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Jamuna Devi (Smt.) Vs. Xiiiith Additional District Judge and ors.

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Court : Allahabad

Decided On : Aug-25-2004

Reported in : 2005(1)ARC60

Judge : S.U. Khan, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 12, 20 and 20(4); [Transfer of Property Act, 1882](#) - Sections 106, 108 and 109; Uttar Pradesh Basic Education Act, 1972 - Sections 2 and 18A; Uttar Pradesh Basic Education (Amendment) Act, 1977; [Constitution of India](#) - Article 14

Appeal No. : C.M.W.P. No. 4684 of 1987

Appellant : Jamuna Devi (Smt.)

Respondent : Xiiiith Additional District Judge and ors.

Disposition : Petition allowed

Judgement :

S.U. Khan, J.

1. This is landlord's petition arising out of her suit for eviction and recovery of arrears of rent filed against respondent Nos. 3 and 4 Kanpur Nagar Maha Palika (KNMP) and U.P. Board of Basic Education (Board in short) numbered as Suit

(SCC Suit) No. 1776 of 1976 on the file of J.S.C.C., Kanpur.

2. The suit for eviction was dismissed on 13.7.1979 by J.S.C.C., Kanpur even after recording the finding of default in favour of the landlord on the ground that notice of termination of tenancy was not given to Board. Revision filed by the landlord petitioner against the said judgment and decree being SCC Revision No. 214 of 1979 was also dismissed on the same ground by XIIIth Additional District Judge, Kanpur, through judgment and order dated 27.1.1983, hence, this writ petition.

3. J.S.C.C. decided the question of rate of rent in favour of the landlord and held that rate of rent was Rs. 56.25 per month as asserted by landlord and not Rs. 46.25 as asserted by tenant. From the judgment of the trial Court it appears that allegation of the landlord that rent had not been paid since 8.4.1974 was not denied by the tenant. The tenant claimed the benefit of Section 20 (4) of U.P. Act No. 13 of 1972. Unfortunately, trial Court did not decide the said question. There is no material on record of this writ petition to ascertain as to what amount was deposited by tenant and on what dates. Prior to filing of the suit the tenancy of KNMP was determined through notice dated 17.8.1975 under Section 106 of T.P. Act. The building in dispute was taken on rent by KNMP and it was running a school therein,

4. In the year 1972 U.P. Basic Education Act, 1972 was passed, providing for the establishment of Board of Basic Education (Board) and for matters connected therewith. The Board was constituted on 25.7.1972 which became the appointed day as defined under the definition clause of the said Act i.e. Section 2(a). Under Section 12 of the Act Director of the Board exercises control over the Basic Schools run by local bodies. It was probably in view of this position that in the suit filed in the year 1976 Board was also made defendant in the suit alongwith the tenant (KNMP). In the year 1977 by U.P. Act No. 5 of 1977, a new section numbered Section 18-A was added in U.P. Basic Education Act, 1972. The amending Act further provided that amendment shall be deemed always to have been inserted. The said section is quoted below:--

Board to become tenant in respect of certain building:-- (1) Where any building or part thereof was on the appointed day occupied as tenant by any local body for the

purpose of any basic school; the tenancy in respect of such building or part shall, with effect from the said day, stand transferred in favour of the Board.

(2) Where any building or part thereof belonging to a local body was on the appointed day occupied by it for the purposes of any basic school, the Board shall, with effect from the said day, be deemed to have become licensee on behalf of the local body in respect of such building or part on such terms and condition as the State Government may by general or special order determine.

(3) The provisions of this section shall have effect, notwithstanding anything contained in any contract, lease or other instrument, or any law for the time being in force.

5. Both the Courts below have held that as tenancy of the building in dispute stood transferred from KNMP to (in favour of) Board, hence, Board would be deemed to be tenant since 1972 in view of retrospective operation of Section 18-A (1) and as no notice of termination of tenancy was given to the Board, hence suit was liable to be dismissed.

6. The provision transferring the tenancy in favour of the Board provided under Section 18-A is substantive in nature but has expressly been made retrospective. The first question to be decided is that as to what would be the effect of this retrospective operation. It is true that in case of retrospective operation of a provision of law, some of the things done, transactions concluded, orders passed and actions taken will have to be reversed. However, this principle of effect of retrospective applicability cannot have universal application. Each and every completed transaction, concluded action and executed order cannot be reopened and reversed. The distinguishing feature between the two would be the nature of transaction, action of order sought to be reversed. By way of retrospective operation deed cannot be made alive. Even otherwise if retrospective operation results in too arbitrary and extremely unjust revival then it may be open to attack under Article 14 of the [Constitution of India](#). Court may in suitable case regulate the impact of retrospectability.

7. If the provision under consideration is given absolute retrospectability then it may result in startling consequences.
8. A landlord who has received full rent from tenant local body from 1972 to 1977 can again ask the Board to pay the rent on the ground that with effect from 1972 Board has become tenant and it is liable to pay the rent since then.
9. If the tenant local body is evicted in execution of decree for ejectment in between 1972 and 1977, Board can claim recovery of possession on the ground that it became tenant since 1972 and as it was not party in the suit hence there was no decree of eviction against it.
10. If tenant local body damages the building or inducts a sub-tenant in between 1972 and 1977, Board can avoid liability to ejectment on that ground on the basis that it became tenant since 1972 and offending acts were not done by it.
11. In my opinion therefore, the only effect of retrospectability of Section 18-A is that in the suits (including revisions and appeals) filed by the landlord against the tenant local body pending on the date when Section 18-A was inserted (21.4.1977), it would be necessary to implead Board as defendant of the suit, otherwise decree or order passed would not be binding upon the Board.
12. In my opinion therefore, tenancy of KNMP was rightly terminated in the year 1975 and suit on the basis of the said termination of tenancy could be decreed even after insertion of Section 18-A with effect from 21.4.1977. Liabilities discharged or incurred by KNMP in between 1972 and 1977 do not stand wiped out by insertion of Section 18-A and Board can neither be made liable for the liabilities discharged by the KNMP during this period nor it can avoid the liabilities incurred by KNMP during this period. The Board therefore, after insertion of Section 18-A in spite of its retrospective application got only statutory tenancy in the building of the school in dispute as contractual tenancy of KNMP had been terminated. There was no need for the landlord to terminate the tenancy of the Board after 1977 and file fresh suit of ejectment.

13. A contrary view has been taken by a learned Single Judge of this Court in Zila Basic Shiksha Adhikari v. Sabira Khatoon, 1978 (4) ALR 191, (In this regard reference may also be made to U.P. Board of Basic Education v. Additional District Judge, 1993(1) ARC277, by another learned Single Judge). However, I am not referring the point to the Division Bench for the reasons that apart from the above point, the same result is to follow on the basis of other two points also which are discussed below:--

It has been held in a recent judgment by the Supreme Court in Shanti Devi Nigam v. Madan Lal Gupta, 2004 (2) ARC 118, that in order to file suit for eviction under Section 20 of U.P. Act No. 13 of 1972, it is not necessary to terminate the tenancy of the tenant.

14. Absolute transfer of whole interest of the tenant in the property is permissible and provided for under Section 108(j) of Transfer of Property Act, relevant portion of which is quoted below:--

Section 108(j)--The lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to . any of the liabilities attaching to the lease.

15. The consequences of transfer of tenant's interest in the tenanted property provided for under the aforesaid provision will follow whether transfer is voluntary or through operation of law. Accordingly, inspite of transfer of tenancy from Local Body to Board by virtue of Section 18-A of U.P. Basic Education Act, the original tenant i.e. Local Body is liable to ejection alongwith transferee tenant (sub-tenant) i.e. Board. (Under Section 109 T.P. Act, rights of lessor's transferee have been provided. Supreme Court in V.R. Vora v. The Board of Trustees, AIR 1991 SC 14, has held that principle of the said section applies to transfers through provision of law).

16. In view of the above it is held that both the Courts below committed an error of law by dismissing the suit on the ground that tenancy of Board had not been terminated.

17. However, the matter has to be remanded to the trial Court/J.S.C.C. for determining the question of benefit of Section 20 (4) of U.P. Act No. 13 of 1972, as the said plea was specifically taken by the tenant and issue was also framed in that regard, however, both the Courts below did not decide the said issue.

18. Accordingly, writ petition is allowed. Both the impugned judgments are set aside. Matter is remanded to the trial Court to decide only and only the question of benefit of Section 20 (4) of the Act to the tenants-respondents.

19. As no one has appeared on behalf of tenant-respondent, hence before proceeding further the trial Court/J.S.C.C., Kanpur shall ensure service of summons upon the tenants i.e. KNMP and Board.

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