

Madhu Gopal

Vs

VI Additional District Judge and Others

Special Leave Petition (Civil) No. 6577 of 1988

(S. Ranganathan, Sabyasachi Mukharji JJ)

26.09.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This application for leave to appeal under Article 136 of the Constitution arises from the judgment and order of the High Court of Allahabad, dated April 27, 1988. By the judgment under challenge the Division Bench by majority directed the Additional City Magistrate or the officer at present exercising the power of District Magistrate under Rule 10 (9) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 to issue notice on all the five landlords mentioned in the petition within one week of the filing of the certified copy of the order, and thereafter to make an order in accordance with law and in the light of the observations made in the said judgment. The petitioner before the High Court, who is the petitioner herein also, was directed not to be dispossessed until disposal of the matter by the High Court.

2. This application is by the tenant - petitioner. The premises in question had five co-owners, namely, Veeresh Saxena, R. C. Saxena, D. C. Saxena, Smt. Shanti Saxena and B. S. Saxena, respondent 3. Until January 1978, Veeresh Saxena was in sole and exclusive actual physical possession of the shop and carried on business in it. In January 1978 the present petitioner filed allotment application for the shop and he was the sole applicant. On January 28, 1978, Veeresh Saxena vacated the shop and sent intimation of vacancy to the Rent Control Officer under the U. P. Urban Buildings (Regulation of Letting and Eviction) Act, 1972 (hereinafter called 'the Act'). The Rent Control Officer, then, directed him to appear in the allotment proceedings. The Inspector reported that Veeresh Saxena was found to be in possession of the shop, discontinuing the business and was going to let out the shop. On the Inspector's report being pasted on the notice board of the Rent Control Officer, neither B. S. Saxena filed an affidavit before the Rent Control Officer that he wanted to let out the shop to the petitioner. The three other co-owners never objected to the petitioner's tenancy on the allotment order throughout the last 10 years. The allotment letter was accordingly passed on February 12, 1978. The possession was, thereafter, taken up, it was alleged by the petitioner in the special leave petition. The petitioner had alleged that he had invested more than Rs. 2 lakhs in the shop, but B. S. Saxena, who was a non-occupant owner, on or about February 25, 1978 filed an application under Section 16 (5) of the Act, after 25 days of allotment, for review of the order. It was alleged by the petitioner that the evidence was overwhelmingly in support of the fact that he had taken possession of the premises on or about February 4/5, 1978. The Rent Controller, however, on the said application of B. S. Saxena allowed the review application and cancelled the allotment order. A revision against the said order was filed before the learned Judge under Section 18 of the Act. The learned Additional District Judge dismissed the revision. The petitioner, thereafter, filed a writ petition in the High Court of Allahabad.

3. The question arose about the maintainability of the review application under Section 16(5) of the Act. It is upon this point that the matter has been agitated before us. There was a difference of opinion about the maintainability of the review application at the instance of a non-occupant owner and the matter was referred to a Bench of three learned Judges and by majority the Full Bench came to the conclusion that such an application was maintainable. The petitioner herein contends that the High Court was wrong in the view it took on the construction of Section 16(5)(b) of the Act.

4. The relevant provisions of the said sub-section read as follows :

(5)(a) Where the landlord or any other person claiming to be a lawful occupant of the building or any part thereof comprised in the allotment or release order satisfies the District Magistrate that such order was not made in accordance with clause (a) or Clause (b), as the case may be, of sub-section (1), the District Magistrate may review the order :

Provided that no application under this clause shall be entertained later than seven days after the eviction of such person.

(b) Where the District Magistrate on review under this sub-section sets aside or modifies his order of allotment or release, he shall put or cause to be put the applicant, if already evicted back into possession of the building, and may for that purpose use or cause to be used such force as may be necessary.

##(6) * * *##

(7) Every order under this section shall, subject to any order made under Section 18, be final.

5. The contention is that a landlord who was not in actual physical possession until making of the allotment order or is evicted in pursuant thereof, is not competent to make an application for review of the allotment order or release order under Section 16 (5)(a) and (b) of the Act. Admittedly, as mentioned hereinbefore, the respondent applicant was not in occupation when the order was made. He was, however, indisputably a landlord. So the question is whether on the construction of the section, a landlord who is not in in actual physical possession at the time of the release order, is entitled under the law to apply for review of the order. The High Court held that he is entitled.

6. We are of the opinion that the High Court was right, Section 16 (5)(a) speaks of 'where the landlord or any other person'. Hence, there are two categories of persons contemplated i. e. a landlord, or any other person. The requirement of sub-section, to be in lawful occupation of the building or any part thereof, applied only in case of any other person claiming to be in lawful occupation and not in case of landlord. The section has used the expression "or" and so the expression "or" is disjunctive of these two categories to be treated separately. Hence, the requirement to be in lawful occupation, is not there in case of an application by the landlord.

7. Mr. G. L. Sanghi, learned counsel appearing for the tenant, has sought to argue that by virtue of the proviso a landlord who was not in occupation, was not entitled to apply. We are unable to accept this. This proviso puts an embargo of 7 days in making the application for review. It can only apply to those who were in lawful occupation at the time of the making of the original order. It cannot curtail the rights of the landlord, as such, it only affects any other person who was in lawful occupation. In any event, it is a well settled principle of construction that unless clearly indicated, a

proviso would not take away substantive rights given by the section or the sub-section. A landlord has a right to the property. The section should not be so constructed as to defeat the right to possession of property in appropriate cases unless the intention of the legislature is manifest. We find no such clear intention in the facts of this case.

8. We are, therefore, of the opinion that the High Court came to the correct conclusion that a landlord, even though not in actual physical possession at the time of the possession of the property, can ask for review of the order of release or allotment. It must be borne in mind that this view was also expressed by Mr. Justice N. D. Ojha, as our learned brother then was, in his judgment in *Niren Kumar Das v. District Judge, Pilibhit*. We agree with that interpretation.

9. In that view of the matter, there is no substance in the contentions urged in the special leave petition. The application is, therefore, rejected.

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