

Amit Kumar Jain Vs. Additional District Judge and ors.

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Court : Allahabad

Decided On : Sep-20-2006

Reported in : 2007(2)AWC1391

Judge : Rakesh Tiwari, J.

Appellant : Amit Kumar Jain

Respondent : Additional District Judge and ors.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard counsel for the parties and perused the record.

2. This writ petition has been filed for quashing the impugned orders dated 26.12.1998 and 23.8.2006 (Annexures-9 and 11 to the writ petition) passed by respondent Nos. 2 and 3 respectively.

3. It appears from Annexure-1 appended to the writ petition that Smt. Jaitoon Begum purchased the shop in dispute from Smt. Mustari Bai by registered sale-deed dated 28.6.1984.

4. The petitioner claims that the shop in dispute was let out to him in the year 1987 by the then landlady Smt. Jaitoon Begum and prior to 1987 the shop was not let out to any other person, as such 1987 would be deemed to be the date of construction.

5. It is submitted by the counsel for the petitioner that Smt. Jaitoon Begum wife of Sri Wali Mohammad and Sri Wali Mohammad sold their respective shares in the disputed property in favour of Sri Rakesh Jain and Smt. Rekha Jain respectively by registered sale-deeds dated 19.12.1995.

6. An application for allotment of the disputed shop was moved by prospective allottee, respondent No. 4, Har Govind Prajapathi before the Rent Control and Eviction Officer, Etawah (hereinafter referred to as R.C. and E.O.) on 1.4.1998 on which the Rent Control Inspector was directed to make inspection and submit his report. Report was accordingly submitted by him on 4.5.1998 to the effect that the shop in question was not vacant.

7. Thereafter the R.C. and E.O. by order dated 7.5.1998 rejected the allotment application of the prospective allottee Har Govind Prajapati (respondent No. 4) holding that the shop in question is not vacant.

8. An application for recall of the order dated 7.5.1998 was moved by respondent No. 4 which was allowed by the R.C. and E.O. by order dated 3.10.1998. Thereafter, the petitioner filed objection thereto against the application moved by the prospective allottee Sri Har Govind Prajapathi.

9. After hearing the counsel for the parties and on perusal of the evidence on record the R.C. and E.O. by order dated 17.11.1998 found that the shop in question was constructed about 60-70 years back and to which the U.P. Urban Buildings (Regulations, Letting, Rent and Eviction) Act, 1972 applied. He also gave a finding that the petitioner had been inducted in the shop without any allotment order in contravention of law.

10. The Rent Control and Eviction Officer held that the tenancy of the petitioner was illegal and he was deemed to be an unauthorized occupant of the shop in

dispute as such the disputed shop was deemed to be vacant under Section 12 of U.P. Act No. 13 of 1972. The relevant findings of the Rent Control and Eviction Officer are as under:

nqdku 60&70 lky iqjku cuh gqbZ g SA fcuk fof/kd ,ykVesaV dh izf;k viuk;s gkfly ugha FkhA dfFkr fdjk;snkjh fof/kd fo# g SA ,sykVesaV izos'ku ,oa fofu;erhdj.k ds vHkko esa foi{khx.k vfer dqekj vFkok Jo.k dqekj nksuksa dk dksbZ Hkh egt vukf/k izos'kdrkZ vukf/kd`r v/;klh gS vkSkj nqdku /kkjk 12 ds izkfo/kkuksa ds vuqlkj osds UV g SA cctwgkr oky mijksDr vkj0 lh0 vkbZ0 voS/k ,oa eqdfEey g SA vkSj nqdku ij vukfd`r v/;klh dk dCtk ysus ds dkj.k csdsuV fJDr ?kksf'kr fd;k tkrk g SA

Hkou Lokeh jkds'k dqekj tSu us vius lk{; esa viuk Lo;a dk 'kiFki= izLrqr fd;k g SA vfer dqekj dh vksj ls lk{; esa dbZ lcwr e; dkxtr ,oa Lo;a dk 'kiFk lk= nkf[ky fd;k x;kA

eSauas mHk; lk{k ds fo}ku vf/koDrk dh cgl lquh ,oa lk=koyh dk voyksdu fd;kA lk=koyh esa miyC/k lk{; ls Li'V gS fd fookfnr nqdku cgqr iqjkuh gS ,oa js UV dUVksy ,DV dh ifjf/k esa vkrh g SA foi{khx.k fcuk vkoaVu ds o'kZ 1987 ls mDr nqdku esa voS/k :lk ls v/;kflr g SA o'kZ 1987 ls fcuk vkoaVu ds v/;kflr gksus ds dkj.k mDr nqdku Mh EM cSdsUIh dh ifjf/k esa vkrh g SA fookfnr nqdku dks fJDr ?kksf'kr fd;k tkuk U;k; laxr izrhr gksrk g SA

vr% vkns'k gqvkd fd eq0 jkexat fLFkr nqdku ftlds iwjc esa IM+d if'pe esa txg f'koky flag] ean flag] mRrj esa nqdku egsUnz dqekj nf{k.k esa nqdku Jh jes'k gS.Mywe gS ,oa ftlesa vukf/kd`r v/;klh Jo.k dqekj tSu] vfer dqekj tSu gS fJDr in ?kksf'kr dh tkrh g SA rn~uqlkj fJDr dk izlkj.k fd;k tkosaA lk=koyh okLrs vkoaVu ij fopkj djus gsrq fnukad 24&11&98 dks is'k gksosa

11. Aggrieved by the aforesaid order dated 17.11.1998 the petitioner moved an application for recall of the aforesaid order and for issuance of commission for ascertaining the nature and age of the constructions. The application was rejected by R.C. and E.O. vide order dated 26.12.1998. The petitioner then preferred Rent Control Revision No. 4 of 1999 against the order dated 26.12.1998 before the District Judge, Etawah which was also rejected vide order dated 23.8.2006, hence this writ petition.

12. The revisional court has held that though the petitioner challenged the order dated 26.12.1998 on his application by which he desired to get ascertained the nature and age of construction of the shop in dispute, which was rejected, but he has not challenged the order dated 17.11.1998 by which the vacancy has been declared and as the petitioner had not filed any revision against the order dated 17.11.1998 immediately when the order was passed this revision has no force. The Court further held that revision is not maintainable as the order dated 26.12.1998 challenged by the petitioner in revision is an interlocutory order.

13. Dealing with the contention of the counsel for the parties that the shop in question was a new construction or not the revisional court was of the view that the burden of proof was on the petitioner and in spite of the opportunity granted to him to give evidence in this regard he has utterly failed to do so and that the order dated 26.12.1998 is neither ex parte nor there is any error apparent on the face of the record.

14. The contention of the counsel for the petitioner before this Court is that the revisional court has failed to exercise its Jurisdiction vested in it in holding that the revision was not maintainable. In this regard he has relied upon para 5 of the judgment in Dhani Chandra Khanna v. Incharge District Judge, Kanpur Nagar and Ors. 2000 (2) ARC 583, in which it has been held that:

Learned Counsel appearing for the petitioner vehemently urged that the respondent No. 1 has failed to exercise jurisdiction vested in him by holding that the revision against the order passed under Section 5 of the Act, was legally not maintainable and in rejecting the revision filed by the petitioner as not maintainable. According to him, judgment and order passed by the court below was, therefore, liable to be quashed. On the other hand, learned Counsel appearing for the contesting respondent fairly conceded that the view taken by the court below under Section 16(5) of the Act was not maintainable and was not correct. Learned Counsel for the petitioner in support of his submission relied upon the decision of this Court in the cases of Baij Nath v. District Judge Kanpur and Ors. 1982 (I) ARC 274 ; Surinder v. District Judge, Dehradun and Ors. 1982 (I) ARC 799 ; Ravindra Pratap Singh v. VIIIth Additional District Judge, Varanasi and

Ors. 1997 (1) ARC 264 and Law Publisher, Allahabad v. Additional District Judge, Allahabad and Ors. 1997 (2) ARC 304 : 1997 (3) AWC 1355. In all the above noted decisions this Court consistently has taken a view that the order passed under Section 16(5) of the Act is revisable.

15. The contention of the counsel for the petitioner is that the Rent Control and Eviction Officer was not justified in holding that the shop in question was an old construction ; that the shop in question was newly constructed in 1984 and that the petitioner being the first occupant in the building as tenant was paying the rent to the landlord, as such the status of the petitioner as tenant cannot be disturbed after 12 years. He urged that in the aforesaid circumstances the first date of assessment would be 1987.

16. It is evident from the perusal of the judgment of the revisional court that the revision has been decided on merit holding that the revision has no force and not that it was not maintainable. It has considered all the legal arguments raised before it, hence the contention of the counsel for the petitioner that the revisional court has not exercised jurisdiction vested in it cannot be sustained. So far as the question of applicability of Act No. 13 of 1972 is concerned, it is apparent from the sale deeds appended as Annexures-1 and 2 to the writ petition as well as from the findings recorded by the Rent Control and Eviction Officer that the building was 60-70 years old, as such the Rent Control Act was applicable. This finding also finds support from the pleadings of the landlord before the Rent Control and Eviction Officer wherein it has been stated in the municipal records that the building has been assessed since 1952. The courts below have therefore, rightly disbelieved the case of the petitioner that the building has been newly constructed after it had fallen down.

17. It appears from the sale-deed appended with the writ petition that the building was purchased in a dilapidated condition. It is on record that the building had been purchased in 1960 from Sri Budhu Lal on payment of Rs. 6,000 and had been sold to Sri Pradeep Kumar in 1968 on payment of Rs. 4,000. There being no evidence of reconstruction or any provisions from Municipal authorities for new construction or in accordance with provisions of the Act for demolition and reconstruction

thereafter I do not find any illegality or infirmity in the findings recorded by both the courts below that the shop was an old construction and the provisions of Rent Control Act were applicable.

18. For the reasons stated above, the writ petition is dismissed.

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