

SUPREME COURT OF INDIA

Anil Kalra

Vs.

J.D.Pandey & Ors.

C.A.No.3763 of 2007

(Dipak Misra and Prafulla C.Pant,JJ.,)

29.09.2015

JUDGMENT

Prafulla C.Pant,J.,

1. The dispute in the present matter pertains to a hundred year old building, which is covered under Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short UP Act 13 of 1972"). Section 13 of said Act placed restriction on landlord, tenant and also on any other person from occupying the building in any capacity, without there being an order of release in favour of landlord, or order of allotment in case of tenant. The building in question is known as 7, Dalibagh situated in Lucknow. Originally said property was owned by a Barrister Mohammad Wasim and on his migration to Pakistan, vested with the Custodian of Evacuee Property, and thereafter settled in favour of Rai Bahadur Lakshman Das, a displaced person. But it appears that physical possession could not be delivered to the allottee as the building was in occupation of several tenants. It is pleaded that the appellant Anil Kalra, along with his brother, sister and two others, has stepped into the shoes of the landlords through Dr. Mulk Raj, Dwarika Das and Banarasi Das, heirs of Rai Bahadur Lakshman Das by way of sale deeds executed in the years 1982-1983. It is alleged by the appellant that after the tenants vacated the premises, an application was moved under Section 16(1)(b) of UP Act 13 of 1972 for release of the building for demolition and reconstruction before the Competent Authority (authorized Additional District Magistrate).

2. The Competent Authority called for a report from Rent Control Inspector, who inspected the spot and reported on 14.11.1984 that the Office of Cane Commissioner (tenant on the part of the building) was in the midst of vacating the same. He further reported that as per information received, Respondent No. 2 Mrigendra Pandey and Respondent No. 3 Nripendra Pandey (both sons of Dr. J.D. Pandey), under the banner of M/s. Swargiya Sanjay Gandhi Sahkari Avas Samiti Ltd., after breaking open the locks, had unauthorisedly occupied the building. It was further reported by the Rent Control Inspector that the Deputy Cane Commissioner had apprehended that the part vacated by him was also likely to be occupied by said society, and a First Information Report was lodged to that effect and the District Magistrate, Lucknow, was also informed about it. With the above information, the Rent

Control Inspector recommended that deemed vacancy be declared in respect of the building under Section 12(1)(b) of UP Act 13 of 1972, and further reported that there was a case in favour of the landlord-appellant for getting released the building for the purpose of demolition and reconstruction. (Co-landlords also joined Anil Kalra by moving separate application before the Competent Authority (Additional District Magistrate, City, Lucknow). On perusal of the report of the Rent Control Inspector and after inviting objections of concerned parties, vacancy was declared. Thereafter, vide order dated 30.12.1986 (on application dated 25.2.1986), the Competent Authority issued the order for release of the building under Section 16(1)(b) of UP Act 13 of 1972 in favour of the appellant and co-landlords. When after issuance of Form-C unauthorized occupants failed to vacate the building, Form-D was issued.

3.The unauthorized occupants filed a review petition before the Competent Authority (Additional District Magistrate, City), but the same was dismissed with the finding that the occupants were transferees from Swargiya Sanjay Gandhi Sahkari Avas Samiti Ltd., which has no title or authority to occupy the building. On this a Rent Revision was filed by respondent Nos. 1 to 3 (Dr. J.D. Pandey and his two sons Mrigendra Pandey and Nripendra Pandey, both advocates). The revision was decided by V Additional District Judge, Lucknow, vide order dated 28.10.1991, in favour of said respondents. The appellant and co-landlords filed the Writ Petition No. 183 (R/C) of 1991 before the High Court of Judicature at Allahabad, Lucknow Bench, challenging the order passed by the revisional court. After hearing the parties, the writ petition was allowed by the High Court, vide order dated 26.5.1999 with the direction that the proceedings for delivery of possession to the landlord shall be re-initiated from the stage they were stayed. The application for recall, filed by respondent Nos. 1 to 3, was dismissed on 4.7.2002. That round of litigation attained finality with the dismissal of Special Leave Petition (C) Nos. 24659-60 of 2002 on 10.12.2002, by this Court.

4. In the above circumstances, the appellant moved application for execution of Form-D before the Rent Control Officer (Additional District Magistrate, City, East, Lucknow), and on 22.2,2003 said authority issued direction for execution of Form-D. It is alleged by the appellant that to frustrate the release order, respondent Nos. 1 to 3 offered to give possession of thirteen rooms only, and got the eviction proceedings stalled against unauthorized occupants. This gave cause to the appellant to file Contempt Petition No. 265 of 2003 before the High Court. In said proceeding also respondent Nos. 1 to 3 expressed willingness to hand over possession of thirteen rooms only and not the building. The single Judge, hearing the contempt petition, directed the Rent Control Officer (Additional District Magistrate, City) to comply the order of the High Court, passed in the writ petition, against which Special Leave Petition (C) Nos. 24659-60 of 2002 had been dismissed. Respondent Nos. 1 to 3 filed Contempt Appeal No. 51 of 2006 against the interim order dated 1.12.2006, passed by the Judge hearing the contempt petition. The contempt appeal was dismissed as not maintainable. Thereafter, the respondents filed Special Appeal (Intra Court Appeal) No. 923 of 2006 before the High Court. The appellant raised a preliminary objection that no Special Appeal is maintainable against the order of the Judge hearing the contempt petition. However, the High Court rejected the preliminary objection. Hence, this appeal through

special leave, before us. Connected Civil Appeal Nos. 5688-89 of 2007 are filed by respondent Nos. 1 to 3 of the Civil Appeal No. 3763 of 2007 against the judgment and orders dated 1.12.2006 and 8.12.2006, passed by the High Court in Criminal Miscellaneous Case No. 265 of 2006 and Contempt Appeal No. 51 of 2006.

5. Mr. Pradeep Kant, learned senior counsel for the appellant, submitted that respondent Nos. 1 to 3 cannot be allowed to frustrate the orders of the court passed in the first round of litigation, which attained finality with the dismissal of Special Leave Petition (C) Nos. 24659-60 of 2002. On the other hand, Mr. Dinesh Kumar Garg, learned counsel for the respondents and affected parties, submitted that the landlords are not entitled to the release of more than thirteen rooms vacated by the Cane Commissioner.

6. However, the respondents failed to show that under what authority the building was being occupied by respondent Nos.

“1 to 3 and let out to various occupants in violation of Section

II of the UP Act 13 of 1972. Section 11 reads as under: -

“11. Prohibition of letting without allotment order. - Save as hereinafter provided, no person shall let any building except in pursuance of an allotment order issued under Section 16.”

7. There is no allotment order issued in favour of any of the alleged occupants under Section 16 of the UP Act 13 of 1972. It is not in dispute that the building is old and covered under sub-section (2) of Section 2 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, which was initially applicable to ten years old buildings as on 15.7.1972. By UP Act 28 of 1976 words “ten years” were substituted by “twenty years”, and by UP Act No. 11 of 1988 “twenty years” were substituted with “forty years”. As such, in any case the building was covered under the Act and not exempted under any of the clauses mentioned in Section 2 of the UP Act No. 13 of 1972.

8. The expression “District Magistrate” is defined in clause (c) of Section 3 and includes an officer authorized by the District Magistrate to exercise, perform and discharge all or any of his powers, functions and duties under the Act. Clause (b) of sub-Section (1) of Section 12 of UP Act No. 13 of 1972 provides that a landlord or a tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if he has allowed it to be occupied by any person who is not a member of his family. Section 13 of the Act provides that where a landlord or tenant ceases to occupy a building or part thereof, no person shall occupy it in any capacity on his behalf of otherwise than under an order of allotment or release under Section 16. Clause (b) of sub-section (1) of Section 16 provides that the District Magistrate may by an order release the whole or any part of the vacant building in favour of the landlord.

9. In *Firm Ganpat Ram Rajkumar v. Kalu Ram and others*¹, this Court, commenting on the conduct of the occupants on behalf of the firm, in a case under Haryana Urban (Control of Rent and Eviction) Act, 1973, has observed as under: -

“5. In the aforesaid view of the matter, the question that requires consideration is how will this order of eviction passed by the High Court and confirmed by this Court by dismissing the special leave petition on the terms mentioned hereinbefore on 24-8-1987 is to be enforced or implemented? In our opinion, the said order must be implemented and cannot be allowed to be defeated by the dubious methods adopted by the partners of the said firm of Ganpat Ram Rajkumar. The whole conduct betrays a calculated attempt to defeat the order of this Court and to mislead this Court. If that is the position, in our opinion, parties cannot be allowed to do so and get away by misleading this Court”

10. In *Zahurul Islam v. Abul Kalam and others*², after a decree of eviction passed by the Competent Court, a miscellaneous judicial case was filed before the Second Court of the Assistant District Judge, Alipore, West Bengal on the basis of forged rent receipts to get the execution proceedings stalled. Commenting on the conduct of the tenant, in said case this Court made following observations: -

“11. After considering the respective contentions of the learned counsel for the parties and the affidavits filed by Respondent 6, M/s Hind Barrel Co. and Respondents 13 to 15, it appears to us that in the facts and circumstances of the case, the petitioner is entitled to a direction from this Court that the decree should be executed immediately by the executing court and delivery of the entirety of the suit premises covered by the decree under execution, should be delivered to the decree-holder, the petitioner, Zahurul Islam, by the executing court by evicting Respondent 1, Abul Kalam and the other respondents including Respondents 6 and 13 to 15 and any other person in possession of any portion of the disputed premises, if necessary, with the police help ”

11. In *Gayatri Devi and others v. Shashi Pal Singh*³ in a case initiated under Delhi Rent Control Act challenging eviction decree, this Court expressed its concern in following words:

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“13. The history of this litigation shows nothing but cussedness and lack of bona fides on the part of the respondent. Apart from his tenacity and determination to prevent the appellants from enjoying the fruits of the decree, there appears to be nothing commendable in the case. Even before us the same arguments of fraud, and that the appellants were not legally owners of the suit ^property, were pleaded.

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18. Considering that the respondent has deliberately delayed the execution, the executing court shall dispose of the execution proceedings with utmost dispatch.”

12. In *M. Meeramytheen and others v. K. Parameswaran Pillai and others*⁴, considering the delay made by tenants in vacating the premises after orders passed under Kerala Buildings (Lease and Rent Control) Act, 1965, by getting inducted sub-tenant, this Court issued following directions: -

“14. The executing court will see that delivery of possession is effected within a period of fifteen days from the date of filing of the execution petition or the application aforementioned. In case for delivery of possession any armed force is necessary, the same shall be deputed by the Superintendent of Police within forty-eight hours from the date requisition is received therefore. It is also directed that in case anybody else, other than the tenants, is found in possession, he shall also be dispossessed from the premises in question.”

13. In *Atma Ram Builders Private Limited v. A.K. Tuli and others*⁵ deprecating the conduct of the tenant after the first round of litigation was over by getting inducted another person, this Court expressed its anguish as under: -

“4. It is deeply regrettable that in our country often litigations between the landlord and the tenant are fought up to the stage of the Supreme Court and when the tenant loses in this Court then he starts a second innings through someone claiming to be a co-tenant or as a sub-tenant or in some other capacity and in the second round of litigation the matter remains pending for years and the landlord cannot get possession despite the order of this Court. The time has come that this malpractice must now be stopped effectively.”

14. In view of law laid down by this Court, as above, and considering the facts and circumstances of the present case, and conduct of respondents whereby persons in large number inducted unauthorisedly by them without any allotment order, Civil Appeal No. 3763 of 2007, filed by the landlord, deserves to be allowed, and Civil Appeal Nos. 5688-89 of 2007, filed by the respondents (contemnors before the single Judge of the High Court) are liable to be dismissed. We order accordingly. We further direct the Competent Authority (Additional District Magistrate, City, East, Lucknow) to execute the Form-D. However, keeping in mind that there are several occupants (inducted unauthorisedly without any allotment order), on humanitarian ground they are allowed three months' time from today to vacate the premises voluntarily, where after they or anyone occupying in their place along with respondent Nos. 1 to 3 in Civil Appeal No. 3763 of 2007, shall be forcibly dispossessed within 48 hours in compliance of this order, as directed above. The District Magistrate and the Senior Superintendent of Police, Lucknow, are directed to provide every assistance in execution of the order of release, affirmed by the High Court in Writ Petition (R/C) No. 183 of 1991 on 26.5.1999. Needless to say that this Court has already dismissed Special Leave Petition (C) Nos. 24659-60 of 2002 on 10.12.2002, challenging the order passed in the writ petition by the High Court. We also clarify that the landlords are not allowed to let out the released building (in the existing condition), and they shall demolish the building for reconstruction for which the building has been released by the authority concerned.

15. With the directions, as above, Civil Appeal No. 3763 of 2007 is allowed and Civil Appeal Nos. 5688-89 of 2007 stand dismissed. There shall be no order as to costs.

¹(1989) Supp 2 SCC 0418

²(1995) Supp 1 SCC 0464

³(2005) 5 SCC 0527

⁴(2010) 15 SCC 0359

⁵(2011) 6 SCC 0385