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State of U.P. Vs. Iiird Additional District Judge and ors.

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Court : Allahabad

Decided On : Jul-02-2007

Reported in : 2008(1)AWC209

Judge : Prakash Krishna, J.

Appellant : State of U.P.

Respondent : iiird Additional District Judge and ors.

Disposition : Petition allowed

Judgement :

Prakash Krishna, J.

1. The present writ petition arises out of the proceedings under Section 21 (8) of U. P. Act No. 13 of 1972 in respect of an accommodation which was let out to the petitioner initially at the rent of Rs. 40 per month on 15.11.1971 and it was enhanced to Rs. 115 per month on 1.2.1972, as some more accommodation was added. Subsequently, the rent was enhanced in the month of June, 1978 to Rs. 160 per month. The accommodation in question is situate in Narainpur Kasba Auraiya wherein office of Weight and Measurement Department is located.

2. An application giving rise to the present writ petition was filed by Smt. Mula Devi, respondent No. 3 herein, on 13.12.1984 under Section 21 (8) of U. P. Act

No. 13 of 1972 for fixing its rent at Rs. 400 per month. It was registered as Case No. 29 of 1986. The said application was contested by the petitioner on the ground that Smt. Mula Devi, the landlady has entered into an agreement on 11.9.1984 whereby it was provided that since 1.6.1983 to 31.5.1988, the rent at the rate of Rs. 160 per month would be payable. On the strength of the said agreement, it was pleaded that the application for enhancement, under Section 21 (8) of the Act is not maintainable. It was stated that the landlady is not entitled to make application for enhancement of the rent. The Rent Control and Eviction Officer by his order dated 3.8.1987 enhanced the rent to Rs. 322 on the basis of the Rent Control Inspector's report. The said order was challenged in appeal, both by the petitioner as well as by the landlady. These appeals were numbered as Appeals No. 11 of 1987 and 13 of 1987. Both these appeals were allowed by a common judgment dated 21.3.1988 on the ground that the rent of the building in question should be fixed in accordance with the formula as provided under Section 21 (8) of the Act, i.e., commensurate to the market value of the property in question. After remand, the Rent Control and Eviction Officer, by his order dated 30.9.1992, fixed the monthly rent at Rs. 400, although he found that as per the market value, the rent comes more than that. This order of the Rent Control and Eviction Officer was challenged in appeal, being Rent Control Appeal No. 9 of 1992. The appellate court by the impugned order dated 5.9.1998, allowed the appeal, set aside the order passed by the Rent Control and Eviction Officer and fixed the rent at Rs. 1,611 per month w.e.f. the date of filing of the application, i.e., 13.12.1984. Challenging the aforesaid appellate order, the present writ petition is at the instance of State of U. P.

3. Heard the learned standing counsel for the petitioner and Sri Arvind Tiwari, advocate for the landlady, respondent No. 3.

4. Before proceeding further, it may be noted that there is no dispute between the parties that on 11.9.1984 an agreement was entered into between the parties and it was agreed that from 1.6.1983 to 31.5.1988, the tenant will be liable to pay monthly rent at the rate of Rs. 160 to the landlady. The said agreement, in my view, is final and binding on the parties. No doubt, remedy for enhancement of rent is available to such landlords who have let out their building to State Government

or a local authority or to a Public Sector Corporation or to a Recognised Educational Institution vide Sub-section (8) of Section 21 of the Act. Sub-section (8) of Section 21 confers right on such landlords. The said right can be waived by a landlord. No public policy is involved in Section 21 (8) of the Act which may prevent a landlord to waive his right under that section. The right given to such landlord is his personal right.

5. The Apex Court in Martin and Harris Ltd. v. VIth Additional District Judge and Ors. 1998 (1) ARC 109 : 1998 (1) AWC 580 (SC), with reference to Section 21 (1) of U. P. Act No. 13 of 1972, has held that a tenant or a landlord can waive the benefit conferred by an Act.

6. In this view of the matter, it is difficult to agree with the view of the appellate court that notwithstanding the fact that an agreement was entered into by the landlady fixing the rent at Rs. 160 per month for the period as stated above, still she can apply for enhancement of the rent under Section 21 (8) of the Act. The agreement entered into by the landlady amounts to waiver of her right conferred on her under Section 21 (8) of the Act. This is one aspect of the case.

7. The other aspect of the case is that the landlady herself claimed that monthly rent be fixed at Rs. 400. A copy of the application has not been annexed alongwith the writ petition or alongwith the counter-affidavit. However, there appears to be no dispute between the parties that the landlady filed the application for enhancement of the rent, stating that the rent should be fixed at Rs. 400 per month. In this regard a specific averment has been made in para 9 of the writ petition. Its reply has been given in para 5 of the counter-affidavit of the landlady. She has stated that when she came to know about true legal position regarding quantum of enhancement of rent, she through her husband, who was her power-of-attorney holder and pairokar of the case, got an affidavit filed demanding the enhanced rent which she was entitled to get. She further states that moving of an application for Rs. 400 per month as rent will not debar her from claiming higher rent under Section 21 (8) of U. P. Act No. 13 of 1972. This section, according to her, requires only moving of an application by the landlady for enhancement. The said section does not say that a higher rent will not be paid if an application demanding lower

vent has been made.

8. It is difficult to agree with the aforesaid stand of the landlady. If certain amount is due to a person and the person agrees to accept a lesser amount, he cannot subsequently demand higher amount. A person is entitled to get the relief prayed for after establishing his entitlement. The claim of the landlady at the most was restricted to Rs. 400 per month. She cannot claim higher rent at the subsequent stage of the proceedings. More so, when admittedly she has not filed appropriate application for enhancing her claim. Only this much has been stated in the para under reply that some affidavit on her behalf was filed by her husband demanding higher rent. Filing of such affidavit will not take place of an amendment application. Indisputably no application amending the original application was filed.

9. Before parting with the case, it may be noted that on earlier occasion, when the order of remand was passed, the appellate court had directed that the rent be fixed after taking into consideration the market value of the property in question. It could be argued that the said remand order having become final as it was not challenged, the courts below were bound by the remand order. However, It may be noted that the said remand order may be binding on the courts below, but certainly not on higher Court, i.e., the High Court. An order of remand is interlocutory in nature. As it was not appealable, the validity of the said remand order can be adjudged by a higher court at the subsequent stage of the proceedings. In this regard, reference may be made to the following decisions of the Apex Court:

1. Preetam Singh (Dead) by L.Rs. and Ors. v. Assistant Director of Consolidation and Ors. 1996 RD 192 : 1996 AWC 553 (SC);

2. Jasrqj Inder Singh v. Hemrqj Multanchand : [1977]2SCR973 ; and

3. Satyadhyan Chosal and Ors. v. S.M. Deorajin Deb and Anr. : [1960]3SCR590 .

10. In the case of Jasraj Inder Singh (supra), the Apex Court has held as follows:

In an appeal against the High Court's finding the Supreme Court is not bound by what the High Court might have held in its remand order. It is true that a

subordinate court is bound by the direction of the High Court. It is equally true that the same High Court, hearing the matter on a second occasion or any other court of coordinate authority hearing the matter cannot discard the earlier holding, but a finding in a remand order cannot bind a higher Court when it hears the matter in appeal.

11. In the case of Satyadhyan Ghosal (supra), the Apex Court has held that it is open to the appellate court which had not earlier considered the matter, to investigate in an appeal from a final decision grievance of a party in respect of an interlocutory order. Relying upon Privy Council decisions in the case of Maharaja Mohesur Singh v. Bengal Government (1859) 7 MIA 283; Ramkripal Shukul v. Mst Rup Kuari (1883) LR II IA 37; Forbes v. Ameeroonissa Begum (1865) 10 MIA 340 and Sheonath v. Ramnath (1865) 10 MIA 413, the Apex Court has held as follows:

It is clear therefore, that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order. A special provision was made as regards orders of remand and that was to the effect that if an appeal lay and still the appeal was not taken the correctness of the order of remand could not later be challenged in an appeal from the final decision as in the cases of other interlocutory orders. The second sub-section did not apply to the Privy Council and can have no application to appeals to the Supreme Court, one reason being that no appeal lay to the Privy Council or lies to the Supreme Court against an order of remand.

12. In the case of Preetam Singh (supra), the Apex Court has held as follows:

6. When the matter was in revision before the Assistant Director of (Consolidation), he had the entire matter before him and his jurisdiction was unfettered. While in seisin of the matter in his revision jurisdiction, he was in complete control and in position to test the correctness of the order made by the Settlement Officer (Consolidation) effecting remand. In other words, in exercise of revision jurisdiction the Assistant Director (Consolidation) could examine the finding recorded by the Settlement Officer as to the abandonment of the land in dispute by those tenants who had been recorded at the crucial time in the khasra

of 1359 Jasli. That power as a superior court the Assistant Director (Consolidation) had, even if the remand order of the Settlement Officer had not been specifically put to challenge in separate and independent proceedings. It is noteworthy that the Court of the Assistant Director (Consolidation) is a court of revisional jurisdiction otherwise having suo motu power to correct an order of the subordinate officer. In this situation the Assistant Director (Consolidation) should not have felt fettered in doing complete justice between the parties when the entire matter was before him.

13. In view of the above discussions, the judgment and order of the court below cannot be sustained and the same is hereby set aside. The order passed by the Rent Control and Eviction Officer fixing monthly rent at Rs. 400 is upheld.

14. The writ petition is allowed.

No order as to costs.

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