

(2004) 11 AHC CK 0240

Allahabad High Court

Case No: C.M.W.P. No. 43487 of 2002

Smt. Ranjana Bhargava

APPELLANT

Vs

A.D.J. and Others

RESPONDENT

Date of Decision: Nov. 5, 2004

Acts Referred:

- Transfer of Property Act, 1882 - Section 106
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21, 21(1), 21(8), 3, 38

Citation: (2005) 1 ARC 322 : (2005) 1 AWC 974

Hon'ble Judges: Janardan Sahai, J

Bench: Single Bench

Advocate: A.N. Bhargava and M.A. Mishra, for the Appellant; Ved Byas Mishra and M.K. Rajvanshi and S.C., for the Respondent

Final Decision: Allowed

Judgement

Janardan Sahai, J.

Heard Sri A.N. Bhargava, learned counsel for the petitioner and Sri Ved Byas Mishra, learned counsel for the respondents.

2. The petitioner is a landlord of a premises. She filed an application u/s 21 (8) of U.P. Act No. 13 of 1972 before the Rent Control and Eviction Officer, Allahabad, for enhancement of rent against the defendant Jal Nigam. The application was opposed by the third respondent on the ground that a civil suit for ejection of the Jal Nigam respondent No. 3 after terminating its tenancy was filed by the petitioner, which was dismissed by the trial court and a revision against that order is pending in the High Court. The objection found favour by the Rent Control and Eviction Officer, who dismissed the application. The appeal against the order was also dismissed by the impugned order dated 13.2.2002, passed by the Additional District Judge, Allahabad,

3. The stand in the counter-affidavit is that there is no relationship of landlord and tenant between the parties as the tenancy is alleged to have been terminated. No doubt by the notice u/s 106 of the Transfer of Property Act given by the landlord/petitioner the tenancy of the opposite party No. 3 would stand terminated but the position in law is that even after the termination of the contractual tenancy the statutory tenancy would still continue. Learned counsel for the respondent concedes that no objection has been taken by the respondent that the provisions of U.P. Act No. 13 of 1972 are not applicable to the building. The result would be that the opposite party would continue as a statutory tenant. In *Dinesh Chandra Misra v. Second Addl. D.J. Kanpur and Ors.* 1980 ARC 116, this Court has held that mere termination of tenancy by a notice u/s 106 of the Transfer of Property Act where the tenant continues to enjoy the protection of the Act against eviction under the provisions of the Act, does not end his status of a tenant except in a formal way and the word "tenant" in Section 21 must be interpreted to include a person whose tenancy had been terminated but who was continuing as tenant. It was also held that even though technically only damages for use and occupation may be payable after the termination of the tenancy, the amount so payable can be regarded as rent and the person liable to pay the same is a tenant for the purposes of the definition of "tenant" in Section 3 (a) as well as for the purposes of Section 21 (1) of the Act. If the person whose tenancy has been terminated by a notice u/s 106 of the Act can be regarded as a tenant within the meaning of Section 3 (a) of the Act there is no reason why his tenancy should not be treated as subsisting for purposes of proceedings u/s 21 (8) of the Act. On the point that the statutory tenancy continues learned counsel for the petitioner also relied upon a decision in *Md. Mahmud Hasan Laskar and Ors. v. Montazi Ali Barbhuiya and Anr.* AIR 1980 GAU 147 in which it has been held that after the termination of contractual tenancy where the building is governed by the provisions of the Rent Control Act the statutory tenancy under the Rent Control Act would continue. The provisions of Section 21 (8) of U.P. Act No. 13 of 1972 would, therefore, be applicable. Section 38 of U.P. Act No. 13 of 1972 provides that the Act will have overriding effect over the provisions of the Transfer of Property Act and Civil Procedure Code. As such the view taken by both the authorities that in view of the pendency of the civil revision the application u/s 21 (8) of U.P. Act No. 13 of 1972 was not maintainable is erroneous. Accordingly, the writ petition is allowed. The order of the Rent Control and Eviction Officer as well as the order dated 13.2.2002, passed in appeal by the Additional District Judge, Allahabad, are set aside and the Rent Control and Eviction Officer is directed to dispose of the application u/s 21 (8) of U.P. Act No. 13 of 1972 in accordance with law expeditiously.