

Court No. - 33

Reserved
A.F.R.

Case :- MATTERS UNDER ARTICLE 227 No. - 2940 of 2017

Petitioner :- Rajendra Singh Jayas

Respondent :- Vishal Khurana

Counsel for Petitioner :- Mr. Pankaj Agarwal, Advocate

Counsel for Respondent :- Mr. Randhir Jain, Advocate

Hon'ble J.J. Munir,J.

1. This petition under Article 227 of the Constitution is directed against an order of vacancy followed by release passed by the Rent Control and Eviction Officer, Mathura in exercise of powers under Section 12/16 of UP Act No.13 of 1972 (for short, 'the Act'), which has been affirmed in revision under Section 18 of the Act by the learned Additional District Judge.

2. The facts giving rise to this petition are these:

An application for allotment of house bearing No. C-55 (new No.212/ 55-C), Radha Nagar, Mathura, was moved before the Rent Control and Eviction Officer, Mathura by Omveer Saraswat son of B.D. Saraswat. The premises last mentioned, shall hereinafter be called, 'the property in dispute'. Upon registration of the application for allotment on the file of the Rent Control and Eviction Officer, an inspection was carried out by the Rent Control Inspector. The Rent Control Inspector submitted his report dated 08.08.2014, which says, in substance, that at the time of inspection, the Rent Control Inspector found Rajendra Singh Jayas at the site. According to the Inspector, Rajendra Singh Jayas facilitated his inspection and informed him that he (Jayas) is the owner and landlord of the property in dispute. He said that he runs a security agency in the property in dispute under the name and style of Jayas Security Agency. The agency aforesaid is engaged in the

provision of security services. Jayas told the Inspector that he had one room in his possession admeasuring 20x13 feet and another room admeasuring 14x20 feet, besides a lavatory, bathroom and kitchen. On the first floor, he had constructed a single room during the years 1990, 1991 and 1992 through the agency of one Nand Ram, a Civil Contractor and a native of Jaisinghpura, Mathura. The report further on says that Smt. Archana wife of Rajendra Singh Jayas had her name entered in the house tax and water tax records, which she regularly deposits, and Jayas asserted that he was the unquestioned owner of the property in dispute since the past 24 years.

3. It appears that some documents were produced before the Rent Control Inspector by Jayas during the inspection. After the Rent Control Inspector's report had been received by the Rent Control and Eviction Officer (for short, 'the RC & EO'), notice in the case registered under Section 12 of the Act was issued to both sides. Rajendra Singh Jayas, who will hereinafter be referred to as 'the petitioner', filed his objections to the allotment application on 16.09.2018 before the RC & EO, wherein he said that the applicant for allotment had no need for the property in dispute, inasmuch as he already had available with him a house in the Civil Lines of Mathura. It was also said in the objections that the applicant for allotment had wrongly said that the petitioner was in unauthorized occupation of the property in dispute. Rather, he was the owner thereof where his family lived. Also that, the petitioner had his business in the same premises under the name and style of Jayas Security Agency. The former owner of the property in dispute was one Balraj Khurana son of Raghunath Rai, who had received the property in dispute from his father. Balraj Khurana lived in the said property occupying it as its owner. Balraj Khurana was not

financially well off. The petitioner's family had helped Balraj Khurana, extending substantial financial aid to him, besides help needed in social matters and dealings. This gesture by the petitioner had led to a strong bonding between him and Balraj Khurana.

4. In the year 1989, Balraj Khurana migrated to Canada and settled there. Since, the petitioner had helped Balraj Khurana financially when migrating to Canada, he gave the property in dispute to the petitioner through a will. Balraj Khurana is now dead and the petitioner is the owner of the property under reference. The property in dispute is a house built on a plot of 100 square yards. This house had been transferred to Raghunath Rai by the Government of India in settlement of a refugee claim. It comprised a room, a verandah and a lavatory, when transferred to the petitioner in the year 1989. It was in a dilapidated state. The further case set up by the petitioner in his objections to the allotment application was that his ration card, gas connection and the voters list showed him to be a resident of the property in dispute. The petitioner took objection, particularly, to the effect that he was never a tenant in the property in dispute nor an unauthorized occupant. The application for allotment deserves to be rejected in the absence of vacancy.

5. Another written statement was filed before the RC & EO by Vishal Khurana on 30.09.2018. He said that the property in dispute was owned by his grandfather, the late Raghunath Rai, who had been assigned the said property on 28.01.1960 by the Government. Raghunath Rai had executed a will dated 08.12.1973 in favour of Virendra Khurana, a son of Raghunath Rai. Vishal Khurana had taken it from Virendra Khurana through a registered sale deed dated 07.05.2012 for a valuable

sale consideration of Rs.30 lakhs. Balraj Khurana had unlawfully let out the property in dispute to Rajendra Singh, from whom he realized rent. He had no right, title or interest to or in the property in dispute. The house, comprising the property in dispute, has been assessed to house tax by the Nagar Palika, Mathura since the year 1963. It is incorrect that Jayas ever helped Balraj Khurana financially. Whatever money was paid by Jayas to Balraj Khurana was towards rent. The property in dispute is an old construction and the assertion regarding Jayas's possession continuing over a period of 25 years, is incorrect. The property in dispute is vacant in the eye of law. Once, vacancy is declared, according to Vishal Khurana, he would make a release application. There was no consent given to allotment of the property in dispute by Vishal Khurana. Vishal Khurana shall hereinafter be referred to as 'the respondent'. The RC & EO permitted parties to adduce evidence on affidavit and also file documents.

6. After hearing the learned Counsel appearing for parties, the RC & EO *vide* order dated 28.02.2015 declared vacancy. The respondent thereupon made an application for release on the ground of *bona fide* need under Section 16 of the Act. The application for release was opposed by the petitioner. The RC & EO *vide* an order dated 08.05.2015 allowed the release application, directing release of the property in dispute in favour of the respondent.

7. Both the orders of vacancy and release made by the RC & EO were challenged by the petitioner through a revision under Section 18 of the Act before the District Judge of Mathura, where it was registered as Rent Control Revision No.1 of 2015. The learned Additional District Judge, Court No.6, Mathura, before whom the revision came up for hearing upon

assignment, dismissed it by a judgment and order dated 27.04.2017, affirming the orders of vacancy and release.

8. Aggrieved, the petitioner, who is in occupation of the property in dispute, has preferred this petition under Article 227 of the Constitution.

9. Heard Mr. Shivam Agrawal holding brief of Mr. Pankaj Agarwal, learned Counsel for the petitioner and Mr. Randhir Jain, learned Counsel appearing on behalf of the respondents.

10. It is submitted by the learned Counsel for the petitioner that the orders of vacancy and release passed in this case are without jurisdiction, as the rights of parties are beyond the scope of proceedings under Section 12/16 of the Act. It is emphasized that the petitioner is not a tenant in the property in dispute on the landlord's behalf. Rather, he is in occupation thereof in his own right. He holds title to the said property that he has acquired under Balraj Khurana's will dated 11.05.1989. He does not pay rent to anyone, and, therefore, is not a tenant. The respondent, on the other hand, claims title to the property in dispute from Virendra Khurana, the other son of Raghunath Rai and Balraj Khurana's younger brother, who is said to have received the property in dispute through a will made by Raghunath Rai on 08.12.1973. The submission is that both parties claim title to the property in dispute from the family of Raghunath Rai and what this case, therefore, presents is a complicated question of title to be decided between the petitioner and the respondent. It is beyond the scope, according to the petitioner, of proceedings for vacancy and release under the Act. Learned Counsel submits that it ought to be decided by a court of competent jurisdiction in a duly constituted title suit.

11. It is next submitted by the learned Counsel for the petitioner that this is not a case of initiation of proceedings for release at the instance of the landlord. It is a case where vacancy has been declared on the application of a prospective allottee. The petitioner is admittedly in occupation of the property in dispute to the knowledge of everyone. He has remained in possession without objection from anyone, including the respondent, from the year 1989 to the year 2014. It is emphasized that when the Rent Control Inspector visited the property in dispute on 08.08.2014, the petitioner indicated his stance that it was a title dispute and the Inspector's report mentions it. The petitioner's objections show clearly that he occupies the property in dispute on the basis of Balraj Khurana's will dated 11.05.1989. He has never paid rent to anyone and occupies the property under reference in his own right. It is also urged that O.S. No.219 of 2015 is pending in the Court of the learned Civil Judge (Sr. Div.), Mathura, seeking a declaration of his right against the respondent, who is the sole defendant there.

12. The respondent has filed a written statement, where the learned Counsel for the petitioner says that there are averments to show that his predecessor-in-title Balraj Khurana was the owner. It is emphasized that Paragraph Nos. 3 and 5 of the written statement show that Balraj Khurana was residing in the property in dispute, which he gave away to the petitioner. The learned Counsel for the petitioner has taken the Court through the various affidavits, which include an affidavit by the respondent. The petitioner's affidavit says that execution of the will by Balraj Khurana in the petitioner's favour is admitted to the respondent and also Balraj Khurana's possession, and that of the petitioner passed on by Balraj. The point, therefore, made

out is that this is a case, as already said, where there is a thick title dispute necessitating adjudication by the Court of competent civil jurisdiction. Reliance in this connection is placed on **Kanaklata Das and others v. Naba Kumar Das and others, 2018 (2) ARC 491**. It is additionally urged as a facet of the same submission that the proceedings here do not arise out of a landlord-tenant relationship and are, therefore, not maintainable under Section 12/16 of the Act.

13. The second submission that has been advanced by the learned Counsel for the petitioner is that the petitioner has been residing in the property in dispute since the year 1989. The present vacancy declared at the instance of a prospective allottee, initiating proceedings 25 years after the petitioner entered into possession of the property last mentioned, makes it a case of utter inaction. It is urged that inaction by the prospective allottee coupled with the respondent's inaction, estops both of them from urging that the petitioner's possession of the property in dispute is unauthorized occupation, leading to vacancy. Learned Counsel for the petitioner places reliance on the decision of the Supreme Court in **Mansaram v. S.P. Pathak and others, 1984 ARC 17**. Learned Counsel has next called in aid the holding in **Arun Kumar Joseph v. Victor Sameul Mathews and another, 2013 (2) ARC 884**, where their Lordships of the Division Bench answered the questions referred to by a learned Single Judge in the following terms:

"(i) Answer to Question No.(a):- Release application by landlord cannot be treated to be barred by limitation even if the same is presented after more than 12 years from the date person has entered into an unauthorised occupation of the premises covered by the Act.

(ii) Answer to Question No.(b):- In absence of any limitation being provided under the Act for initiation of release proceedings in respect of

deemed vacancy, no period of limitation can be read in the statutory provisions only on the principle that a power vested in an authority must be exercised within a reasonable time."

14. The next submission urged by the learned Counsel for the petitioner is that in order to determine as to who, amongst the parties, is the landlord, one has to look to the definition under Section 3(j) of the Act. Section 3(j) defines the landlord as a person to whom rent is payable. It is urged that both the Authorities below did not test the party's case by this standard to determine if there was anyone who stood in the relationship of a landlord to the petitioner. In support of his submission, learned Counsel for the petitioner has placed reliance upon the authority of the Supreme Court in **Navneet Prakash Gupta and another v. Bishan Chand and others, 2003 (1) ARC 187.**

15. It is also urged by the learned Counsel for the petitioner that there is evidence patent on record to show that the property in dispute is a new construction, to which the Act does not at all apply. On this short ground alone, according to learned Counsel, all proceedings taken before the Authorities below are *ultra vires*. In support of this contention, learned Counsel for the petitioner has drawn this Court's attention to Paragraph Nos.7, 8, 9, 11 and 14 of the petitioner's affidavit filed before the RC & EO, which he says shows the construction to be new. He emphasizes that there are documents on Pages Nos.100 onwards of the paper-book to show that new constructions were raised by the petitioner after the original dilapidated were demolished. Information, in this regard, was given to the competent authority of the Nagar Palika, Mathura by registered post on 30.09.1992. The construction being a new one, the Act did not apply by virtue of Section 2(h).

16. Mr. Randhir Jain, learned Counsel for the respondent has refuted the submissions advanced by the learned Counsel for the petitioner. On the first issue which Mr. Shivam Agarwal has urged, it is said in answer that there is no such complicated and arguable question of title involved, which the Authorities seized of proceedings under Section 12/16 of the Act, may be incompetent to decide. He submits that the will dated 11.05.1989 from Balraj Khurana, on which the petitioner has relied, was never produced in original before the two Authorities below. A photostat copy of the will was produced, which does not inspire confidence, if not precisely hit by the best evidence rule. Learned Counsel for the respondent urges that the will of 1989 propounded by the petitioner is violative of Section 2(h) of the Indian Succession Act, 1925, inasmuch as it does not qualify for a will at all.

17. It is next submitted that Balraj Khurana was not the owner; at the most he was in occupation as the landlord, who illegally let out to the petitioner. The respondent's predecessor-in-title, on the other hand, Virendra Khurana, was owner by virtue of the respondent's grandfather's will dated 08.12.1973. Virendra Khurana raised a loan on the security of the property in dispute, to the repayment of which, the respondent contributed. Virendra Khurana later on executed a sale deed dated 07.12.2012 in favour of the respondent. The question of title once raised by the tenant, the Authority under Section 12/16 of the Act has to scrutinize material, in order to come to a conclusion, if the title dispute raised is *bona fide*. To verify the contention about title, the authority seized of statutory proceedings, under Section 12/16 of the Act, has to look into evidence relevant to the issue and the finding, that is recorded, is one for the limited purpose of testing the claim in statutory

proceedings. Reliance in this connection has been placed upon the decision of the Supreme Court in **S. Thangappan v. P. Padmavathy, (1999) 7 SCC 474** and further upon the decision of this Court in **Krishna Chandra Srivastava and another v. District Judge, Allahabad and others, 1997 (2) ARC 374**.

18. It is further urged by the learned Counsel for the respondent that the authority can always incidentally decide the question of title, the final determination thereof being always left to the Civil Court. In aid of the said facet of his submission, the learned Counsel for the respondent has placed reliance upon the authority of the Supreme Court in **Dr. Ranbir Singh v. Asharfi Lal, (1995) 6 SCC 580**. He has further relied upon the decision in **Shamim Akhtar v. Iqbal Ahmad and another, (2000) 8 SCC 123**. Learned Counsel for the respondent has also urged that Raghunath Rai's will in favour of his predecessor-in-title, Virendra Khurana was never challenged by the other heirs of Raghunath Rai. That apart, the will propounded by the petitioner, has not been proved in any title proceedings before a court of competent jurisdiction.

19. To the second issue, that is to say, about limitation urged on behalf of the petitioner, it is submitted by the learned Counsel for the respondent that the question of limitation was never raised before any of the Authorities below. It is not even a ground taken in the petition. It is next submitted that in the absence of any limitation being provided under the Act for initiation of proceedings for vacancy, no period of limitation can be read into the statutory provision on the principle that a power vested in an Authority must be exercised within a reasonable period of time. For the submission, the learned Counsel for the respondent, like the petitioner, has reposed faith in the decision of the Division Bench of this Court in **Arun Kumar Joseph**

(*supra*). To that part of the petitioner's contention, where he says that the property in question is a new construction, to which the Act would not apply, it is urged that both the Authorities below have recorded a finding of fact based on municipal assessment records from 1957 to 1965 and right up to 2008 that no new construction has ever taken place or erected in place of the old. The same old constructions continue to exist on the spot, according to the *Amin's* report submitted in the injunction suit instituted by the petitioner. It is next urged that the information given by the petitioner to the Municipal Authority about completion of constructions, neither mention a date nor a new assessment, relative to the new construction. The new assessment has never been produced by the petitioner to substantiate the fact. In the circumstances, age of the constructions would be governed by the existing assessment records.

20. This Court has considered the submissions advanced by learned Counsel for the parties and perused the record.

21. The foremost issue that has been raised on behalf of the petitioner is that the cause here involves an intricate and complicated question of title between the petitioner on one hand and the respondent on the other, that is beyond the scope of statutory proceedings under Section 12/16 of the Act to determine. We do not think that in these statutory proceedings, the Authorities are debarred from incidentally examining the questions of title; at least so much of it, as would enable them to determine, if indeed there is a *bona fide* dispute of title between parties, or in their opinion, it is a mere sham to resist the statutory proceedings from taking their due course. Here, it is noteworthy that the foot, on which the petitioner claims title to the property in dispute, is a will executed in his favour by Balraj

Khurana, the elder son of the first owner of the property in dispute, Raghunath Rai. Surprisingly, in the objections filed to the allotment application by the petitioner, while it is asserted that Balraj Khurana got the property in dispute from Raghunath Rai during his lifetime and that on account of economic support extended to Balraj Khurana by the petitioner, the said Balraj, when migrating to Canada, handed over the property in dispute to the petitioner and has since died, there is no mention of the will by Balraj Khurana in his reply. There is not even a whisper about it.

22. The first mention of this will finds place in an affidavit dated 13.01.2015 filed by the petitioner before the RC & EO, where as rightly noticed by the learned Additional District Judge, it is averred that Balraj Khurana transferred the property in dispute to the petitioner by his last will and testament dated 11.04.1989 and delivering possession thereof to him, went away to Canada along with his family. The learned Additional District Judge has taken umbrage to the fact that the objection makes for the petitioner's pleadings, where this will is not even mentioned. It is brought in through evidence in the form of an affidavit, later on. It has been held by the learned Judge that parties cannot prove anything beyond their pleadings. These proceedings being statutory proceedings, not precisely governed by the Code of Civil Procedure, even if the provisions of the Code do not apply *stricto sensu*, the fundamentals of a fair procedure would certainly dictate that a party must plead the basis of his title, if he asserts one, at the earliest in any proceedings, where some kind of determination of rights is done. The conspicuous non-mention of the will by Balraj Khurana in the objections filed to the allotment application by the petitioner, makes the basis of the petitioner's case highly

suspect. The expression used in the reply submitted by the petitioner to the application for release, on which the proceedings for determination of vacancy have commenced, show, as already said, that the petitioner asserts that he was 'handed over' the property by Balraj Khurana, when he migrated to Canada with his family. The precise expression employed in Hindi is "मुझे ये सम्पत्ति सौंप दी".

23. Now, one is expected to know that in order to acquire title to immovable property, that is worth any sum upward of the value of Rs.100/-, a formal and registered conveyance is to be executed. Since, there was no conveyance, apparently the story of a will was invented. If one were to look to the will dated 11.05.1998 relied upon by the petitioner, it is hardly a bequest. A will is defined by Section 2(h) of the Indian Succession Act, 1925 thus:

"2. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

(a) to (g) x x x x

(h) "will" means the legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death."

24. A look at the copy of the document dated 11.05.1989, said to be the will executed by Balraj Khurana in the petitioner's favour, annexed as Annexure No. CA-2 to the counter affidavit filed by the respondent, shows the following recital (relevant part):

"मैं सपरिवार कनाडा जाने से पहले सामयाभाव में अपनी इस अचल सम्पत्ति मकान के बारे में यह उचित आवश्यक समझता हूँ। ताकि मेरे जाने के बाद मकान के बारे में कोई विवाद उत्पन्न न हो कि मैं अपना मकान 55 सी बांके राधा बिहार नगर (हाइडिल नगर) तह 0 व जिला मथुरा को अपने परिवार के अति घनिष्ठ सहयोगी के किये गये सहयोगों के एवज में श्री राजेन्द्र सिंह जायस पुत्र से वासुदेव सिंह जायस 19-20 सी राधानगर को अपने सभी अधिकारों

सहित सौंप दूँ, मेरे नाम से बिजली का कनेक्शन भी लगा है। गैस कनेक्शन भी जारी है। जिसके कागजात भी मैं श्री राजेन्द्र सिंह जायस को सौंप रहा हूँ।

इस मकान से सम्बन्धित हर तरह के अधिकार अब मेरी जगह श्री राजेन्द्र सिंह जायस को होंगे। मैंने इससे पूर्व कोई भी वसीयत नहीं की है यह मेरी प्रथम व आखिरी (अन्तिम) वसीयत है, यदि कोई भी व्यक्ति इस वसीयत के अलावा अन्य कोई वसीयत बताता है तो वह न्यायालय आदि में पूर्णतः अमान्य व शून्य समझी जायेगी।"

(emphasis by Court)

25. Thus, whereas a will by its essence and definition under the statute takes effect after the demise of the testator and is in no way a conveyance or a transaction *inter vivos*, the document relied upon by the petitioner and propounded as Balraj Khurana's will, is clearly a conveyance that creates and transfers rights by the executant *in presenti* to the other party, to wit, the petitioner. It is clearly a deed of assignment by whatever name called and, apparently being one in relation to property above the value of Rs.100/-, if considered a sale deed, has to be made by registered instrument. If it is regarded a gift deed, then too, it has to be compulsorily registered. By the terms of the disposition carried in the instrument, it can never be regarded as a will or a testament. The learned Additional District Judge has taken note of this position of the law and the character of the instrument and we are in agreement with him.

26. The learned Additional District Judge has further noticed that the property in dispute was acquired by Raghunath Rai under The Displaced Persons (Compensation and Rehabilitation) Act, 1954 in lieu of the compensation and rehabilitation grant from the Government of India *vide* a sale certificate of the year 1960. The said fact has been held to be verifiable by the learned Additional District Judge, from a perusal of Paper No. 8-Aa/12 on the file of the Authority of first instance. The property in dispute is in no way, therefore, a

Hindu Joint Family property. It was acquired by Raghunath Rai, given to him by the Government. In what manner, this property went to Balraj Khurana, is not at all established. To the contrary, a careful scrutiny of the evidence by the two Authorities below shows that the property went to the other son of Raghunath Rai, Virendra Khurana by a will dated 08.12.1973. The learned Additional District Judge has looked into the will and opined that it has made disposition of the property by Raghunath Rai in the manner that it has been directed to pass to his wife upon Raghunath Rai's demise, and further, upon his wife's demise to their son, Virendra Khurana. The Additional District Judge has also recorded, on the basis of evidence, the finding that after demise of Raghunath Rai's widow, the property went to Virendra Khurana and his name was mutated in the Nagar Palika records. This property was sold by Virendra Khurana to the respondent by a registered sale deed for a valuable sale consideration of Rs.30 lakhs. The respondent's name too was mutated in the house tax and water tax records, which were perused by the learned Judge and are on record.

27. On the other hand, reverting back to the will propounded by the petitioner, it has been remarked by the learned Additional District Judge that the witnesses of the will are both said to be dead, but the will being scribed by Balraj Khurana's daughter, Lovely Khurana, her affidavit has been filed on record before the Authority of first instance. Lovely Khurana has denied scribing the will and said that it is forged. In the circumstances, it has been held that neither the execution of a valid will by Balraj Khurana in the petitioner's favour is *prima facie* established nor Balraj Khurana's right or title to the property in dispute that he could convey to the petitioner.

28. Upon the issue that whatever the dispute between parties, delineated hereinabove, constitutes a complicated question of title, which ought to be left to the Civil Court to decide and not in these statutory proceedings, this Court finds that the question here does not present that kind of a case at all. The passage of title from the original owner to the respondent, is through an unimpeachable course of disposition with a corresponding record of the parties' rights by the Municipal Body. Certainly, this kind of a position may be regarded as one where the Authorities below were required to incidentally go into the question of title, to determine the proceedings before them, and, the question that has arisen, looked into in the face of evidence *prima facie*, is not at all a complicated or vexed question of title, where the Statutory Authorities should lay their hands off the matter and wait for a determination by the Civil Court. The Authorities can incidentally go into the question of title, if raised by a tenant. On the said point, reference may be made with profit to the decision of this Court in **Krishna Chandra Srivastava** (*supra*), where it was held:

"7. Similar view was taken in *Smt. Kailashwati v. IVth Addl. District Judge* [1980 ARC 388.] . A Division Bench of this Court in *Ran Nath Mishra v. Prescribed Authority* [1984 (2) ARC 227.] , held that under Section 21 of U.P. Act No. 13 of 1972 the Prescribed Authority is under a legal duty to determine a question of title to find out as to whether there is relationship of landlord and tenant between the applicant and the opposite party in application submitted before it under Section 21 of the Act. It is settled law that the Prescribed Authority has jurisdiction to decide a question of title incidently to find out as to whether there is relationship of landlord and tenant between the parties. The Prescribed Authority is not precluded from exercising its jurisdiction under Section 21 of the Act whenever the tenant raises an objection regarding the title of the applicant to the disputed property.

The Prescribed Authority can examine the matter on merits and if it finds that there is evidence which justifies the claim of the applicant he can proceed to decide the matter regarding question of title incidently. In the present case, it has been found that respondents 3 and 4 formerly purchased the disputed property from Ramji Lal, who had succeeded the interest of Har Narain Lal. The petitioners did not raise any dispute before the Prescribed Authority that they were not tenants of Late Har Narain Lal."

29. The principle in **Krishna Chandra Srivastava** would, on the state of evidence here, apply in the same manner to the RC & EO as it was held to apply in case of proceedings for release before the Prescribed Authority under the Act. The contention of the learned Counsel for the petitioner, therefore, based upon the matter involving a complicated or vexed question of title, cannot be accepted.

30. The same point in the context of maintainability of an eviction suit arose in **Dr. Ranbir Singh** (*supra*), where the landlord's title was challenged by the tenant saying that the plaintiff had not inherited any interest in the demised property from the original landlord. It was held by the Supreme Court in **Dr. Ranbir Singh**:

"9. It may be pointed out that it is well-settled law that the question of title of the property is not germane for decision of the eviction suit. In a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties. In *LIC v. India Automobiles & Co.* [(1990) 4 SCC

286] (SCC pp. 300-02, para 21) this Court had an occasion to deal with similar controversy. In the said decision this Court observed that in a suit for eviction between the landlord and tenant, the Court will take only a *prima facie* decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It has been further observed that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has *prima facie* right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is *bona fide* the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is *bona fide* in the circumstances of the case."

31. It may be remarked that the decision of the Supreme Court may be confined to the determination of relationship of landlord and tenant, which alone can be determined in a rent suit, but it is well-settled that for that purpose also, the question of title can be incidentally gone into; it cannot be finally pronounced upon. Here also, if the petitioner thinks that he has a case to establish before the Civil Court, the determination made by the Statutory Authorities based on evidence, *prima facie* forthcoming, would not in any manner finally determine the title of parties. The petitioner can establish his title before the Court of competent jurisdiction and secure a decree to recover possession of the property in dispute. Nevertheless, the petitioner's objection that the statutory proceedings must await determination of title is not a proposition to be accepted on the given state of evidence, that *prima facie* appears in this case. Both the Authorities of fact below have taken that view about the rights and title of parties *prima facie* and this Court is not inclined to interfere with the same in the exercise of our jurisdiction under Article 227 of the Constitution.

32. The other question that has been raised relates to limitation and the bar to declaration of vacancy because proceedings in this case have been initiated on an application for allotment made 25 years after the petitioner entering possession. In the opinion of this Court, this point is clearly answered against the petitioner by the Division Bench in **Arun Kumar Joseph** (*supra*), where it has been held that there is no limitation prescribed for initiation of release proceedings relating to a deemed vacancy. The said submission is stated to be rejected.

33. The third submission advanced on behalf of the petitioner is primarily based on the premise that the petitioner and Balraj Khurana never stood in the relationship of a landlord and tenant, so as to attract the fiction of a deemed vacancy under Section 12 of the Act. It has been urged that the petitioner was simply transferred possession of the property in dispute by Balraj Khurana in terms of the will that he executed, and, therefore, the petitioner's possession cannot be judged in terms of Section 12 of the Act. This point has been very meticulously considered by the learned Additional District Judge, before whom it was mooted in the Rent Revision. He has examined the issue and found on the basis of Paper No.11-Aa/9 that Balraj Khurana on 10.05.1989 had executed a rent deed in favour of Smt. Sheela Jayas, wife of the petitioner, demising the property in dispute to her for three years. It must be remarked here that Smt. Sheela Jayas is not the petitioner's wife, but his brother's wife, as would appear from the rent deed dated 10.05.1989. The learned Additional District Judge has held that on the state of evidence here, Balraj Khurana, being Raghunath Rai's son, was given a right of residence and letting it out too, on rent. The definition of a landlord has been considered by the

Revisional Authority to hold that it means under Section 3(j) of the Act, a person to whom in relation to a building rent is payable or if the building were let, would be payable and includes, except the family defined in clause (g) of Section 3 of the Act, the agent or attorney of such person.

34. The learned Additional District Judge has remarked that the evidence, particularly, the lease deed shows that Balraj Khurana would let out the property in dispute and realize rent in relation to it. He would thus be regarded the landlord in relation to the property in dispute. The learned Additional District Judge has held that in order to give rise to the fiction of deemed vacancy under Section 12, a mere occupation by a person who is not a member of the landlord's or the tenant's family, as the case may be, is enough. Here, the landlord, in relation to the property in dispute, Balraj Khurana, permitted it to be occupied by the petitioner leasing it out to his sister-in-law and then making a strange kind of disposition in favour of the petitioner, authorizing him to take the property in his ownership possession, styling it a will. It is on the basis of these facts that the Revisional Authority has held that the fiction would arise on the right of Balraj Khurana, who was the owner's son, permitted to occupy it and let it out on rent. We would remark that it would arise because Balraj Khurana allowed it during his lifetime to be occupied by the petitioner, who is not a member of his family, as defined under the Act. The conclusions, therefore, drawn by the Authorities below that a deemed vacancy came into existence, cannot be faulted.

35. So far as the last point, that was argued, is concerned, it is about the age of the building, and for that reason, the inapplicability of the Act. While the petitioner says that he got the building demolished and reconstructed in the years 1990,

1991 and 1992, the two Authorities below, particularly, the Revisional Authority, after a meticulous examination of evidence on record, have held that no new constructions were raised. The Revisional Authority has looked into the assessment records, right from the year 1956 to the year 2008 and found that the existing construction that has been assessed, has remained unchanged. There is no recorded change of construction or enhancement of the annual value that would be there in the event of a new construction. The communication to the Nagar Palika about the construction being completed has not been considered reliable by the Authorities below. The aforesaid finding is a finding of fact based on a plausible view of the evidence on record, which does not merit interference by this Court in the exercise of our jurisdiction under Article 227 of the Constitution.

36. In the result, this petition **fails** and is **dismissed**. There shall be no order as to costs.

37. The interim stay order is hereby vacated.

Order Date :- 29.11.2023
Anoop

(J.J. Munir, J.)