

(2008) 07 AHC CK 0081

Allahabad High Court

Case No: None

Ram Pratap Singh alias
Shailendra alias Shalu

APPELLANT

Vs

Vinod Kumar Shivhare and
Others

RESPONDENT

Date of Decision: July 14, 2008

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 20(4)

Citation: (2008) 4 AWC 3540

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.U. Khan, J.

Heard Sri Ramendra Asthana, learned Counsel for the tenant petitioner and Sri P.N. Dubey, learned Counsel for the landlord respondent No. 1 (the other proforma respondents are tenants).

2. This is tenant's writ petition. Landlord respondent No. 1 instituted suit for eviction against tenant petitioner on the ground of default in the form of S.C.C. Suit No. 51 of 1997, J.S.C.C., Agra decreed the suit for eviction as well as for arrears of rent through judgment and decree dated 9.1.2007. Against the said judgment and decree, tenant petitioner filed S.C.C. Revision No. 10 of 2007, A.D.J., Court No. 14, Agra dismissed the revision on 15.3.2008, hence this writ petition.

According to the plaint allegations rate of rent was Rs. 30 per month and water tax in addition to the said amount was also payable by the tenant. However, tenant pleaded that Rs. 30 per month included tax also. The courts below found the version of the tenant in this regard to be correct.

3. Rent had not been paid since 1.6.1989. In order to avail benefit of Section 20(4) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 tenant deposited Rs. 4,500 on the first date of hearing, i.e., 26.8.1998. However, according to the courts below total amount required to be deposited was Rs. 5,203, i.e., there was deficiency of Rs. 703. According to the learned Counsel for the tenant petitioner, if tenant is held to be liable to deposit Rs. 30 per month, then there is no substantial error in the calculation of the courts below.

4. However, the main argument of learned Counsel for the tenant petitioner is that water tax even if payable by the tenant still it does not become part of the rent and in order to avail benefit of Section 20(4) of the Act, it is not necessary to deposit water tax. Learned Counsel has further argued that courts below held that the rent of Rs. 30 per month payable by the tenant included tax, accordingly amount of rent would be less than Rs. 30 per month as part of the said figure would be water tax. I do not agree with this argument in the least. The tenant had pleaded that the rent was Rs. 30 per month, which included water tax. This plea was accepted by the courts below. It did not mean that rent was less than Rs. 30 per month and the balance was the water tax. If parties agree that tenant would pay a certain amount per month and it would include water tax in the sense that over and above the said amount tenant would not be required to pay anything as water tax, then the said figure remains rent and only rent. The said figure cannot be split into two figures, one denoting the rent and the other denoting the water tax.

5. In any case by virtue of Section 7 of the Act, water tax becomes part of the rent. The relevant words u/s 7 of the Act are as follows:

The tenant shall be liable to pay to the landlord in addition to and as part of the rent the 6. ...water tax.

6. Deficiency of Rs. 700 in comparison to the deposited amount of Rs. 4,500 cannot be said to be negligible. Accordingly, tenant was rightly held not to be entitled to the benefit of Section 20(4) of the Act.

7. It may be mentioned that learned Counsel for both the parties stated that lower revisional court had granted stay order in favour of tenant petitioner on payment of Rs. 2,000 per month.

8. No other point was argued.

9. Accordingly, writ petition is dismissed.

10. Tenant petitioner is granted one year's time to vacate provided that:

1. Within six weeks from today he files an undertaking before the J.S.C.C. to the effect that on or before the expiry of aforesaid period of one year he will willingly vacate and handover possession of the property in dispute to the landlord-respondent.

2. Entire decretal amount due till date of passing of stay order by the lower revisional court is deposited within six weeks.

3. Rent/damages for use and occupation @ Rs. 2,000 per month with effect from the date on which stay order was passed by the lower revisional court till 14.7.2009 are deposited within six weeks (after adjusting the amount already paid or deposited) before the J.S.C.C. for immediate payment to the landlord-respondent.

11. In case of default in compliance of any of these conditions tenant petitioner shall be evicted through process of Court after six weeks and tenant petitioner shall be liable to pay damages at the rate of Rs. 2,000 per month since after six weeks till the date of actual vacation.