1976 and 18.5.1983. The Ordinance No. 28 of 1983 was effective only from 18.5.1983 onwards and reliance on Ordinance No. 28 of 1983 could not be made available to a suit filed prior to 18.5.1983.

23. In the present case, the suit was filed in the year 1982 and therefore, the provisions of Section 2 (1) (a) read with Section 3 (o) as amended by U. P. Act No. 28 of 1976 will apply in the present case, inasmuch as, the suit was filed in 1982.

Since the Act was not applicable, therefore, the revisionist could evict the defendants after serving a notice determining the tenancy. Thus, I hold that since the suit was filed in the year 1982, the provision of Section 2 (1) of the Act as amended by U. P. Act No. 28 of 1976 was applicable. Ordinance No. 28 of 1983 was not applicable in the present case. The defendants are not liable to get the benefit of Section 39 of the Act as the said section is applicable to those suits which were pending on the date of the commencement of U. P. Act No. 13 of 1972, i.e., 15.7.1972.

24. In view of the aforesaid, the revision is allowed and the impugned order dated 20.9.1984 is set aside and the suit of the plaintiff is decreed with costs.

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