

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

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Court : Allahabad

Decided On : Dec-01-2006

Reported in : 2007(2)AWC1381

Judge : Rakesh Tiwari, J.

Appellant : State of U.P. and anr.

Respondent : Additional District Judge and ors.

Judgement :

Rakesh Tiwari, J.

1. Heard learned Counsel for the parties and perused the record.

2. The petitioners have filed this writ petition challenging the judgment and decree passed by the Judge Small Cause Court/Civil Judge (Junior Division), Shahjahanpur dated 27.2.2004 in S.C.C. Suit No. 12 of 2001 (Waqf Madarsa Sayedia No. 42, Khudaband Haul Qayum, Shahjahanpur v. State of U.P. and Anr.) and the judgment and order passed by the Additional District Judge, Court No. 6, Shahjahanpur dated 2.11.2004 in S.C.C. Revision No. 15 of 2004, State of U.P. and Anr. v. Waqf Madarsa Sayedia No. 42, Khudaband Haul Qayum, Shahjahanpur.

3. The premises in dispute Bungalow No. 2, Kariappa Road, Cantt., Shahjahanpur was let out to the petitioners by the landlord-respondent No. 3 since before 1960 for running District Supply Office on a monthly rent of Rs. 79 inclusive of all taxes. The petitioners used to make payment of Rs. 948 yearly on submission of bill by the landlord. It appears that the petitioners did not pay rent to the respondent-landlord, as such two notices demanding the defaulted rent were sent by the landlord asking further to hand-over possession of the premises in dispute to him within 30 days.

4. The petitioners replied the notices by stating that as and when the respondent-landlord furnished bill the rent would be paid.

5. The landlord thereafter filed S.C.C. Suit No. 12 of 2001 before the Judge Small Cause Court/Civil Judge (Junior Division), Shahjahanpur for ejectment and arrears of rent w.e.f. 1.3.1999 to 31.8.2001 amounting to Rs. 2,370 and damages w.e.f. 1.9.2001 to 12.12.2001 @ Rs. 1,500 per month.

6. The petitioners contested the suit by filing written statement.

7. The Judge Small Cause Court/Civil Judge (Junior Division), Shahjahanpur decreed the suit vide impugned judgment and decree dated 27.2.2004 against which not only the petitioners filed S.C.C. Revision No. 15 of 2004 but the respondent also filed S.C.C. Revision No. 16 of 2004 on the ground that the trial court has wrongly rejected its relief C sought by it in the suit for payment of Rs. 1,500 per month from the date of institution of the suit to the delivery of possession of the premises in dispute.

8. The Additional District Judge, Court No. 6, Shahjahanpur dismissed both the aforesaid revisions vide impugned judgment and order dated 2.11.2004.

9. Relying upon the decision of this Court in Rang Nath v. State of U.P. 1984 ALJ 455, the trial court held that the notices under Sections 80, C.P.C. and 106 of the Transfer of Property Act can be given together and there is no illegality in giving a notice under Section 106 of the Transfer of Property Act terminating the tenancy. The trial court granted three months' time to vacate the premises in dispute as well

as to pay arrears of rent at the rate of Rs. 79 per month w.e.f. 1.3.1999 to 31.8.2001 amounting to Rs. 2,370.

10. By the impugned judgment and decree dated 27.2.2004 the trial court held that the petitioner-tenants had defaulted in payment of rent and their tenancy had been legally terminated by notice under Section 106 of the Transfer of Property Act. The trial court further held that in the circumstances of the case the landlord is entitled to get the house vacated. The trial court rejected the claim of the landlord for compensation at the rate of Rs. 1,500 per month from the date of institution of the suit to the date of delivery of possession. The relevant extract of the judgment and order of the trial court dated 27.2.2004 is as under:

i=koyh ij miyC/k lk{; ls Li'V gS fd lk=koyh ij 1&3&99 ls fdjk;s dh vnk;xh 'ks'k jgh gS tks 28&2&02 dks U;k;ky; esa fojks/kLo:lk tek fd;k g SA bl izdkj ;g Li'V gS fd izfroknh cdk;s fdjk;s dh nsunkj jgk gS vkSj izfroknh us fdjk;k dh vnk;xh esa fMQk YV fd;k g SA

oknh }kjk ukxfVI fnukafr 16&4&01 ,oa ukxfVI fnukafr 4&9&01 jksM fo/k /kkjk 80] lh0 ih0 lh0 izfroknh dks izsf'kr fd;k g SA ukxfVI /kkjk 106] IEifRr vurj.k vf/kfu;e ds rgr izlrqr djrs gq, ckdh }kjk cdk;k fdjk;k dh olwyh ds fy, vkosnu fd;k x;k rFkk izfroknh ls /kkjk 106] IEifRr Urj.k vf/kfu;e ds rgr yxku ekfyd ,oa fdjk;snkj ds IEcU/k dks Okknh }kjk lk;ZoftZr dj fn;k x;k vkSj oknh us ukxfVI] /kkjk 106] IEifRr vUrj.k vf/kfu;e ds ek;/e ls izfroknh ls dgk fd vc og mugsaa fdjk;snkj ugha j[kuk pkgrk vkSj oknh ge fdjk;snkj leklr djrk g SA bl izdkj oknh }kjk izfrokn ds fdjk;s ds fMQk YV dks ns[krs gq;s fdjk;snkj ds IEcU/k esa ukxfVI ds ek;/e ls l;ZoLou fd;k tk pqdk gS eq[; lk{; ds ek;/e ls Lo;a oknh us vius dFku dh iqf'V dh gS bl lk{kh ls folrkj ls izfrijh{kk dh x;h bl lk{kh us izfrijh{kk esa Hkh vius dFku dk leFkZu fd;k gS vkSj ;g crk;k fd vc og izfroknh dks viuk fdjk;snkj ugha j[kuk pkgrk g SA blus ;g crk;k gS fd mDr edku fti tk;nkn dk eqdnek gS og ddbZ;k b ZV dh iDdh cuh g SA nhokj ij iDdh feV~Vh dk ysi gS Lo;a jSy gS blus vius }kj fn; x;s ukxfVI dk Hkh lk{; 'kiFk ij fn;k gS vkSj mlus ;g Hkh crk;k gS fd og enjlk [kksyuk pkgrk g SA blfy;s mUgaa fookfnr edku dh vko';drk g SA izfroknh dh vksj ls ijhf{kr lk{kh ih0 MCY;w0 1 lqjsUnz fd'kksj diwj us ;g crk;k gS fd ukxfVI dk tokc ftyk iwfrZ vf/kdkjh ds gLrys[k esa gS ctV izklr gksus ij iSlk Hkqxrku fd;k x;kA

bl izdkj lk=koyh ij miyC/k lk{; ds fo'ys'k.k ls eSa bl vfHker dk gwWa fd izfroknh us oknh ds edku ds fdjk;s dks vnk djus esa fMQk YV fd;k gS blfy;s okn dkj.k mRiUu gqvk gS vkSj oknh /kkjk 106] IEifRr vUrj.k vf/kfu;e ds rgr uksfVI nsdj fdjk;snkjh ds IEcU/k dks l;ZoftZr dj fn;k gS blfy;s og [kkyh djuk pkgrk g SA esjs vfHker esas bl izdj.k esa oknh dks edku [kkyh djus dk vf/kdkj izkir gS vkSj mlus fdjk;snkjh ds IEcU/k dks /kkjk 106] IEifRr var vf/k0 ds uksfVI ds }kjk fdjk;snkjh dks lekIr dj fn;k gS blfy;s og fookfnr edku dks izfroknh ls [kkyh dj ikus dk vf/kdkjh gS oknh }kjk /kkjk 80 vkSj 106] IEifRr varj.k vf/k0 ds rgr ,d gh uksfVI fn;s tkus ds IEcU/k esa ekuuh; mPp U;k;ky; }kjk fof/k O;olFkk jax ukFk cuke LVsV vkQ ;w0 ih0] 1984 ,0 ,y0 ts0 455 nkf[ky fd;k g SA ftlds voyksdu ls eSa bl vfHker dk gWw fd /kkjk 80 vkSj 106 Fkk uksfVI ,d lkFk fn;k tk ldrk gS dksbZ fof/kd =qfV ugha gS vr% oknh dks fookfnr edku dks [kkyh djus dk vf/kdkj izklr g SA

mijksDr foospu ls ;g Li'V fd;k tk pqdk gS fd oknh fookfnr edku dk ekfyd gS vkSj izfroknh us fdjk;s dh vnk;rh esa fMQk YV fd;k gS blfy;s oknh us /kkjk 106] IEifRr vUrj.k vf/kfu;e ds rgr fdjk;snkjh lekIr dj nh gS vr% oknh lk{k esa fdjk;snkj ls edku [kkyh djus IEcU/kr ,oa cdk;k fdjk;k dh olwyh izklr djus gsrq vuqrks'k ikus dk lk;kZlr vk/kkj gS vr% nkok oknh IO;; Lohdkj fd;s tkus ;ksX; g SA

vkns'k

mDr y/kqokn IO;; fMxzh fd;k tkrk g SA izfroknhx.k dks vknsf'kr fd;k tkrk gS fd og rhu ekg ds Hkhrj fookfnr edku dks [kkyh dj dCtk o n[ky oknh dks ns nsos rFkk izfroknh fnukad 1&3&99 ls fnukad 31&8&01 rd 79@& #l;s izfrekg ds fdjk;k dh nj ls 2370 #l;s fdjk;k mDr rhu ekg dh vof/k esa vnk dj nsosA ,oa fnukad 1&9&01 ls mDr fdjk;k dh vnk;rh rd 79 :l;s izfrekg dh nj ls {kfriwfrZ vnk;rh fd frfFk rd oknh dks nsosA vU;Fkk oknh dks ;g vf/kdkj gksxk fd og izfroknh ds [kpsZ ij U;k;ky; }kjk ikfjr vkns'k dk vuqiky dj ysosA

1500 #lk;s izfrekg ds fglkc ls gtZ ds IEcU/k esa oknh dk nkok fujlr fd;k tkrk g SA

fnukad 27&2&04 ,lO Mh0@&Mh0; Mh0 vks>kMh0 Mh0 vks>ky?kqokn U;k;k/kh'k@flfoy tt tw0 fM0'kkgtgkiqjA

11. The revisional court vide impugned judgment and order dated 2.11.2004 held that from the reply of the notice it is apparent that the petitioners had taken a stand that the landlord had not submitted any bills regarding rent w.e.f. 1.3.1999 to 28.2.2002, hence the rent had not been paid. The revisional court considered the replies of the petitioners dated 4.6.2001, 16.4.2001, 4.9.2001 and 31.10.2001 as well as the compensation of the petitioners on the question of service of notices under Sections 80. C.P.C. and 106 of the Transfer Property Act. The revisional court considered the question of applicability of Section 106 of the Transfer of Property Act that whether the petitioners were entitled to the benefit of Section 106 of the Transfer of Property Act.

12. The revisional court again considering the decision of this Court rendered in Rang Nath (supra) held that the notice given to the petitioners was valid. In so far as the applicability of Section 114 of the Transfer of Property Act is concerned, the revisional court held that in view of the decision rendered in Arun Kumar v. VIII Additional District Judge, Budaun the petitioners will not be entitled to the benefit of Section 114 of the Transfer of Property Act and the court below has rightly found the petitioners to be defaulters and there is no error of law in the impugned judgment and order of the revisional court apparent on the face of the record. The judgment and order dated 2.11.2004 passed by the revisional court is as under:

fo}ku v/khuLFk U;k;ky; }kjk lk=koyh ij miyC/k lEiw.kZ lk{; ds fo'ys'k.k ds lk'pkr~ ;g fu'd'kZ fudkyk gS fd fuxjkuhdrkZ us fnukad 1&3&99 ls fdjk;s dh vnk;xh 'ks'k jgh gS tks mls fnukad 28&2&2000 dks U;k;ky; esa tek fd;k g SA mDr fu'd'kZ iw.kZr% lgh gS mlesa fdlh izdkj dh dksbZ =qfV ugha gS bl izdkj Li'V gS fd izfroknh cdk;k fdjk;k dk nsunkj gSaA vkSj mlus fdjk;k vnk djus esa =qfV dh g SA

tgka rd oknh }kjk fuxjkuhdrkZ dks izLrqr ukxfVI fnukad 16&4&01 ,oa ukxfVI fnukad 4&9&01 dh oS/krk dk iz'u g SA mijksDr nksuksa ukxfVI /kkjk 80] nhokuh izf;k lafgrk ,oa /kkjk 106] Vh0 ih0 ,DV ds vurnZr izLrqr dh x;h gS vkSj mlds }kjk cdk;k fdjk;kdh olwyh ds fy;s vkosnu fd;k x;k g SA vkSj /kkjk 106] Vh0 ih0 ,DV ogr oknh rFkk fuxjkuhdrkZ ds egt edku ekfyd ,oas fdjk;snkjh ds lEcU/k dks VjfeusV dj fn;k x;k vkSj oknh us bl ukxfVI ds ekgjke ls ;g jgk gS fd og izfroknh dks og vc fdjk,nkj ughas j[kuk pkgrrk gS vkSj fdjk;snkjh lekir djrk gSa] dgus dk rkRi;Z ;g gS fd oknh }kjk

izfroknh }kjk fdjk;s ds fMQk YV ds vk/kkj ij fdjk;snkjh ds lEcU/k esa ukfVI }kjk fdjk;snkj VfeZusV dh tk pqdh g SA mijksDr rF; dks oknh us lk{; esa fl) fd;k pwwafd oknh }kjk ukfVI ds ek;/e ls fdjk;k tek djus ds fMQk YV ds vk/kkj ij fdjk;snkjh lekir dj nh xbZ gS vkSj pwafd izfroknh fuxjkuhdkZ fdjk;s dks vnk djus esa fMQkYVj jgk gS] blfy;s gh foi{kx.k dks izfroknh fuxjkuhdkZ ls fookfnr edku [kkyh djkus dk vf/kdkj izklr gSa tgkWa rd ukfVI dh cS/krk dk iz'u gS] bl ekeys esa Li'V fof/k gS fd /kkjk 80] nhokuh izf;k lafgrk ,oa /kkjk 106] Vh0 ih0 ,DV dh ukfVI ,d lkFk tk ldrh gSa mlesa fof/kd =qfV ugha g SA bl izdkj dh O;oLFkk ekuuh; mPp U;k;ky; }kjk 1&9&84 ,0 ,y0 ts0 455 jaxukFk cuke LVSV vkQ ;w0 ih0 rFkk vU; esa Li'V :l ls nh xbZ g SA

bl ekeys esa ,d rF; ;g Hkh fopkj.kh; gS fd D;k bl ekeys us fuxjkuhdkZ }kjk 114] fd D;k bl ekeys us fuxjkuhdkZ }kjk /kkjk 114] Vh0 ih0 ,DV dk ykHk ikus dk vf/kdkj g SA

pwafd foi{kx oknh ds /kkjk 106 ds ukfVI ds }kjk fdjk;snkjh leklr dj nh gS vr% ,slh n'kk esa esjs fopkj esa fuxjkuhdkZx.k dks /kkjk 114] Vh0 ih0 ,DV dk ykHk ugha feysxk tSlk fd ekuuh; bykgkckn mPp U;k;ky; }kjk v#.k dqekj cuke v'Ve vfr ftyk tt cnk;w dh O;oLFkk esa nh xbZ g SA

mijksDr lEiw.kZ foospuk ds vk/kkj ij esjk ;g fopkj gS fd fo}ku v/khuLFk U;k;ky; }kjk lk=koyh ij miyC/k lk{; dk klgh ls vkdyu ,oa fo'ys'k.k fd;k x;k gS vkSj muds }kjk tks fu'd'kZ fudkyk x;k gS mlesa fdlh izdkj dh =qfV ugha gS vksj ;g fuxjkuh lo;; [kkfjt fd;s tkus ;ksX; g SA

vkns'k

vfuxjkuh lO;; [kkfjt dh tkrh gS vkSj fo}ku v/khuLFk U;k;ky; }kjk ikfjr fu.kZ; ,oa vkns'k fnukad 27&2&2004 dh iqf'V dh tkrh gSAfnukad 2&11&2004 usgky vgen flhdh2&11&04vij ftyk tt] dks VZ ua0 6'kkgtgkijA

13. Sri S.K. Mehrotra, learned Counsel for the State has vehemently urged that the courts below have committed an error of law in holding that the notice under Section 106 of the Transfer of Property Act was given to the petitioners. He further submits that as the petitioners had deposited the entire amount of rent before the court below the petitioners are entitled to the benefit of Section 114 of the Transfer

of Property Act. Referring to the judgment of the revisional court he has urged that the revisional court has wrongly held that the provisions of the Provincial Small Cause Courts Act would not be applicable to the case which in fact should have been in respect of the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

14. Sri S.K. Mehrotra further submitted that the Court has already enhanced the rent from Rs. 79 to Rs. 1,000 after hearing counsel for both the parties vide order dated 6.10.2005 which was passed by this Court when the number of rooms and area/location, status of the parties and area of the tenanted accommodation was not placed before the Court.

15. It is the pious duty of a tenant to pay rent to the landlord timely and regularly in accordance with the provisions of the Act which has admittedly not been done by the petitioners. Payment of rent is not dependent upon the submission of bills by the landlord as there is no agreement to this effect. If a tenant takes a building on rent it is obligatory upon him to pay rent timely which is not dependent on any overt act of the landlord and the tenant ought to make provision for regular payment of rent.

16. Now Sri S.K. Mehrotra has given details of the premises in dispute by producing a fax copy of the letter dated 30.11.2006 from the District Supply Officer, Shahjahanpur to him giving details of the area of the premises in dispute which is taken on record.

17. He filed the aforesaid copy of faxed letter dated 30.11.2006 alongwith an application during the course of the day to bring it on record.

18. Petitioner No. 2 is the tenant in the premises in dispute on a monthly rent of Rs. 1,000 w.e.f. October, 2005 in pursuance of this Court's order dated 6.10.2005 which was only Rs. 79 only since before 1960. The premises in dispute admeasures 7698 sq. ft. including covered and uncovered area, verandahs open space and latrine/ bath room. This rent is too meager in a city like Shahjahanpur for payment of even taxes like water tax, house tax etc. With the passage of time, the value of house/shop has increased many folds and as such the rent has to be

proportionately increased. The Court is therefore of the view that during the pendency of the writ petition equity has to be balanced by enhancement of rent now according to locality, the area under the occupation of the tenant etc.

19. In view of the decisions in *Rajeshwari (Smt.) v. Smt. Prema Agarwal* 2005 (1) ARC 526 ; *Khurshida v. A.D.J.* 2004 (2) ARC 64 : 2004 (1) AWC 851, wherein the rent was increased to about fifty times, the High Court held that it can enhance the rent to a reasonable extent as has also been held by this Court in para 7 of the decision in *Smt. Zohra v. IVth Additional District Judge* 2006 (63) ALR 643 : 2006 (3) AWC 2309 and 2004 (54) ALR 177 and *Hari Mohan Kichlu v. VIIIth A.D.J. Muzajfarnagar and Ors.* 2004 (2) ARC 652 : 2005 (1) AWC 163, wherein the rent was increased to more than 28 times the High Court held that while granting relief to a tenant against eviction the writ court is empowered to enhance the rent to a reasonable extent.

20. Admit.

21. Having a pragmatic approach and considering the facts and circumstances of the case and location and area of the premises in dispute as well as current market rate of rent prevalent in the area and in order to balance the equity, it would be appropriate that the rent of the premises in dispute be now increased to Rs. 21,300 per month from December, 2006 as under:

1 room (11 x 10 ft.) @ Rs. 1,000 = 1,000
1 room (20 x 10 ft.) @ Rs. 1,500 = 1,500
1 room (13 x 13 ft.) @ Rs. 1,200 = 1,200
1 room (12 x 12 ft.) @ Rs. 1,200 = 1,200
1 room (12 x 13 ft.) @ Rs. 1,200 = 1,200
1 room (32 x 10 ft.) @ Rs. 2,000 = 2,000
1 covered verandah (40 x 9 ft.) @ Rs. 2,000 = 2,000
1 covered hall (27 x 18 ft.) @ Rs. 2,500 = 2,500
1 uncovered room (20 x 18 ft.) @ Rs. 1,000 = 1,000
1 uncovered room (10 x 18 ft.) @ Rs. 500 = 500
1 uncovered room (13 x 18 ft.) @ Rs. 500 = 500
1 uncovered verandah (41 x 13 ft.) @ Rs. 3,000 = 3,000
1 uncovered verandah (21x8 ft.) @ Rs. 2,000 = 2,000
L and B (uncovered) (10 x 8 ft.) @ Rs. 200 = 200
Open space (in front) (102 x 15 ft.) @ Rs. 1,000 = 1,000
Open space (back side) (46 x 58 ft.) @ Rs. 500 = 500
Total Rs. = 21,300

22. Normally the rent of the accommodation in the premises in dispute as per the details supplied by letter dated 30.11.2006 would be about Rs. 21,300. However, looking to the note made at the bottom of the faxed letter that the construction of the building is made of unbaked mud bricks the rent has to be proportionately reduced which in the opinion of the Court should be reduced to 50%, i.e., Rs. 11,650.

23. It is accordingly directed that the petitioner-tenants shall pay Rs. 11,650 per month as the rent of the premises in dispute w.e.f. December, 2006 payable to the respondent-landlord by 7.1.2007 and thereafter by 7th day of each succeeding month till further orders with 10% notional increase after every 5 years in accordance with the provisions of Act No. XIII of 1972.

24. In default of payment of the enhanced rent as directed above by this Court, the respondent-landlord

can get the disputed house vacated with the help of police, if necessary, within a period of one month by giving notice in writing to vacate the house in dispute.

25. List this case in April, 2007 to inform about compliance of this order.

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