

(2014) 01 AHC CK 0041

Allahabad High Court (Lucknow Bench)

Case No: Runt Control No. 10 of 2004

Surya Prakash Mishra

APPELLANT

Vs

Gurubachan Singh
Saluja and OthersRESPONDENT

Date of Decision: Jan. 20, 2014**Acts Referred:**

- Transfer of Property Act, 1882 - Section 114
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 2(2)

Citation: (2014) 4 ALJ 40 : (2014) 103 ALR 66**Hon'ble Judges:** Sibghat Ullah Khan, J**Bench:** Single Bench**Advocate:** S.K. Mehrotra, Advocate for the Appellant; R.K. Dwivedi, Jaspreet Singh and S.P. Shukla, Advocate for the Respondent**Final Decision:** Dismissed

Judgement

Sibghat Ullah Khan, J.

Heard Shri S.K. Mehrotra, learned Counsel for the tenant petitioner and Shri Jaspreet Singh learned Counsel for the landlords opposite parties Nos. 1 to 3. This is tenant's writ petition arising out of suit for eviction filed against him by the landlords respondents in the form of S.C.C. Suit No. 13 of 1991, Gurubachan Singh and others v. Surya Kumar Mishra and Akhilesh Kumar (Akhilesh Kumar is proforma opposite party No. 4 in this writ petition). J.S.C.C./Civil Judge, Senior Division Lakhimpur Khiri decreed the suit on 2.3.2001 only on the ground that U.P. Act No. 13 of 1972 was not applicable to the building in dispute which was in the form of two shops. Rate of rent of both shops is Rs. 1400 per month. However the findings of default and sub letting were recorded in favour of the tenant and against the landlords. Against the judgment and decree passed by the Trial Court petitioner filed Revision No. 5 of 2001, 5th A.D.J. Lakhimpur Khiri dismissed the revision on 2.1.2004, hence this writ petition.

2. It was alleged that the tenant petitioner had sub let a part of the shop in dispute to Akhilesh Kumar defendant No. 2/opposite party No. 4. The said assertion of the landlord was not believed by the Courts below.

3. Prior to filing of the suit notice of terminating the tenancy was sent through registered post on 23.10.1991. Defendant petitioner admitted the receipt of the notice.

4. Plaintiff landlord asserted that the shop in dispute was constructed in 1985 hence in 1991 when suit was filed, U.P. Act No. 13 of 1972 was not applicable thereupon. The property in dispute consists two shops. Petitioner took them on rent in 1987 and 1988.

5. The tenant pleaded that initially there was an old shop in the tenancy occupation of Rashid Ali who was running the business under the trade name New Light Studio; thereafter it was purchased by the plaintiff and after making necessary changes it was let out to the petitioner; However the changes were not very extensive hence building continued to be old. Plaintiff purchased the property through registered sale-deed dated 17.9.1979. In the sale-deed the property sold was described as open land having garrage and two Kaccha houses. It was found by the Courts below that the shops in dispute were constructed over the portion which was garrage when sale-deed was executed and in the said garrage initially Rashid Ali was tenant. In the notice it was mentioned that the property had been constructed in 1985. Reply to the said notice was given by the tenant but the said assertion was not denied. Application to Executive Officer, Nagar Palika, Lakhimpur Khiri was given by the landlord on 16.3.1985, copy of which was filed before the Court below. In the said application landlords intimated that they had constructed 20 new shops and they must be assessed to house tax. Accordingly 16.3.1985 could be the date of construction. House tax was assessed for the first time in the year 1985-86.

6. In view of the above no fault can be found with the findings of the Courts below that building was constructed in 1985 and not earlier. The tenant did not file any other house tax assessment document. By virtue of explanation I to section 2(2) of U.P. Act No. 13 of 1972 date of reporting of the construction or date on which first assessment (House tax assessment) comes into effect would be the date of construction. If U.P. Act No. 13 of 1972 does not apply then tenant is liable to eviction after termination of tenancy. Receipt of notice terminating the tenancy was admitted by the tenant.

7. Reference to an authority of this Court in Asgar Ali v. Razzaq Hasan 2004 (22) LCD 446 by learned Counsel for the petitioner is misplaced. In the said case benefit of section 114 T.P. Act was given to the tenant as under the agreement between the parties, it was provided that tenant would be liable to eviction only on three months default in payment of rent.

8. It appears that Shri Narayan Gupta tenant of another shop of the same complex filed Revision No. 131 of 1999 against similar judgment of eviction. The revision was dismissed by this Court on 8.7.2002 holding that the complex was constructed in 1985

placing reliance upon landlord's application dated 16.3.1985 to the Nagar Palika for assessment and the fact that the building was assessed from 27.7.1985.

9. Some other authorities have also been cited which I do not consider necessary to discuss. Writ petition is therefore dismissed.

Tenant-petitioner is granted six months time to vacate provided that:

1. Within one month from today tenant files an undertaking before the JSCC to the effect that on or before the expiry of aforesaid period of six months he will willingly vacate and handover possession of the property in dispute to the landlord-respondent.

2. For this period of six months, which has been granted to the tenant-petitioner to vacate, he is required to pay Rs. 15000/- (at the rate of Rs. 2500/- per month) as rent/damages for use and occupation. This amount shall also be deposited within one month before the JSCC Lucknow and shall immediately be paid to the landlord-respondent.

3. Entire unpaid rent at the old rate due till date is deposited before the JSCC for immediate payment to the land lord respondent.

In case of default in compliance of any of these conditions tenant-petitioner shall be evicted through process of Court after one month. It is further directed that in case undertaking is not filed or Rs. 15000/- and the unpaid rent are not deposited within one month then tenant-petitioner shall be liable to pay damages at the rate of Rs. 4000/- per month since after one month till the date of actual vacation.

Similarly, if after filing the aforesaid undertaking and depositing Rs. 15000/- and the unpaid rent the house in dispute is not vacated on the expiry of six months then damages for use and occupation shall be payable at the rate of Rs. 4000/- per month since after six months till actual vacation. It is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and initiate execution proceedings.