Neutral Citation No. - 2024:AHC:27371

A. F. R.
Judgment reserved on: 16.1.2024
Judgment delivered on: 16.02.2024

Court No. - 50

Case :- WRIT - A No. - 12683 of 2023
Petitioner :- Mohd.Ikram And Another
Respondent :- Smt. Shamshana
Counsel for Petitioner :- Firoz Haider,Abu Bakht
Counsel for Respondent :- Komal Mehrotra

Hon'ble Ashutosh Srivastava,J.

1. Heard Shri Abu Bakht, learned counsel for the petitioners and Shri Komal Mehrotra, learned counsel for the sole respondent/landlady.

2. The instant writ petition, at the instance of petitioners/tenants, has been filed assailing the order dated 23.5.2023 passed by the learned District Judge, Saharanpur in Rent Appeal No. 15 of 2022 whereby and whereunder the rent appeal has been allowed the order of the learned Prescribed Authority dated 5.3.2022 has been set aside and the matter has been remanded back to the learned Prescribed Authority for considering the release application under Section 21 (1) (a) of the U.P. Act No. 13 of 1972, afresh.

3. The facts giving rise to the controversy involved between the parties lies in a narrow compass. A release application under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 was filed on 22.1.2021 by the respondent/landlady against the petitioners setting up a need for her son to expand his business and augment his income so as to meet out family liabilities for the shop ‘A’ and ‘B’, respectively under the tenancy of the petitioners. The release application was registered as PA Case No. 6 of 2021. The petitioners appeared and filed their objections. The learned Prescribed Authority framed an issue as to whether the release application under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 was maintainable and proceeded to hold that since

the release application was filed on 22.1.2021 after the Uttar Pradesh (Regulation of Urban Premises) Tenancy Act, 2021 (U.P. Act No. 16 of 2021) had come into effect and the U.P. Act No. 13 of 1972 had been repealed the release application registered as PA Case No. 6 of 2021 was not maintainable and no relief could be granted to the landlady/respondent under the U.P. Act No. 13 of 1972. The Prescribed Authority accordingly dismissed the release application vide judgment and order dated 5.3.2022. Aggrieved by the dismissal of the release application as non maintainable, the respondent/landlady preferred an appeal under Section 22 of the U.P. Act No. 13 of 1972 which has been allowed by the impugned order dated 23.5.2023, the order of the Prescribed Authority dated 5.3.2022 has been set aside and the matter has been remanded back for consideration of the release application, afresh.

4. Shri Abu Bakht, learned counsel for the tenant/petitioners submits that the order of the learned District Judge, Saharanpur in allowing the rent appeal by the order dated 23.5.2023 is patently erroneous and is liable to be set aside inasmuch as the release application under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 filed on 22.1.2021 was not maintainable as U.P. Act No. 16 of 2021 had come into effect from January 11, 2021 as provided under Section 1 (4) of U.P. Act No. 16 of 2021. It is further contended that sub section 1 of Section 46 of the U.P. Act No. 16 of 2021 provides that the U.P. Act No. 13 of 1972 and the Uttar Pradesh Regulation of Urban Premises Tenancy (Second) Ordinance, 2021 and U.P. Ordinance No. 3 of 2021 stand repealed.

5. Shri Komal Mehrotra, learned counsel for the landlady/respondent, on the other hand, submits that the proceedings of U.P. Act No. 13 of 1972 under which Act the release application under Section 21 (1) (a) was preferred was very much in force inasmuch as U.P. Act No. 16 of 2021 has been made operative with retrospective effect from 11.1.2021. Earlier, the Uttar Pradesh Regulation of Urban Premises Tenancy Ordinance, 2021 (U.P.

Ordinance No.2 of 2021) was operative. However, it lapsed on 31.2.2021. Consequently, the provisions of U.P. Act No. 13 of 1972 revived and in such view of the matter, the Appellate Court was justified in treating the proceedings initiated under the U.P. Act No. 13 of 1972 to be maintainable. He further submits that Section 46 (2) of the U.P. Act No. 16 of 2021 which relates to repeal and savings provides that all cases and other proceedings under the U.P. Act No. 13 of 1972 pending at the commencement of this Act shall be continued and disposed of in accordance with the provisions of the said Act as if that Act had continued to be in force and the U.P. Act No. 16 of 2021 had not been enacted. He, thus, contends that the release application filed on 22.1.2021 would be deemed to be pending on the commencement of the U.P. Act No. 16 of 2021 which has been made retrospective in operation w.e.f. 11.1.2021. It has further been argued by Shri Komal Mehrotra, learned counsel for the respondent that the U.P. Act No. 16 of 2021 contemplates existence of a tenancy agreement between the parties as is evident from Section 38 (2) of the U.P. Act No. 16 of 2021 and in the absence of any tenancy agreement between the parties the provisions of the Act No. 16 of 2021 would not be applicable.

6. Learned counsel for the petitioners in rejoinder submits that on 22.1.2021 i.e. the day on which the release application was admittedly filed, the U.P. Ordinance No. 3 of 2021 was very much in force and as such, the appropriate action against the petitioners ought to have been taken under the Ordinance No. 3 of 2021 as provided under Section 46 (4) of the U.P. Act No. 16 of 2021. It is further contended that the U.P. Ordinance No. 2 of 2021 was promulgated by the Governor on January 9, 2021. Due to the sudden adjournment of the first session of 2021 of the State Legislature on March 4, 2021, proceedings of which was determined from February 18, 2021 to March 10, 2021 replacing Bill of the said Ordinance could not be passed by the House of the State Legislature. Consequently, the Ordinance No. 2 of 2021 promulgated on January 9, 2021 lapsed on March 31, 2021 as the replacing Bill therefore could not be enacted within 06 weeks of reassembly

of the State Legislature as required under Article 213 of the Constitution. After the lapse of the Ordinance No. 2 of 2021, it was decided to bring a new tenancy law to keep the provisions of the Ordinance No. 2 of 2021 in force even after March 31, 2021 to establish Rent Authority and Rent Tribunals to regulate the renting of premises, to protect the interests of landladys and tenants and to provide speedy adjudication mechanism for resolution of disputes. Since, the State Legislature was not in session, the U.P. Ordinance No. 3 of 2021 was promulgated on April 9, 2021. The Bill was subsequently presented and the U.P. Act No. 16 of 2021 was enacted w.e.f. 11.1.2021.

7. Learned counsel for the petitioners further contends that though the U.P. Act No. 16 of 2021 contemplates on existence of a tenancy agreement between the parties, the sub Section (3) (b) of Section 4 of the Act deals with a situation wherein no agreement in writing is found to have been entered between the landlady and the tenant. In such an event, a tenancy agreement shall be entered into by the landlady and tenant and present the same before the Rent Authority within 03 months of the commencement of the Act. The proviso to the said section provides that where the landlady or tenant fails to present jointly a copy of the tenancy agreement or fail to reach an agreement within specified period, the landlady and tenant shall separately file the particulars about such tenancy with the Rent Authority within one month from the date of expiry of the period mentioned in Clause (b) in the form specified in First Schedule of the Act. The landlady/respondent did not discharge this burden.

8. I have heard the learned counsel for the parties and have perused the record.

9. The moot question for consideration by this Court is as to whether the U. P. Act No. 13 of 1972 stood repealed by virtue of the Ordinance No. 2 of 2021 or Ordinance No. 3 of 2021 so as to render the application under Section 21(1)(a) of the U.P. Act No. 13 of 1972 non maintainable.

10. Before this Court dwells into the above aspect, it would be apt to understand the significance of an Ordinance. Article 213 of the Constitution of India confers power to the Governor to promulgate Ordinances during recess of Legislature. An Ordinance promulgated under Article 213 of the Constitution of India shall have the same force and effect as an Act of the Legislature of the State assented by the Governor. An Ordinance must be changed over into law within six weeks of the reassembly of the Legislature or it will lapse. Once an Ordinance lapses the law brought in the system ceases to operate and will not be treated as legal law anymore. An Ordinance can be re-promulated just thrice. The consequence of lapse of an Ordinance in cases where these existed an old law which was over ridden by the Ordinance then it will again become the valid piece of law. A Seven Judges Bench of the Apex Court in the case of ***Krishna Kumar Singh Vs. State of Bihar*** reported in ***2017 (3) SCC 1*** while dealing with various aspects regarding promulgation of an Ordinance amongst other issues held that an Ordinance which has ceased to operate is not void. As an instrument it is not still born. During the tenure of the Ordinance it has the same force and effect as a law enacted by the Legislature.

11. Now coming to the case at hand, the Court finds that the U.P. Ordinance No. 2 of 2021 was promulgated on 11th June, 2021. Under the said Ordinance the U.P. Act No. 13 of 1972 was repealed. The release application dated 22.01.2021 was filed when the U.P. Ordinance No. 2 of 2021 was very much in force. The release application under the U.P. Act No. 13 of 1972 was certainly not maintainable as the Act stood repealed. The subsequent lapse of the Ordinance No. 2 of 2021 would be of no significance inasmuch as the U.P. Ordinance No. 3 of 2021 was promulgated on 9th April, 2021 w.e.f. 11.01.2021. There is no merit in the submission of Sri Komal Mehrotra, learned counsel for the respondent that the release application would be deemed to be pending on the date of the enforcement of the U.P. Act No.16 of 2021. The entire proceedings under the U.P. Act No. 13 of 1972 are without jurisdiction. The learned Prescribed Authority was justified in

rejecting the release application under Section 21(1)(a) of the U.P. Act No. 13 of 1972, as not maintainable. The Appellate Authority appears to have been misguided by the fact that the landlady/respondent had served a Notice dated 1.7.2020 terminating the tenancy of the petitioners and as such, had already initiated the proceedings for eviction of the petitioners from the tenanted premises and, therefore, stood covered by the provisions of Section 46 (2) of the U.P. Act No. 16 of 2021. The Court is afraid that such erroneous assumption by the learned Appellate Authority cannot be sustained inasmuch as there is no legal requirement of issuing a notice for filing a release application under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 except when a release application is filed within three years of purchase of the tenanted premises from the erstwhile landlord/owner, which is not the case at hand. The requirement is only when filing a suit under Section 20 of the Act. In the absence of any proceedings initiated by the landlady/respondent under Section 21 (1) (a) prior to enforcement of the U.P. Act No. 16 of 2021 or the U.P. Ordinance No. 2 of 2021, the findings recorded by the Appellate Authority cannot be sustained. The Appellate Authority in Rent Appeal committed manifest error of law in setting aside the order of the Prescribed Authority and directing fresh consideration of the release application under Section 21(1)(a).

12. For the reasons recorded above, the writ petition is **allowed.** The impugned order dated 23.05.2023 passed by the learned District Judge, Saharanpur in Rent Appeal No.125 of 2022 is set aside. The order of the Prescribed Authority dated 5.3.2022 passed in PA Case No.6 of 2021 is sustained.

13. Parties to bear their own costs.

Order Date :- 16.02.2024
Ravi Prakash

(Ashutosh Srivastava, J.)

Digitally signed by :-
RAVI PRAKASH
High Court of Judicature at Allahabad