

(1995) 02 AHC CK 0135

Allahabad High Court

Case No: C.M.W.P. No. 32538 of 1995

Mohan Lai

APPELLANT

Vs

Ist Addl. District Judge and
Others

RESPONDENT

Date of Decision: Feb. 1, 1995

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 34, 340
- Penal Code, 1860 (IPC) - Section 420, 465, 467
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 16, 18

Hon'ble Judges: N.L. Ganguly, J

Bench: Single Bench

Advocate: R.B.D. Mishra, for the Appellant; S.C. and Sushil Harkauli, for the Respondent

Final Decision: Dismissed

Judgement

N.L. Ganguly, J.

An allotment order was passed in favour of one Satyendra Vir Singh on 9.11.84. Application for canceling the said allotment order was moved by the contesting Respondents. The prescribed authority cancelled the allotment order passed in favour of Satyendra Vir Singh. An application and revision was filed against the order of cancellation of the allotment order dated 9.11.84 by the present Petitioner Mohan Lai. The revision petition was dismissed by the 1st Addl. District Judge on the ground of non-maintainability. This writ petition by Mohan Lai, Petitioner is against the said order.

2. The perusal of the judgment of the court below shows that the accommodation in question was originally allotted in the name of Shri Niwas Vasistha on 3.1.78, who had dispossessed the landlady Smt. Pushpa Kumari and had occupied the premises on the basis of the allotment order. A revision application was filed against the

allotment in favour of Shri Niwas Vasistha who succeeded in lingering the proceedings in the revision for a pretty long time and lastly by order dated 14.9.90 the allotment order in his favour was set aside.

3. Smt. Pushpa Kumari, the landlady died during the pendency of the revision and her heirs were substituted as parties. The heirs of Smt. Pushpa Kumari landlady sold the property in question to the contesting Respondent Nos. 3 to 6.

4. By an application dated 4.5.91 Mohan Lai, Petitioner had filed an objection to the application filed by the opposite party Nos. 3 to 6 for delivery of possession through police in their favour. In objection filed by Mohan Lai, the Petitioner claimed himself to be the owner of the property in question. A Civil Suit No. 790 of 1978 was filed in the Court of Munsif, Agra in which an application was submitted in which it was stated that in a portion of the accommodation in question, one Rajendra Prasad and in the other portion Satyendra Vir Singh, the allotment order was passed treating Mohan Lai as owner of the property. It was also claimed that rent was paid to Mohan Lai by said Satyendra Vir Singh. The right and title of Smt. Pushpa Kumari or her heirs as owner of the property was denied. In the said proceedings, an application was moved on 15.10.91 by Satyendra Vir Singh claiming himself to be in possession of the accommodation and he had filed certain copies of the rent deed and receipts before the prescribed authority. The prescribed authority mentioned in the inspection note dated 13.4.77 and also the fact that the accommodation was allotted in favour of Sri Niwas Vasistha on 3.1.78. This allotment in favour of Shri Niwas Vasistha was challenged by Smt. Pushpa Kumari on the ground that he is wholly illegal and unauthorised occupant. It was found by the Rent Control and Eviction Officer that before the allotment in the name of Shri Niwas Vasistha, Smt. Pushpa Kumari was in possession of the property in question which was already released in her favour. In the revision filed by Smt. Pushpa Kumari, Shri Niwas Vasistha had opposed the revision and thereafter illegally transferred the possession to some one. Admittedly, Shri Niwas Vasistha in his application for allotment had mentioned the name of Smt. Pushpa Kumari as recorded owner of the property. The R.C. and E.O. in his judgment mentioned that there was no justification for Satyendra Vir Singh to have taken over possession during the pendency of the revision. The findings show that Shri Niwas Vasistha and Mohan Lai Petitioner and Satyendra Vir Singh had colluded and concealed the correct facts and order was obtained by concealing the correct facts. Thus, the order of allotment dated 9.11.94 was cancelled.

5. Admittedly, the order of cancellation of the allotment in the name of Satyendra Vir Singh was never challenged by Satya Vir Singh, who was the person affected by recalling of the allotment order.

6. The learned Counsel for the Petitioner Sri Ravi Kiran Jain submitted that the order dated 2.9.93 dismissing the revision as not maintainable was patently illegal and unwarranted. He submitted that the said order was passed u/s 16(b) of the U.P. Act

No. 13 of 1972. He further submitted that such an order is revisable under the provisions of Section 18 of the Act. He submitted that the order Impugned was wrongly labeled as interlocutory order. It was urged that the adjudication about the legality and validity of the allotment order dated 9.11.84 by the Impugned order is the final adjudication in the matter and cannot be said that It was an interlocutory order.

7. A perusal of the counter affidavit filed by the contesting opposite parties and rejoinder affidavit on behalf of the Petitioner, it Is apparent that the Petitioner and the contesting opposite parties both claimed themselves to be the owners of the property and landlords of the same. Application was submitted by way of objection before the prescribed authority by the Petitioner that he being the landlord and owner of the premises, is entitled to get the possession of the property and Smt. Pushpa Kumari was not entitled and competent to move the application for delivery of possession In her favour. The copy of the plaint In Suit No. 719 of 1978 filed before the Munsif, Agra Mohan Lai u. Smt. Prayandul Km. Gupta and Ors. is on record as Annexure-7 with the writ petition in which the relief claimed shows that Mohal Lai Petitioner had claimed a decree for permanent prohibitory injunction restraining the Defendant Nos. 1 to 3 from transferring the land and the ownership to any person and from interfering with the ownership and rights of the Plaintiff and proforma Defendants in the suit, the impugned order of the learned 1st Addl. District Judge shows that the objections of the revisionist which are pending for disposal before the same officer, which were pending and no final orders have been passed. The learned Addl. District Judge mentioned In the impugned order itself that the order challenged before him in revision was an Interlocutory order and the rights of the parties have not yet been finally disposed of, the disputed matters are still pending.

8. An application u/s 340, Code of Criminal Procedure has been filed on behalf of the contesting opposite parties on the ground and the Petitioner has concealed the material facts and has stated false facts in the writ petition and supplementary affidavit filed with the writ petition only for the purpose of procuring Interim order. Before proceeding to consider the application u/s 340 Code of Criminal Procedure I consider it appropriate to consider the present writ petition on merits after hearing the learned Counsel for the parties. After hearing the learned Counsel for the parties and perusal of the record, I am of the view that the Petitioner, although claims himself to be the owner of the property in respect of which he has filed certain copies of khatauni and certain orders of the Tahsildar, as basis for his claim. He has also filed copies of certain rent notes indicating that he is the owner of the property In question. Shri Sushil Harkauli, learned Counsel for the contesting Respondents submitted that the application for taking action and filing complaint against the Petitioner was filed in the court below also and the police on the basis of the orders of the court below, made investigation and launched criminal prosecution u/s 420, I.P.C. Case u/s 467/465, I.P.C. has also been initiated. This is

clear from the facts of the case that the claim of the Petitioner, if any, seeking declaration or Injunction was taken and same is said to have been dismissed. The short question for consideration by this Court is whether the court below was justified In rejecting the revision of the Petitioner on the ground of non-maintainability. The fact that the order of allotment in the name of Shri Niwas Vasltha stood cancelled and thereafter it was allotted in the name of Satyendra Vir Singh. It is well settled that the court shall give relief to the real aggrieved person. The allotment has been cancelled in the name of Satyendra Vir Singh who has not filed any revision against the said order of cancellation. The order of cancellation of allotment affected Satyendra Vth Singh directly, Mohan Lai, Petitioner is not to be affected by the cancellation of the allotment order in any manner? Mohan Lai, Petitioner if has any legal right in respect of the property, he should take recourse to the civil court for declaration or injunction. It is alleged that suit filed by Mohan Lai, Petitioner has been dismissed. The Petitioner is not the real aggrieved party nor any relief should be granted to a person, who is not the real aggrieved person. He may have any claim which can be asked for by himself before the appropriate civil court if not already adjudicated.

9. I do not consider it a fit case for invoking the jurisdiction under Article 226 of the Constitution at the instance of the Petitioner. An order obtained by Satyendra Vir Singh or Shri Niwas Vasistha by concealment of material facts and by playing deception was patently an order non est. Recalling such an order cannot be termed as adjudication of final order. In fact it would amount to setting aside something which was non est. I am of the view that the writ petition calls for no Interference under Article 226 of the Constitution and is liable to be dismissed. The Petitioner if has any legal right, may take recourse to competent court for their redress unless already adjudicated. I do not consider it appropriate in the facts and circumstances of the case to make enquiry or proceed with the proceedings u/s 340, Code of Criminal Procedure The application submitted by the Respondents u/s 340, Code of Criminal Procedure is also rejected.

10. The writ petition is dismissed. The interim order dated 14.9.93 is hereby vacated.