Income Tax Officer Vs Smt. Kaiser Jahan and Another

C.M.W.P. No. 7829 of 2010

Court: Allahabad High Court

Date of Decision: May 24, 2010

Acts Referred:
Constitution of India, 1950 â€" Article 226, 227#Uttar Pradesh Consolidation of Holdings Act, 1953 â€" Section 11C

Citation: (2011) 4 AWC 3674

Hon'ble Judges: Devendra Pratap Singh, J

Bench: Single Bench

Advocate: Govind Krishna, for the Appellant; Himanshu Shekhar and A.S. Raj, for the Respondent

Final Decision: Dismissed

Judgement

Devendra Pratap Singh, J.
Heard Learned Counsel for the parties.

2. This petition is directed against concurrent judgments dated 30.5.2008 and 8.1.2010 by which the release application filed by the Respondent

No. 1 u/s 21 (1) (a) of U.P. Act No. XIII of 1972 (herein-after referred to as the Act) has been allowed by both the courts below.

3. It appears that the Respondent No. 1 filed a release application which was registered as P.A. Case No. 10 of 2002 under the Act inter alia with

the allegation that the proforma Respondent No. 2 was a tenant of the disputed building at the rate of Rs. 80 per month which was in the

occupation of the Petitioner and by virtue of a partition decree dated 16.5.1995 in suit No. 254 of 1989, she had become the owner and landlord

entitled to receive the rent and despite giving information to the tenant, rent was not paid or deposited. It was further asserted that she has a large

family of grown up children and their family but the residential accommodation in their possession was much less than their requirement and

therefore, the disputed building was needed for settling the families of the two sons.

4. The Petitioner and proforma Respondent No. 2 contested the application inter alia with the allegation that the disputed building was let out to the

proforma Respondent No. 2 wherein the office of the Petitioner was running since 1943 and the rent was also being paid but sometime in 1974,

the landlord Muzammil died but as he was issueless and there were no immediate heirs, the rent was being deposited u/s 30 of the Act. It was

further pleaded that the alleged partition/compromise decree was fraudulent and, therefore, was void and the parties to that suit, only to create title

in their favour, had filed the collusive suit. It was further asserted that since there were no heirs of the deceased landlord, the property would vest in

the State. It was also stated that the building which was in possession of the Respondent No. 1 was huge and where the entire family was

conveniently staying and there was no bona fide need for the disputed building.

5. In support of his case, the Respondent-landlord brought on record several documentary evidence to prove their prima facie title including

mutation of her name in the revenue records. Both the courts below, after considering the evidence on record have allowed the application holding

that the Respondent No. 1 was the owner and landlord of the disputed premises and her need for settling the family of her two sons was genuine

and bona fide and since the tenant did not make any effort to search out an alternative accommodation, it allowed the release application.

6. Learned Counsel for the Petitioner firstly urged that once title was disputed by the Petitioner, the release application was not maintainable and

the Respondent-landlord should have been relegated to the regular court to get a declaration to that effect. In support thereof, he has relied upon a

single Judge decision of this Court rendered in the case of Smt. Suman Lata v. Prescribed Authority 1985 (2) ARC 454 and a Supreme Court

decision in Budhu Mai v. Mahabir Prasad 1988 AWC 1057.

7. Before dealing with the aforesaid citations, it would be appropriate to examine the evidence which was on record. Admittedly the original owner

and landlord was Muzammil. The present landlord claims exclusive title in pursuance of a partition decree in suit No. 245 of 1989 decided on

16.5.1995 which was exhibited as paper No. 23-Ga. The landlord has also filed the decree in Misc. Succession Case No. 29 of 1979 dated

21.8.1979 which was on record as paper No. 25-Ga. They had also filed paper No. 26-Ga to 37-Ga which were Income Tax and Wealth Tax

notices and assessment order of the Income Tax Department against Mohammad Ishaq. Though the Petitioner has not filed any of the aforesaid

documents even though both the courts below have relied upon it to record a finding about the prima facie title of the landlord, but the said

documents have been produced during argument. A perusal of the decision in Succession Case No. 29 of 1979 dated 21.8.1979, Mohammad

Ishaq v. Amina Bibi and Ors. shows that succession certificate was granted to Mohammad Ishaq in reference to the movable property of

Muzammil to lay claim on the amounts deposited in the Post Office, Banks etc. The notices issued by the Income Tax Department filed as paper

No. 26-Ga to 36-Ga show that notices were issued to deceased Muzzamil u/s 30 of the Wealth Tax Act through his legal heir Mohammad Ishaq

for the years 1967-68; 1968-69; 1969-70; 1970-71; 1971-72; 1972-73 and 1973-74 and assessment order, paper No. 37Ga, was also passed.

All these have been issued by the income tax Department, Azamgarh. The partition decree dated 16.5.1995 which is paper No. 23-Ga shows that

in respect of the properties left by Muzammil several of his heirs laid claim in the said partition suit No. 245 of 1989, Mst. Zubaida Khatoon v.

Mohd. Ishaq and Ors. which was decided in terms of a compromise wherein the disputed building and one another property went into exclusive

share of Mohammad Ishaq. Paper No. 24-Ga is the property tax assessment order wherein the name of the landlord is entered in the column of

the owner while the Petitioners-department is entered in the column of tenant. The cumulative effect of these documents together with the oral

evidence leads to the only inference which has rightly been drawn by both the courts below. Neither the Petitioners nor the proforma Respondent-

tenant brought any documentary evidence on record to raise any suspicion on the derivative title of the landlord except bald assertion that the

partition decree was fraudulent and the other documents were manufactured. In fact, the department itself admitted in the notices that Mohammad

Ishaq was the legal heir of deceased Muzammil and therefore, it would be estopped from pleading otherwise.

8. Now let us examine whether the ratio rendered in the aforesaid two cases applies to the present facts. In the case of Suman Lata (supra), the

admitted case of the landlord in the release application u/s 21 (1) (a) of the Act was that his tenant had closed down his business and vacated the

premises but handed over the possession to a third party to whom the landlords did not accept as their sub-tenant but only as an unauthorized

occupant. The learned Judge on the premise that there was admission by the landlord himself that no landlord and tenant relationship existed

between him and the third party, held that the application u/s 21 was not maintainable. There was absolutely no question of denial of title but a

mere question of landlord and tenant relationship and the court was justified in rejecting the application because Section 21 deals with release of a

tenanted building from a statutory tenant and not from an authorized occupant for which application u/s 16 of the Act was the correct forum. Thus,

the decision is of no help to the Petitioner.

9. In the case of Budhu Mai (supra) the facts were that the owner and landlord had executed a registered deed in favour of his widowed daughter-

in-law and her two minor children assigning all the benefits arising out of the tenanted property to them so that they may maintain themselves but

subsequently he unilaterally revoked the said family settlement and asked the tenants to pay rent to him and on their failure, he filed an eviction suit

on the basis of arrears of rent where the tenants raised a plea that the registered family settlement was akin to transfer of title and its unilateral

cancellation would not deprive the widow and her two children the right to receive the rent. In these circumstances, the Supreme Court held that

where there was a title dispute, the eviction suit could not proceed before the Small Cause Court. However, it also went on to hold that:

it is also true that in a suit instituted by the landlord against his tenant on the basis of contract of tenancy, a question of title could also incidentally be

gone into and that any finding recorded by a Judge, Small Causes in this behalf could not be res judicata in a suit based on title.

10. Meaning thereby that the Judge, Small Causes Court can record a prima facie satisfaction with regard to title which would be subject to a

declaration before the regular courts. In the opinion of the Court, the ratio in Budhu Mai''s case would not apply in the present case.

11. Both the courts below after analyzing the evidence, have recorded findings of fact about prima facie title of the landlord which has not been

shown to be perverse or without evidence and therefore, the argument cannot be accepted.

12. It is then urged that since the alleged compromise conferring title on the Respondent-landlord was unregistered, it could not have been looked

into. In support thereof, he has relied upon a decision rendered in the case of Bhoop Singh v. Ram Singh Majoor 1996 ACJ 174 and Sardar Singh

Vs. Smt. Krishna Devi and another, .

13. In Bhoop Singh and Sardar Singh''s case (supra), both the courts below have basically held that registration is necessary even of courts decree

where it creates a right but it would not be necessary if it only recognizes an existing right. In Sardar Singh''s case, the Apex Court says that:

if it is foundation, creating right, title and interest in praesenti or future or extinguishes the right, title or interest in immovable property of the value of

Rs. 100 or above it is compulsorily registrable and non-registration render it inadmissible in evidence. If it contains a mere declaration of a pre-

existing right, it is not creating a right, title and interest in praesenti, in which event it is not a compulsorily registrable instrument.

14. A perusal of the partition decree shows that several parties were claiming their pre-existing right or share and interest in the properties left

behind by the deceased and six years after contest, the suit was finally decided on the basis of a compromise where shares were divided between

the parties and therefore, even according to the said decisions, nonregistration would not render it inadmissible in evidence and therefore, the

argument is bound to be rejected.

15. It is then urged that when none is there to inherit a property, it would automatically revert to and vest in the State. In support thereof, he has

relied upon a decision of the Apex Court rendered in the case of Sheo Nand and Ors. v. Deputy Director of Consolidation, 2000 (2) AWC 1276.

16. This question does not arise in the present case as Muzammil left behind his legal heirs whose status was recognized even by the Income Tax

Department and their claim was also duly recognized by the Courts and those orders have been acted upon and have become final. It would be

worthy of note that State Government itself has not come forward to lay any claim, then how can a tenant canvass such an argument? In the

opinion of the Court, it cannot and it is only a ploy to delay the inevitable. Further, the principle of ""escheat"", which literally means ""to revert to the

State"" is not applicable and the Supreme Court in the case of Sheo Nand was concerned with Section 11C of U.P. Consolidation of Holdings Act,

1953 and therefore, it would be alien to the present facts and thus, the argument is rejected.

17. Though half hearted arguments with regard to the findings of bona fide and genuine need and that on comparative hardship have been raised,

the counsel for the Petitioner has not been able to point out any error, much less an error on the face of the record. Recently the Apex Court in the

case of Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased) through LRs. and Others, , while considering an appeal against the order of

our High Court where the findings of fact recorded by the appellate court in a case of release were set aside, has held:

Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all Courts and Tribunals throughout the territories in

relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory In nature. The High

Court does not act as a Court of appeal or a Court of Error. It can neither review nor reappreciate, nor reweigh the evidence upon which

determination of a subordinate Court or inferior Tribunal purports to be based or to correct errors of fact or even of law and to - substitute its own

decision for that of the inferior Court or Tribunal. Ã¯Â¿Â½Thfe powers are required to be exercised most sparingly and only in appropriate cases in

order to keep the subordinate Courts and inferior Tribunals within the limits of law.

18. It has gone on to quote with approval its observation in an earlier decision in State, through Special Cell, New Delhi Vs. Navjot Sandhu @

Afshan Guru and Others, , to the effect that:

it is settled law that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.

Thus, this argument also cannot be accepted.

19. There is another aspect, whether this petition itself was maintainable?

20. In the pleadings of the release application and so also before this Court, it is admitted to the Petitioner that Union of India through Secretary,

Ministry of Finance was the tenant and Petitioner was only an occupier on its behalf but the tenant has not challenged the impugned orders either in

this petition or otherwise and, therefore, the order has become final as against the tenant. Can a mere occupier challenge it ?

However, since the petition has been heard and is being disposed of on merits, it would only be academic to beg an answer.

21. The Respondents before the court below and before this Court had raised specific pleas that the tenant had not paid or deposited even the

pittance called rent of Rs. 180 per month after 1979. Though the Petitioner says it was deposited in Court, but no evidence was either brought on

record before the court below or before this Court. It is disclosed in paragraphs 9 and 10 in the counter filed before this Court that the entire area

of tenancy is about Rs. 40,000 sq. ft. (about 1 acre) while the constructed area is about 9000 sq. ft., yet even the meagre rent, even by Azamgarh

standards, was neither paid nor deposited. However, since this petition is being dismissed, it would not be proper to raise the rent at this stage.

22. For the reasons above, this is not a fit case for exercise of power under Article 226 of the Constitution of India. Rejected. The Respondent-

landlord shall be entitled to her cost, quantified at Rs. 50,000.