

(1999) 11 AHC CK 0081

Allahabad High Court

Case No: C.M.W.P. No. 48605 of 1999

Peer Gulam

APPELLANT

Vs

IIIrd Additional District Judge,
Etah and others

RESPONDENT

Date of Decision: Nov. 19, 1999

Acts Referred:

- Evidence Act, 1872 - Section 116
- Transfer of Property Act, 1882 - Section 106
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1)

Citation: (2000) 1 AWC 428

Hon'ble Judges: Yatindra Singh, J

Bench: Single Bench

Advocate: Vinod Prasad, for the Appellant; S. C., for the Respondent

Final Decision: Dismissed

Judgement

Yatindra Singh, J.

What is the status of a tenant after termination of his tenancy u/s 106 of the Transfer of Property Act (the T. P. Act)? Can such a tenant claim adversely to his landlord? Is an application u/s 21 (1) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972 (the new Act) maintainable against such a tenant? These are the questions that arise in this writ petition. Here are the facts.

Facts

2. Sri Om Prakash Gupta (the contesting respondent) is the landlord of the house in question. Petitioner is the tenant of the same. The contesting respondent terminated the tenancy of the petitioner by the notice dated 8.1.1972. At that time, the United Provinces (Temporary) Control of Rent and Eviction Act. 1947 (the old Act)

was applicable. He waited for another twelve years and then filed an application on 5.7.1984 u/s 21 (1) (a) of the new Act for the release of the house in question. The Prescribed Authority rejected his application on 6.12.1993, but his appeal was allowed on 30.9.1999, hence the present writ petition.

Points for Determination

3. Sri Vinod Prasad, counsel for the petitioner, has raised following points before me :

- (i) The tenancy of the petitioner was determined on 8.1.1972. What was his status thereafter? Was he a trespasser? Has he become owner of the house as twelve years had already expired at the time of filing the application u/s 21 (1) (a) of the new Act?
- (ii) An application u/s 21 (1) of the new Act can be filed only against a tenant. Was petitioner a tenant after determination of his tenancy? Was any application, u/s 21 (1) of the new Act, maintainable against him?
- (iii) Has the contesting respondent made out the grounds for eviction of the petitioner u/s 21 (1) (a) of the new Act?

1st Point : Possession of tenant after termination of tenancy-Permissive

4. Section 116 of the Evidence Act enacts a rule of estoppel between a landlord and a tenant. The Privy Council in *Bilas Kunwar v. Desraj Ranjit Singh*, held :

"A tenant who has been let into possession cannot deny his landlord's title, however, defective it may be, so long as he has not openly restored possession by surrender to his landlord."

This was approved by Apex Court in *Atayam Veerraju v. Pechetti Venkajuia*. One can, without adding any other authority, say a tenant, in possession of a premises, cannot deny the title of his landlord under whom he had entered, or from whom he has taken a renewal of his lease and to whom he has paid rent. A tenant cannot say that the landlord had no title at the time of his admission. Whether the landlord takes proceedings for ejectment, or rent, or use and occupation against his tenant, the tenant can neither set up the superior title of a third person, nor show that the landlord has no title. The only course for such a tenant (who wishes to set up superior title than his landlord), is to hand over the possession of the premises, and then take proceedings to recover it.

5. The counsel for the petitioner submitted that the law explained in the previous paragraph is distinguishable on the wordings of Section 116 of the Evidence Act. He laid emphasis on the following words of Section 116 of the Evidence Act "No tenant of Immovable property--shall during the continuance of the tenancy". According to him the tenancy was determined by the notice dated 8.1.1972, it came to an end ; there is no continuance of the tenancy ; and the bar of Section 116 of the Evidence Act is not applicable. There are divergent opinions. Sarkar on the Evidence 15th ed.

page 1923 narrates the two views as follows :

"The doctrine of estoppel does not extend after the discontinuance of tenancy, that is to say. It is open to the tenant to question the title of the landlord who had inducted him, if the tenancy is terminated and possession surrendered : and the tenancy may terminate by having run its prescribed course or by act of parties, e.g.. by reason of notice to quit served, or forfeiture, or by act of law, that is to say, the tenant is dispossessed by a person claiming and having a title paramount. But the preponderance of opinion is in favour of the view that if a tenant has been let into possession by a landlord, he cannot even after expiration of tenancy dispute his title and plead adverse possession, without first openly and actually going out of occupation, and thereby making it clear that he intended to dispute the title of his landlord.

Sarkar has opined that preponderance of opinion is that even after expiration of tenancy, the tenant cannot claim adverse possession. Let's consider some of the cases.

6. A Division Bench of Nagpur in *Mst. Hirabai v. Jiwanlal Palode*, has held that :

"Section 116 was not regarded as exhaustive of the rule of estoppel governing a landlord and a tenant.Even prior to the enactment of the Evidence Act the view prevailed that a tenant who had been let into possession was estopped from denying the landlord's title without surrendering possession.

.....

The fact that in the present case the tenancy came to an end by reason of forfeiture and the landlord served a notice asking the tenants to vacate the house did not make any difference to the applicability of the rule of estoppel which is grounded on the tenant being still on the premises which he had obtained from the landlord. The estoppel continues so long as the tenant does not surrender possession to the landlord."

So is the view of a Division Bench of Andhra Pradesh in *Bokka Sreeramulu v. Kalipatnapu Venkateshwar Rao* :

"It is then argued that the protection, if any, u/s 116 has come to an end by reason of the registered notice to quit given to the defendant ; but, as we have already observed above, the bar of estoppel continues till the defendant has given up his possession for the mischief contemplated by Section 116 cannot be avoided until the tenant actually goes out of occupation and there is a great preponderance of judicial opinion in favour of this view."

7. To sum up, the law is that the tenant cannot deny the title of landlord merely because his tenancy has come to an end by forfeiture or notice to quit u/s 106 of the T. P. Act. A tenant in order to claim adverse possession has to hand-over the

possession back to the landlord and then claim adverse possession. The possession of the petitioner after determination of notice dated 8.1.1972 was permissible and not adverse.

2nd Point : Petitioner was a statutory tenant--Application was maintainable

8. The relationship of the landlord and tenant was governed by the T. P. Act. This relationship was contractual. It is only in the middle of the 20th century that different States had enacted Rent Control Acts giving protection to the tenants. A Constitution Bench of the Supreme Court was called upon in *V. Dhanapal Chettiar v. Yesodai Ammal*, (the Dhanapal case) to consider if a notice to quit u/s 106 of the T. P. Act is necessary for eviction of a tenant under the Rent Control Acts. The Supreme Court held that :

Determination of a lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the Transfer of Property Act.

The Supreme Court in *M. Subbarao v. P. V. K. Krishna Rao*, (the Subbarao case) held that Constitution Bench in the Dhanapal, case had held that :

"In the matter of determination of tenancy the State Rent Acts do not permit a landlord to snap his relationship with the tenant merely by serving on him a notice to quit as is the position under the Transfer of Property Act. The landlord can recover possession of the property only on one or more of the grounds enacted in the relevant section of the Rent Acts. Even after the termination of the contractual tenancy the landlord under the definitions of landlord and tenant contained in the Rent Acts remains a landlord and a tenant remains a tenant."

9. A contractual tenant whose tenancy has been terminated continues to be a tenant : loosely called a statutory tenant. A statutory tenant differs from a contractual tenant in the sense that under the later, the tenant has an estate of interest in the demised property whereas in case of the former the tenant has a mere personal right of occupation. His rights are governed by the statute. A statutory tenant is not heritable unless so provided. Here under the old Act, statutory tenancy was not heritable but under the new Act it is heritable.

10. The petitioner in the present case after determination of notice dated 8.1.1972 was a statutory tenant. The relationship between the landlord and the tenant did not snap ; it continued. An application u/s 21 (1) of the Act is maintainable against

such a tenant. The proceedings u/s 21 (1) of the Act cannot be quashed on the ground that they were not maintainable.

3rd Point : Bona fide Need and

Comparison of Hardship

11. It is true that the Prescribed Authority had rejected the application holding that the need of the contesting respondent is not bona fide. But the appellate court has allowed the appeal after recording a finding that the need of the landlord is bona fide and greater hardship will occasion to him in case his application is dismissed. There is no illegality or perversity in the finding recorded by the appellate court. The Judgment is not vitiated on this Count.

Conclusion

12. The petitioner after determination of tenancy was not a trespasser. His status was that of statutory tenant. An application u/s 21 (1) of the new Act was maintainable against him. There is no illegality so far as the finding of bona fide need and comparative hardship is concerned. The writ petition has no merits. It is dismissed. However, the fact that the petitioner is a retired soldier of the Indian Army and is old man of 72 years, he may not be evicted from the premises in dispute for a period of 15 months from today provided he deposits entire arrears of rent within one month from today before the Prescribed Authority and also files an undertaking in the form of an affidavit within the same time before the prescribed authority that he will vacate the premises within 15 months and will pay the rent for the period of his occupation.