Aurobindo Society and Another Vs Sheesh Ram Kanswal

Court: SUPREME COURT OF INDIA

Date of Decision: Nov. 10, 2016

Citation: (2017) 1 RCRRent 1 : (2017) 1 RecentApexJudgments(RAJ) 297 : (2017) 1 RentLR 175 : (2016) 12 Scale 178

Hon'ble Judges: J. Chelameswar and Prafulla C. Pant, JJ.

Bench: Division Bench

Advocate: Sanjay Parikh, Ms. Anitha Shenoy, Ms. Ninni Susan Thomas, Ms. Surbhi Agarwal, Dharavi S., Ms. Shristi Agnihotri, Advocates, for the Appellants; Somnath Mukherjee, Advocate, for the Respondents

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Leave granted.

2. The first appellant is a society registered under the Societies Registration Act, 1860 owning property in the premises bearing no. 189/1 (New

no. 566) of the Haridwar Road, Rishikesh. The said premises came to be allotted on 23.6.1986 in favour of the respondent purportedly in

exercise of the power under Section 16(1) of U.P. Urban Building(Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter, `the ACT'').

3. Aggrieved by the same, the first appellant preferred a revision under Section 18 of the ACT. One of the grounds was that the first appellant was

not given an opportunity contemplated under the proviso to Section 16(1) of the ACT before the order of allotment came to be passed. The said

revision was pending for more than a decade.

4. During the pendency of the revision, the ACT came to be amended by Act no. 5 of 1995 declaring that the ACT did not apply to any building

belonging to or vested in a public charitable or public religious institution"".

5. The revision was allowed on 21.4.1997.

6. It was held by the revisionary authority that the allotment of the property in issue is unsustainable for two reasons: (i) the ACT itself did not apply

to the property in question in view of the declaration under Section 2(bb) [1*] of the ACT, and (ii) the mandate of proviso to Section 16(1) was

not complied with.

[1* 2. Exemptions from operations of the Act - (1) Nothing in this Act shall apply to the following, namely-

xxx xxx xxx xxx

(bb) any building belonging to or vested in a public charitable or public religious institution;]

7. The respondent challenged the revisionary order by way of a writ petition in the Allahabad High Court initially which came to be transferred to

the High Court of Uttarakhand and re-numbered as Writ Petition No. 3467 of 2001.

8. Interestingly, within a period of less than two months after the revisionary order holding the initial order of allotment illegal, the respondent

submitted an application on 4.6.1997 for re-allotment of the premises in question. On 13.6.1997, re-allotment order came to be passed in favour

of the respondent.

9. Aggrieved by the same, the first appellant filed (i) a review [2*] petition on 3.7.1997 and a revision No.89/97. The said review petition was

allowed [3*] by an order dated 7.7.97 setting aside the reallotment order.

[2* It is highly doubted whether such a review is tenable in law. However, neither the respondent nor the authority before whom the review

application was filed ever bothered about that aspect.]

[3* ""Therefore, property bearing old No.189/1, Haridwar Road, Rishikesh and new No.566, Haridwar Road, Rishikesh reallotted to Shri Sheesh

Ram Kanswal on 13.6.97 is cancelled and set aside. The file be consigned to record room.""]

10. Aggrieved by the order dated 7.7.97, the respondent carried the matter in revision. The said revision was allowed by the order dated

10.1.2002 on the ground that the respondent allottee was not heard by the reviewing authority before passing the order dated 7.7.1997. The

revisionary authority, therefore, directed (the Rent Controller & Eviction Officer) to hear both the parties and pass orders afresh.

11. The Revision no. 89 of 1997 filed by the first appellant society was dismissed by another order dated 10.1.2002 on the ground that in view of

the order dated 7.7.1997 reviewing the order of re-allotment, there was no need to examine the correctness of the re-allotment order.

12. Aggrieved by the two orders mentioned above, the first appellant society filed Writ Petition no. 106 of 2002. The said writ petition was heard

along with writ petition no. 3467 of 2001 (referred to supra) filed by the respondent. By the impugned judgment, Writ Petition no. 106 of 2002

was dismissed and Writ Petition no. 3467 of 2001 was allowed.

Hence these appeals.

13. Section 16 of the ACT authorises the District Magistrate to pass orders requiring a landlord [4*] to let the vacant building or a part of it to any

specified person. Section 16(1)(a) reads as follows:

[4* "landlord" in relation to a building, means a person to whom its rent is or if the building were let, would be, payableand inlcudes, except in

Clause(g), the agent or attorney or such person]

16. Allotment and release of vacant building - Subject to the provisions of the Act, the District Magistrate may by order -

(a) require the landlord to let any building which is or has fallen vacant or is about to fall vacant, or a part of such building but not appurtenant land

alone, to any person specified in the order(to be called an allotment order):

14. However, the proviso to the said sub-section mandates that the District Magistrate to give an opportunity to landlord to establish that the

operation of Section 16 is not attracted in his case.

Provided that in the case of a vacancy referred to in sub-section(4) of Section 12, the District Magistrate shall give an opportunity to the landlord

or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under clause(a).

15. There is a categoric finding in the Rent Control Revision no. 23 of 1997 filed by the first appellant herein that no opportunity contemplated

under proviso to Section 19 was given to the appellant before the order dated 23.6.1986(the original order of allotment in favour of the

respondent). The relevant portion of the Revisionary Order reads as follows:-

In addition to this, one important fact is this that after declaring the house vacant it was mandatory for the Rent Controller and Eviction Officer to

provide opportunity of hearing to the landlord under Section 16 of the UP Act No. 13/72 but from the facts available in the file, it becomes clear

that after declaring the house in question as vacant and prior to allotment, the Rent Controller and Eviction Officer had not afforded any

opportunity of hearing to the landlord whereas, it was very essential to provide such an opportunity and in the absence of the same, the allotment

cannot be held valid and lawful.

It was therefore concluded:-

As has been stated by me hereinabove that the Rent Controller and Eviction Officer had not given any notice prior to allotment, hence, the

allotment order is not proper and for the aforesaid ground also, the allotment order dated 23.6.86 is liable to be set aside.

16. The said finding of fact that the allotment order was not preceded by an opportunity contemplated under proviso to Section 16(1) is not

disturbed by the High Court in the impugned judgment.

17. The other question considered by the High Court is that whether in view of the subsequent amendment to the ACT by the UP Act 5 of 1995

exempting buildings belonging to or vested in a public charitable or public religions institutions whether the re-allotment order dated 13.6.1997

could have been passed.

18. The High Court by the impugned judgment opined that in view of the original order of the allotment dated 23.6.1986, the respondent acquired

accrued right and not a mere right"". This accrued right became a ""substantive right"" and consequently UP Act no. 5 of 1995 which came into

existence on 26.9.1994 could not divest that right which had already accrued to the allottee. The relevant portion of the judgment reads as

follows:-

The court, however, finds that an allotment order was made in favour of the allottee pursuant to which the allottee was given possession. Upon

such orders being passed, the allottee acquired an accrued right and not a mere right. This accrued right became a substantive right and,

consequently, the UP Act No. 5 of 1995 which came into existence on 26th September, 1994 could not divest that right which had already

accrued to the allottee. In the opinion of the court, even if the proceedings were pending in a revision pursuant to the order of allotment being

passed by UP Act no. 5 of 1995 could not divest that right, which had already accrued to the allottee. The landlord could not take advantage of

UP Act no. 5 of 1995 and contend that the protective umbrella which gave a protection to the tenant had now been removed and the allottee was

required to seek the remedy under the civil law.

In view of the aforesaid, the provision of Section 6(c) of the General Clauses Act is wide enough to include the accrued right of an allottee to

protect himself under the Rent Act and the UP Act no. 5 of 1995 would not come in the way in the pending proceedings under the Rent Act.

Consequently, the court is of the opinion that upon coming into force the UP Act no. 5 of 1995, pending proceedings before the revisional court or

before the Rent Control & Eviction Officer was not affected and that the authorities/courts were competent to adjudicate upon the matter.

19. For reaching the conclusion that the respondent acquired an indefeasible right, the High Court placed reliance on Section 6 [5*] of the UP

General Clauses Act.

[5* ""Effect of repeal - Where any [Uttar Pradesh], Act repeals any enactment hitherto made or hereafter to be made, then, unless a different

intention appears, the repal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any remedy, or any investigation or legal proceeding commenced before the repealing Act shall have come into operation in respect of

any right, privilege, oligation, liability, penalty, forfeiture or puishment as aforesaid;

and any such remedy, may be enforced and any such investigation or legal proceeding may be continued and concluded, and any such penalty,

forfeiture or punishment imposed as if the repealing Act had not been passed.""]

20. We find it little disturbing to notice the logic adopted by the High Court. Section 6 of the Act clearly indicates that it only provides for the

consequences following the repeal of an earlier enactment by a subsequent enactment. In the instant case, there is no repeal of any earlier

enactment. Amendment Act 5 of 1995 only inserts a new clause into the ACT making a declaration that the provisions of the ACT did not apply to

certain clauses of property specified therein. Section 6 of the UP General Clauses Act would have no application to such a situation. The High

Court simply ignored the language of Section 6.

21. In the circumstances, the conclusion reached by the High Court that the respondent acquired ""an accrued right and not a mere right"" is without

any basis in law. Such a conclusion cannot be sustained. The initial allotment dated 23.6.1986 is without affording any opportunity to the appellants

and, therefore, the order is void ab initio. We, therefore, set aside the judgment under appeal.

22. The civil appeals are allowed.

23. We also deem it appropriate, in the circumstances of the case, to direct the respondent to vacate the premises in question within a period of 8

weeks from today.