

Chetar Sen Jain

Vs

Addl. Dist. Judge-III, and others

Civil Appeal No. 2862 of 1992

(Dr. T. K. Thommen, S. P. Bharucha JJ)

07.08.1992

JUDGEMENT

THOMMEN, J.

1. Leave granted.

2. This appeal arises from the judgment of the Allahabad High Court in Civil Miscellaneous Writ Petition No. 15504 of 1988. The appellant is the tenant. The landlord, respondent herein, filed the Writ Petition in the High Court challenging the concurrent findings of the Rent Control and Eviction Officer, Rishikesh, Dehradun (hereinafter referred to as the 'Rent Controller' or 'Rent Court') and the Court of the Additional District Judge III, Dehradun (the "Revisional Court"), to the effect that the tenant was in occupation of the premises in question since prior to 15-6-1976 for non-residential purposes. Setting aside these findings of the Rent Court and the Revisional Court and allowing the respondent-landlord's Writ Petition, the High Court remanded the case to the District Court, Dehradun for fresh findings on the points in issue.

3. This order of remand by the High Court is now challenged by the tenant in this appeal. It is not disputed that the premises in question were taken on lease by the tenant in 1958. He was residing in the premises. In 1968 he shifted his residence, but retained possession of the premises. In 1971 a fresh lease was agreed upon between the landlord and the tenant whereunder the tenant continued his possession of the premises for the purpose of storing goods. The premises have ever since been used by the tenant as a godown. On 4-3-1982 one Y.P. Dhuliya filed an application for allotment of the premises in terms of Section 12(3) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act No. 13 of 1972) alleging that a "deemed vacancy" had arisen by reason of the tenant building a residential building of his own and shifting his residence to that building. The Rent Court declared the premises to be vacant on 27-8-1982. A review petition was filed by the tenant against that order. That petition was allowed by the Rent Court. The landlord then filed a revision in the District Court. His revision was allowed on 23-9-1983. The tenant then approached the High Court by Writ Petition No. 11781 of 1983. Dismissing the writ petition on 17-4-1983, the High Court held that the question of vacancy could be decided at the time of allotment of the premises or the release of the same to the landlord.

4. On 25-4-1984 the premises were released to the landlord by order of the Rent Court. The tenant approached the District Court in revision. That Court remanded the case to the Rent Court. The Rent Court on 2-5-1986 held that the tenant was in occupation of the premises since before 15-7-1978

with the consent of the landlord and no vacancy had therefore occurred. The landlord filed a revision petition before the Additional District Judge. That petition was, by order dated 11-7-1988, dismissed. The learned Judge held that the premises having been at all material times in the possession of the tenant, no vacancy had occurred. Against these concurrent findings of the Rent Court dated 2-5-1986 and the District Court dated 11-7-1988, the landlord filed the Writ Petition in the High Court. The High Court by the impugned order, as aforesaid, reversed the findings and remanded the case to the District Court.

5. Having heard counsel on both sides, it does not seem to be any longer in doubt that the tenant has been in occupation of the premises in question since long prior to the coming into force of Act 13 of 1972. At any rate in 1971 there was a fresh oral lease between the parties pursuant to which the tenant has been ever since using the premises as a godown. It is also not in doubt that the proceedings against the tenant on the ground of deemed vacancy did not commence until 4-3-1982, when one Y.P. Dhuliya filed an application for allotment of the premises on the allegation that a deemed vacancy had arisen in terms of Section 12(3) of the Act. These facts show that the tenant had been put into possession of the premises by the landlord and he had been treated as a tenant long before the coming into force of Act 13 of 1972. It is also clear that no proceedings against the tenant for recovery of the premises had been initiated at any time prior to 1982. The tenant had been in occupation of the premises at all material times with the consent of the landlord.

6. Various questions are agitated before us on behalf of the tenant. Mr. Vaidyanathan appearing for the tenant contends that the High Court was wrong in remanding the case. The view expressed by the High Court as to the test to decide the character and nature of the building or as to the applicability of Section 12(3), counsel says, was incorrect. He, however, raises a very significant contention on the basis of which we propose to dispose of this case. Mr. Vaidyanathan says that facts which are not in dispute clearly show that Section 14 of Act 13 of 1972 (as amended by Act 28 of 1976) dealing with the regularisation of occupation of existing tenants is attracted and all defects, if any, in the occupation of the premises by the appellant are cured, and the landlord is not entitled to seek recovery of the premises.

7. Section 14 reads:

"14. Regularisation of occupation of existing tenants - Notwithstanding anything contained in this Act or any other law for the time being in force, any licensee (within the meaning of Section 2-A) or a tenant in occupation of a building with the consent of the landlord immediately before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976, not being a person against whom any suit or proceeding for eviction is pending before any Court or authority on the date of such commencement shall be deemed to be an authorised licensee or tenant of such building."

8. It is not in dispute that the tenant has been in uninterrupted occupation of the building with the consent of the landlord at any rate during the period from 1971 to 1982. It is also not disputed that no suit or other proceeding for eviction of the tenant was pending before any Court or authority at the relevant time, i. e. on 5-7-1976, when U.P. Act 28 of 1976, amending U.P. Act 13 of 1972, came into force.

9. Section 14 begins with a non obstante clause. It says

"notwithstanding anything contained in this Act or any other law for the time being in force.....".

10. This clause leaves no doubt that a tenant, who has been in occupation of the premises with the consent of the landlord immediately before 5-7-1976 and against whom no case for eviction was pending on that day, is deemed to be an authorised tenant of the premises. His occupation is thus statutorily regularised. Such a tenant has security of tenure, subject, of course, to the provisions of Chapter IV of the Act dealing with eviction of tenants on specified grounds.

11. In the circumstances, the High Court was wrong in setting aside the concurrent findings of the statutory authorities and remanding the case for further evidence. The judgment of the High Court is set aside. The order of the learned Additional District Judge dated 11-7-1988 is restored.

The appeal shall, accordingly, stand allowed with cost.

Appeal allowed.

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