

SUPREME COURT OF INDIA

Vijay Lata Sharma

Vs.

Raj Pal

C.A.No.5229 of 2004

(G. P. Mathur and C.K.Thakker JJ.)

13.08.2004

JUDGMENT

C.K.Thakker, J.

1. Leave granted.

2. This appeal by special leave is directed against an order passed by the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 36462 dated September 19, 2002. By the said order, the High Court dismissed the petition filed by the appellant confirming the order passed by the Prescribed Authority, Aligarh on October 29, 1996 allowing the application of third party of be joined as respondent in U.P.U.B. Case No. 19 of 1989 instituted by Smt. Kamla Devi and another against Raj Pal.

3. The facts as stated by the appellants are that one Ramesh Chand Tewari (since deceased) husband of Smt. Kamla Devi (who also died during the pendency of the proceedings) and father of the appellant herein, was owner of the property in question. It was let out to one Raj Pal. Upon the death of Ramesh Chand Tewari, the property was inherited by the appellant and her mother Smt. Kamla Devi. Thus, they became the owners. Since they wanted the premises for business of Anurag, son of Kamla Devi and brother of appellant herein, they initiated proceedings for getting the property vacated from occupation of tenant in accordance with Section 21 of the *U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972* (hereinafter referred to as 'the Act'). The proceedings were initiated in 1992. In 1993, the case came up for hearing. The tenant, however, wanted to delay the proceedings on one ground or the other. In the circumstances, Thakur Radha Krishnaji Maharaj Virajman Mandir, through its Secretary, Banwari Lal Pandey made an application for impleadment as party respondent alleging that deceased Ramesh Chand Tewari, father of the appellant, had executed a will on February 07, 1978 in favour of Thakur Radha Krishnaji Maharaj bequeathing the property to the temple and hence it ought to be joined as party respondent. The appellants contested the application contending that no such will was executed by the deceased in favour of temple and the documents were false and fabricated. It

was also contended that the applicant was not necessary party and hence his application was not maintainable.

4. The Prescribed Authority, however, by an order dated October 29, 1996, allowed the application observing that the court was required to see whether Kamla Devi was the owner of the property after the death of Ramesh Chand Tewari or Thakur Radha Krishanji Maharaj had become owner thereof. When it was the case of the applicant that a will was executed in favour of Shri Thakur Radha Krishanji Maharaj by deceased Ramesh Chand Tewari, the applicant ought to be joined as party respondent. Accordingly, the prayer for impleadment was allowed.

5. Being aggrieved by the order passed by the Prescribed Authority, the appellant preferred Miscellaneous Writ Petition which also comes to be dismissed by the High Court. The said order is challenged in the present appeal.

6. We have heard the learned counsel for the parties. The learned counsel for the appellant contended that respondent No.2 is neither necessary nor proper party to the proceedings. He, therefore, could not be joined as party respondent in the proceedings under the Act. It was also submitted that the Authority under the Act has no jurisdiction to decide "title" to the property and the only question it has to consider is as to whether the "landlord" is entitled to possession on the ground mentioned in the application for eviction. The counsel also submitted that it was not even the case of respondent No. 1 that the appellant and her mother were of entitled to rent. On the contrary, it was admitted by him that the rent was paid to them. In the circumstances, the order passed by the Prescribed Authority and confirmed by the High Court deserves to be set aside.

7. The learned counsel for the respondents, on the other hand, supported the order passed by the Prescribed Authority and confirmed by the High Court. It was submitted that the appellant cannot be said to be "landlord" under the Act in view of the will executed by deceased Ramesh Chand Tewari in favour of Shri Thakur Radha Krishanji Maharaj. The Prescribed Authority, therefore, was under obligation to consider the said fact and by making an order of impleadment, no illegality has been committed by the Authority. It was also submitted that joining of party is essentially in the discretion of the court and when the discretion is exercised judiciously no interference is called for. Even the High Court has also confirmed the order. It was, therefore, prayed that this Court may not exercise discretionary power under Article 136 of the Constitution and may not set aside those orders.

8. Having considered the rival contentions of the parties, in our opinion, the appeal deserves to be allowed. It is not in dispute that Ramesh Chand Tewari was the owner of the property. According to appellant, after the death of Ramesh Chand Tewari, the applicants Smt. Kamla Devi (since deceased) and the appellant became the owners. Though the case of respondent No.2 is that a will was executed by deceased Ramesh Chand Tewari in favour of Thakur Radha Krishanji in February, 1978, the application was made for the first time in 1993 i.e. after 15 years. In our opinion, the learned counsel for the appellant is also right in submitting that even in the written statement filed by the first respondent, the fact that the applicants

were 'landlords' was not disputed. In the written statement, it was stated by the respondent that it was not admitted that the property was let out to the first respondent in his individual capacity. According to him, the firm of M/s. Raj Pal & Brothers was the tenant of the property and payment of rent was made on behalf of the firm. It was thus not disputed that the rent was paid to Smt. Kamla Devi and the appellant. Now Clause (j) of Section 3 of the Act defines "landlord" as a person to whom rent is payable. When the rent was payable and was in fact paid to Smt. Kamla Devi and the appellant nothing more was necessary. In our opinion, the learned counsel for the appellant is right in submitting that even the Prescribed Authority has not said that the rent was not payable to Smt. Kamla Devi and the appellant or was not paid to them. The Prescribed Authority also "fully" agreed with the argument of the advocate appearing for Smt. Kamla Devi and the appellant that the issue of ownership could not be decided in the proceedings under the Act and the only question was regarding relationship of landlord and tenant. Unfortunately, however, the Prescribed Authority went on to observe that it was the case of applicant (Respondent No.2 herein) that the property was bequeathed by deceased Ramesh Chand Tewari by executing a will in favour of Thakur Radha Krishanji Maharaj. The Prescribed Authority, therefore, stated;

"The relation of landlord and Tenant is not proved only by accepting landlord or by paying the rent by tenant. It has to be seen who become landlord after the death of earlier landlord. If this property had been let out by Smt. Kamla Devi etc. to the present tenant, then the matter would have been different. When the earlier landlord has died then after his death who became the real landlord, if in dispute, this can be finally decided by the Court only. The tenant has no right to finally decide this question by accepting one party as landlord or by paying him rent."

9. In our view, in the facts and circumstances as mentioned in the release application and also the stand taken by the tenant in written statement and keeping in view the definition of "landlord" in Section 3(j), respondent No. 2 can neither be said to be necessary nor proper party to the proceedings. The question of title cannot be decided by the Prescribed Authority under the Act. The orders passed by the Prescribed Authority as well as the High Court, therefore, deserve to be quashed and set aside.

10. For the reasons aforesaid, the appeal deserves to be allowed and is accordingly allowed. The order passed by the Prescribed Authority on October 29, 1996 and confirmed by the High Court on September 19, 2002, is set aside and the application filed by respondent No. 2 is rejected. Since the proceedings are pending since more than a decade, the Prescribed Authority is directed to dispose of the case as expeditiously as possible preferably within six months. In the facts and circumstances of the case, there shall be no order as to costs.