

RAMESH CHAND
v.
PRESCRIBED AUTHORITY & ANR.

JULY 27, 1989

[M.H. KANIA AND L.M. SHARMA, JJ.]

Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972—Section 43(2)—Landlord bound by undertakings-cum-assurances given by him while seeking permission to file suit for eviction of tenant.

In 1959 the landlord filed an application under section 3(1) of the U.P. (Temporary) Control of Rent & Eviction Act, 1947 for the eviction of the tenant from the shop on the ground that the landlord wanted to demolish the shops in the building including the shop of the appellant/tenant and in their place wanted to construct new shops and residential portion on the first floor. In the application the landlord gave an assurance (undertaking) that he would give new shop to the tenant/appellant after the new shops were constructed, at a reasonable rent. This application was contested by the appellant/tenant alongwith other tenants. The application was made to the District Magistrate u/s 2(d) of the U.P. Rent Act, 1947. The Rent Controller and Eviction Officer who acted as District Magistrate under the said Act granted the permission and rejected the contentions of the tenants. Against this decision all the tenants filed revision petitions which were dismissed by the commissioner Rohilkhand Division, Bareilly. The tenants preferred further revision to the State Govt. u/s 7-F of the said Act. In disposing of the revision petitions the Special Secretary noted that the landlord had given an undertaking to the tenants that they would be given newly constructed shops on standard rent and that during the period taken for construction alternative accommodation would be given to them. Thereafter the landlord filed a suit on the basis of the permission for eviction of the tenants. During the pendency of the suit the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 came into force. The U.P. Rent Act of 1947 was repealed and some amendments were made to section 43(2)(rr) in the U.P. Rent Act of 1972 whereby the landlords who had on the basis of permission granted to them u/s 3(1) of the U.P. Rent Act of 1947 instituted suits for the eviction of the tenants were given the right to apply for eviction of their tenants straightaway if the permission granted to them under section 3(1) of the U.P. Rent Act of 1947 had been obtained on any ground

specified in sub-section (1) or sub-section (2) of section 21 of the U.P. Rent Act of 1972. Taking advantage of these provisions, the landlord filed an application for an order of eviction u/s 43(2)(rr) of the U.P. Rent Act 1972. The Prescribed Authority dismissed the application of the landlord on the ground that the permission obtained by him was conditional permission and it would come into operation when the landlord had complied with the offer made by him and until then he could not claim eviction of the tenant u/s 43(2)(rr) of the U.P. Rent Act, 1972. Against that order the landlord preferred a writ petition in the High Court of Allahabad. The High Court took the view that the Prescribed Authority was bound to allow the application of the landlord u/s 43(2)(rr) and order eviction. Against this judgment the tenant-appellant came up by way of special leave. In setting aside the order of the High Court, this Court in allowing the appeal,

HELD: One of the circumstances which constituted the basis for the grant of the permission to file the suit for eviction was that the landlord gave an assurance-cum-undertaking to give the newly constructed shops to the tenants sought to be evicted including the tenant in the appeal and that the landlord also gave a similar assurance to give alternative accommodation to the tenant during the period which would be taken in completing the new construction. Nothing is found in the provisions of Section 43(2)(rr) of the U.P. Rent Act of 1972 which would enable the landlord to evade his duty to comply with the undertaking-cum-assurances given by him. The undertaking-cum-assurances given by the landlord in the instant case certainly formed part of the basis on which the permission to file suit for eviction was unconditionally given to him. It is but fair that the Court should see to it that the tenant is not deprived of the benefit of the undertakings-cum-assurances. [566G, 567F]

Asa Singh v. B.D. Sanwal & Ors., AIR 1969 All. 474 and *Bansilal Sahu v. The Prescribed Authority & Anr.*, AIR 1980 All. 194, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2548 of 1983

From the Judgment and Order dated 15.9.82 of the Allahabad High Court in Civil Misc. W.P. No. 14807 of 1981.

Pramod Swarup for the Appellant.

R.B. Mehrotra for the Respondents.

A The Judgment of the Court was delivered by

KANIA, J. This is an Appeal by Special Leave against a judgment and order dated September 15, 1982 delivered by the Allahabad High Court in Civil Miscellaneous Writ No. 14807 of 1981.

- B The appellant before us is the tenant of the shop in question. Respondent No. 1 is a proforma party, namely, the Prescribed Authority, and respondent No. 2 is the landlord of the building containing the shop in question, situated at Mandi Harbansganj Dhampur. We propose to refer to the appellant as the tenant and respondent No. 2 as the landlord. In 1959 the landlord filed an application under section 3(1) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to as "the U.P. Rent Act of 1947") for the eviction of the tenant from the said shop. The said application was made on the ground that the landlord wanted to demolish the shops in the building including the said shop and in their place wanted to construct new shops and also to construct the residential portion on the first floor. In the new building the accommodation would be much larger and, apart from shops, even residential premises would be constructed. In paragraph 7 of the application, the landlord gave an "assurance (undertaking that the applicant will give the new shop to the second party after the new shops are constructed on a reasonable rent." It is common ground that the applicant referred to was the landlord and the second party referred to was the tenant. This application was contested by the tenant along with other tenants, against whom also, the similar applications were filed. The application was made to the District Magistrate within the meaning of the said expression in sub-section (d) of section 2 of the U.P. Rent Act of 1947. The Rent Controller and Eviction Officer who acted as District Magistrate within the connotation of the said term under the said Act, about which there is no dispute, granted the permission and rejected the contentions of the tenant. In the order granting the permission, which order, is dated February 27, 1980, the Rent Controller and Eviction Officer noted that the landlord was ready to give the newly constructed shops to the tenants on a reasonable rent. Taking into account all relevant facts and circumstances including the aforesaid fact of the assurance-cum-undertaking given by the landlord, the permission to evict the tenant was granted. Against this decision all the tenants including the tenant herein filed revision petitions which were dismissed by the Commissioner, Rukhilkand Division, Bareilly. The tenants applied by way of further revision to the State Governor under Section 7-F of the said U.P. Rent Act of 1947. In disposing of the revision
- H

petitions, the Special Secretary, who disposed of the same in the name of the Governor of the State of U.P., noted that the landlord had given an undertaking to the tenants that they would be given newly constructed shops on standard rent and that during the period taken for construction, alternative accommodation would also be given to them. Thereafter, the landlord filed a suit on the basis of the aforesaid permission for eviction of the tenant. During the pendency of the suit, the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the U.P. Rent Act of 1972') came into force. The U.P. Rent Act of 1947 was repealed by sub-section (1) of section 43 of the U.P. Rent Act of 1972 save and except to the extent provided in the savings clause set out at sub-section (2) of that section. Some amendments were made to section 43(2) (rr) in the U.P. Rent Act of 1972 by the U.P. Act of XXXIII of 1976, whereby the landlords who had on the basis of the permissions granted to them under section 3(1) of the U.P. Rent Act of 1947 instituted suits for the eviction of their tenants were given the right to apply for eviction of their tenants straightaway if the permission granted to them under section 3(1) of the U.P. Rent Act of 1947 had been obtained on any ground specified in sub-section (1) or sub-section (2) of section 21 of the U.P. Rent Act of 1972. Taking advantage of these provisions, the landlord filed an application for an order of eviction against the tenant on the ground that the permission had been obtained by the landlord on the ground specified in clause (b) of section 21(1) of the U.P. Rent Act of 1972 and hence, he was entitled to an order of eviction straightaway under section 43(2) (rr) of the U.P. Rent Act of 1972. The Prescribed Authority dismissed the application of the landlord on the ground that the permission obtained by him was a conditional permission and it could not come into operation unless the landlord had complied with the offer made by him before the Rent Controller and Eviction Officer, namely, to make available to the tenant an alternative shop. It was held by the Prescribed Authority that till that condition was satisfied by the landlord, he could not claim the eviction of the tenant under section 43(2) (rr) of the U.P. Rent Act of 1972. Against this order, the landlord preferred the aforesaid writ petition which was disposed of by the learned Single Judge of the High Court by the impugned judgment. The learned Judge took the view that the Prescribed Authority was bound to allow the application of the landlord under section 43(2) (rr) of the U.P. Rent Act of 1972 and order eviction. It was held by the learned Judge that the ground on which permission was granted by the Rent Controller and Eviction Authorities under the U.P. Rent Act of 1947 fell within clause (b) of sub-section (1) of section 21 of the U.P.

- A Rent Act of 1972 and hence, the Prescribed Authority under the Act of 1972 had no jurisdiction to embark upon any fresh enquiry as to the nature of the permission. It was held by the learned Judge that the finding of the Rent Control authorities was that the building was in a dilapidated condition and required demolition and hence, the Prescribed Authority had no jurisdiction to impose any condition before
- B granting an eviction order. It was held by him that the Prescribed Authority had failed to exercise its statutory duty to order the eviction of the tenant. The learned Single Judge directed the Prescribed Authority to pass an order of eviction against the tenant. It is this judgment of the learned Single Judge which is impugned before us by Shri Parmod Swaroop, learned counsel for the appellant.

C

- Learned counsel for the appellant submitted that the decision of the prescribed Authority to decline the prayer for eviction made by respondent No. 2 was justified in view of the undertakings given by respondent No. 2 when the permission to file a suit for eviction was
- D given under the U.P. Rent Act of 1947 and the High Court was in error in upsetting the decision of the Prescribed Authority. It was, on the other hand, contended by Mr. Mehrotra, learned counsel for respondent No. 2 that in view of the provisions of section 43(2) (rr) of the U.P. Rent Act of 1972, the Prescribed Authority had no jurisdiction to go behind the permission and was bound to give an order for eviction
- E unconditionally as held by the High Court in its impugned judgment. Although the judgment of the Prescribed Authority, which was set aside by the High Court, is not before us, it appears clear from the impugned judgment that the Prescribed Authority took the view that the permission granted to respondent No. 2 to file the suit for eviction was a conditional one and was operative only on the performance of
- F the condition incorporated in the undertaking given by the landlord.

We are of the view that the entire argument before us proceeds to a large extent on a misapprehension. However, before dealing with the rival submissions, we propose to refer to the relevant provisions of the aforesaid two Acts very briefly.

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- U.P. Rent Act of 1947 was a temporary measure enacted with the object of continuing during a limited period the powers to control the letting and the rent of residential and non-residential accommodation and to prevent the eviction of tenants from the same. The relevant
- H portion of sub-section (1) of section 3 of that Act runs as follows:

"3. Restrictions on eviction.

(1) Subject to any order passed under sub-section (3) no suit shall, without the permission of the District Magistrate, be filed in any civil court against a tenant for his eviction from any accommodation, except on one or more of the following grounds:"

Thereafter, clauses (a) to (g) set out the grounds on which a suit for eviction could be filed without the permission of the District Magistrate. Sub-section (2) of section 3 provides for an application for revision against the order of the District Magistrate granting or refusing the grant of permission to file a suit for eviction of a tenant to the Commissioner. Sub-section (4) provides that the order of the Commissioner made in such revision application as set out above, shall be subject to any order passed by the State Government under section 7F of that Act. Sub-section (d) of section 2 of the U.P. Rent Act of 1947 gives an inclusive definition of the term "District Magistrate" and states that the said term would include an officer authorised by the District Magistrate to perform any of his functions under that Act. The U.P. Rent Act of 1972 was enacted to make provisions in the interest of the general public for the regulation of letting and rent of, and the eviction of tenants from, certain classes of buildings situated in the urban areas. Section 21 of this Act provides for release of a building under occupation of the tenants, that is, very briefly, for the eviction of tenants from the buildings under tenancy and also *inter alia* prescribes grounds on which such eviction can be ordered. It may be mentioned that eviction of tenants is not permitted except on prescribed grounds. Section 43 of the U.P. Rent Act of 1972 provides for repeal and savings. Under sub-section (1) of that section the U.P. Rent Act of 1947 is repealed. The relevant portion of sub-section (2) of section 43 of the U.P. Rent Act of 1972 which is in the nature of a savings provision runs as follows:

"43 Repeal and savings.

(1) x x x x G

(2) Notwithstanding such repeal

x x x x

(rr) where any permission referred to in section 3 of the H

A old Act has been obtained on any ground specified in sub-section (1) or sub-section (2) of section 21, and has become final, either before the commencement of this Act, or in accordance with the provisions of this sub-section, after the commencement of this Act, whether or not a suit for the eviction of the tenant has been instituted, the landlord may
B apply to the prescribed authority for his eviction under section 21, and thereupon the prescribed authority shall order the eviction of the tenant from the building under tenancy, and it shall not be necessary for the prescribed authority to satisfy itself afresh as to the existence of any ground as aforesaid, and such order shall be final and shall
C not be open to appeal under section 22”.

The provisos to the clause are not relevant for our purpose.

The main contention of the learned counsel for respondent No. 2 before us was that in view of the provisions of clause (rr) of sub-section
D (2) of section 43 of the U.P. Rent Act of 1972, once the permission to file the suit for eviction was granted by the authorities concerned under the U.P. Rent Act of 1947 and that permission was on a ground specified in sub-section (1) or sub-section (2) of section 21 of the U.P. Rent Act of 1972, it was not open to the Prescribed Authority before which the application for eviction was filed to reconsider the same.
E The Prescribed Authority, in the present case, has tried to analyse that permission and declined to grant the decree for eviction on the basis that the permission was conditional and the landlord was not willing to carry out those conditions. In our view, the question of the authority under the U.P. Rent Act of 1947 having imposed any condition, does not arise at all. A plain reading of the order of the Rent Controller and
F Eviction Officer, Bijnor as well as the orders of the Commissioner in revision and that of the State Government makes it clear that the permission given to the landlord to file the suit was not subject to any condition at all. At the same time, the judgment of the Rent Controller clearly shows that one of the circumstances which constituted the basis for the grant of the permission to file the suit for eviction was that
G the landlord gave an assurance-cum-undertaking to give newly constructed shops to the tenants sought to be evicted including the tenant before us and that the landlord also gave a similar assurance to give alternative accommodation to the tenant during the period which would be taken in completing the new construction. As we have already pointed out, the petition for permission to file a suit, filed
H before the Rent Controller by the landlord, in terms, contained an

assurance-cum-undertaking that the landlord would give the newly constructed shops after the new shops were constructed to the tenants sought to be evicted on a reasonable rent. It appears that the offer to provide for alternative accommodation during the period when the new construction was coming up was made by the landlord in the course of the hearing before the said Eviction Officer, Bijnor. The revision petition against that said order was dismissed by the Commissioner, Rukhilkhand Division, as we have already pointed out earlier. The order passed under section 7F of the U.P. Rent Act of 1947 by the State Government also dismissed the revision petition preferred by the tenant to the State Government. The order of the State Government which was passed on behalf of the Governor of the State by the Special Secretary, however, clearly notes that the landlord had given an undertaking to the tenants that they would be giving the newly constructed shops to them on standard and that during the period taken up in completing the new construction, alternative accommodation would also be given to them. However, no condition in this connection was imposed by the State Government on the permission to file the suit for eviction. Under these circumstances, we propose to proceed on the assumption that the High Court was justified in coming to the conclusion that the Prescribed Authority under the U.P. Rent Act of 1972 had no jurisdiction to go behind the permission granted by the relevant authorities under the U.P. Rent Act of 1947 for the filing of the eviction suit. However, it appears to us that the High Court was, with respect, in error in not taking into account the undertakings-cum-assurance given by the landlord to the tenant in his application for permission to file a suit as well as in the course of the hearing before the aforementioned authorities. We do not find anything in the provisions of section 43(2) (rr) of the U.P. Rent Act of 1972 which would enable the landlord to evade his duty to comply with the undertakings-cum-assurances given by him. These undertakings-cum-assurances given by the landlord certainly formed part of the basis on which the permission to file the suit for eviction was unconditionally given to him. It is but fair that the court should see to it that the tenant is not deprived of the benefit of the undertakings-cum-assurances. In fact, no good reason has been shown as to how the landlord can justly claim that he is no longer bound by the undertakings-cum-assurances given by him as set out earlier. In these circumstances, we set aside the order of the High Court and pass the following order in its place:

(1) We direct that the Prescribed Authority, Nagina, District Bijnor, to pass an order of eviction against the appellant-tenant before us but the Prescribed Authority will give the necessary directions or

A orders to respondent No. 2-landlord to provide alternative accommodation to the appellant during the period when the new construction is coming up and also pass appropriate orders for ensuring that after the new construction is completed, a comparable shop is given to the appellant herein.

B (2) In order not to delay the construction of the new shops, the Prescribed Authority may provide that, in case the landlord fails to or is unable to provide alternative accommodation to the appellant-tenant during the period when the new construction is being completed, he shall pay a certain sum as fixed by the Prescribed Authority per month to the appellant-tenant which would be reasonably adequate to enable that tenant to obtain alternative accommodation for that period. For the aforesaid purpose, the Prescribed Authority may give such directions as it may think fit.

D Before parting with the matter, we may refer to two decisions which were cited before us. The first of these is the decision of a Full Bench of the Allahabad High Court in *Asa Singh v. B.D. Sanwal & Ors.*, AIR 1969 All. 474. The Full Bench of that High Court *inter alia* held in that case that while granting permission under section 3 of the U.P. Rent Act of 1947 the District Magistrate was bound to consider also the need of the tenant for the accommodation, if such a case is set up by the tenant. This case was cited by the learned counsel for the tenant. Learned counsel for respondent No. 2, on the other hand, cited the decision of another Full Bench of the Allahabad High Court in *Bansilal Sahu v. The Prescribed Authority & Anr.*, AIR 1980 All. 194 which, very briefly stated, laid down that the Prescribed Authority under the U.P. Rent Act of 1972 is bound while acting under clause (rr) of section 43(2) of the said Act, irrespective of the occurrence of subsequent events, to order eviction according to the permission granted by the Prescribed Authority under section 3 of the U.P. Rent Act of 1947.

G In our view, it is not necessary for us to enter into a discussion of either of the authorities because they do not touch upon the question which has arisen before us, namely, enforcing the undertakings-cum-assurances given by the landlord in obtaining the permission under section 3 of the U.P. Rent Act of 1947.

The Appeal is allowed to the extent aforestated. Looking to the facts and circumstances of the case, there will be no order as to costs.

H R.N.J.

Appeal allowed.