

Court No. - 4

Case :- WRIT - A No. - 20393 of 2023

Petitioner :- Smt. Somwati @ Sonam And 4 Others

Respondent :- Jagdish Sonkar

Counsel for Petitioner :- Yogesh Kumar Srivastava, Gaurav Gautam, Noor Muhammad, Srishti Singh

Counsel for Respondent :- Devendra Kumar

Hon'ble Prakash Padia, J.

1. The present petition has been filed inter-alia with the prayer to quash the order dated 19.05.2022 passed by Small Causes Court, Jhansi in Suit bearing Suit No. 24 of 2018 (Jagdish Sonkar vs. Ram Swaroop Gupta) as well as order dated 18.10.2023 passed by District Judge, Jhansi in Rent Control Appeal No. 44 of 2022 (Smt. Somwati and others vs. Jagdish Sonkar) and allow the present petitioners to peacefully continue their business in the shop in question.

2. Facts in brief as contained in the writ petition are that the petitioners are in possession of building no.420A, Sadar Bazar, Jhansi for more than 50 years. Father of the respondent had allotted the premises on the rent to the husband of the petitioner no.1 namely Ram Swaroop for Rs.12.50/- per month and after death of Ram Swaroop, the property has been inhabited by their legal heirs as joint tenants. The suit was filed by the respondent (landlord) against the father of the petitioner under Section 21(1)(a) of the U.P. Act No.13 of 1972 being Suit No. 24 of 2018 with the prayer to direct the tenant to release the shop in question.

3. After hearing counsel for the parties in the aforesaid suit, judgment was delivered by the Prescribed Authority-Small Cause Court, Jhansi on 19.05.2022 by which the shop in question was released and the petitioners were directed to handover the peaceful vacant possession of the shop to the landlord within two months. The plaintiff-respondent was directed to make the payment of rent of two years by way of compensation to the petitioners. The operative portion of the order dated 19.05.2022 is reads as follows:-

"सायल / वादी का प्रार्थनापत्र 21(1)A यू० पी० एक्ट संख्या 13/1972 वास्ते निर्मुक्त किये जाने प्रश्नगत दुकान भवन नम्बर 420 स्थित सदर बाजार झांसी जिसकी सीमाये पूरब में अखिल जैन, पश्चिम में दुकान राजू घड़ी वाले, उत्तर में गली कैंट बोर्ड व दक्षिण में गली कैंट बोर्ड है, स्वीकार किया जाता है। विपक्षीगण को आदेशित किया जाता है की वह निर्णय के दिनांक से दो माह के अंदर प्रश्नगत दुकान रिक्त करके उसका कब्जा दखल सायल को सौंप देवे। वादी को उद्देशित किया जाता है की वह दुकान के दो वर्ष के किराये की धनराशि के बराबर धनराशि प्रतिकार के रूप में विपक्षी को अदा करे।

यदि विपक्षीगण द्वारा उक्त अवधि के अंतर्गत प्रश्नगत दुकान का कब्जा व दखल सायलान को नहीं दिया जाता तो सायल नियमानुसार न्यायालय के माध्यम से प्रश्नगत दुकान का कब्जा दखल प्राप्त करने का

अधिकारी होगा।”

4. Aggrieved against the aforesaid, Rent Control Appeal bearing No. 44 of 2022 was filed by the petitioner in the court of District Judge, Jhansi, the same was dismissed by him vide order dated 18.10.2023. The operative portion of the aforesaid order reads as follows:-

”अपीलार्थी /विपक्षीगण /किरायेदार श्रीमती सोमवती उर्फ सोनम आदि द्वारा प्रस्तुत रेंट कन्ट्रोल अपील संख्या -44/2022 निरस्त की जाती है । विद्वान विचारण न्यायालय द्वारा नियत वाद संख्या -24/2018 जगदीश सोनकर बनाम राम स्वरुप गुप्ता आदि में पारित निर्णय दिनांकित -19.05.2022 पुष्ट किया जाता है। अपील का व्यय उभय पक्ष स्वयं वहन करेंगे। पत्रावली नियमानुसार दाखिल दफ्तर की जाये।

इस निर्णय की प्रति सहित विद्वान विचारण न्यायालय की पत्रावली अविलम्ब सम्बन्धित विचारण न्यायालय प्रेषित की जावे। ”

5. It is argued by the counsel for the petitioners that orders were passed by the court below without proper adjudication of facts in suit and suit was allowed.

6. While going through the records and after going through the orders, operative portion of which are quoted above, it is clear that cogent findings were recorded by both the courts below while passing the aforesaid order. In this view of the matter, the Court is of the opinion that no interference is called for by this Court specially under Article 226 of the Constitution of India.

7. After some arguments, a prayer has been made by the counsel for the petitioners to some reasonable time be granted to them to vacate the shop in question.

8. This prayer has not been opposed by Shri Ashutosh Kumar, Advocate, holding brief of Shri Devendra Kumar, learned counsel appearing on behalf of respondent.

9. In the facts and circumstances of the case, without interfering with the orders passed by the courts below which are under challenged in the present petition, the present petition is **disposed of**, directing the petitioners to vacate the shop in question within a period of six months i.e., on or before 30.06.2024 with the following conditions:-

(i) Defendant-petitioners are directed to file an affidavit within four weeks from today before **Judge Small Cause, Jhansi** that he will vacate the shop in question within the time given by the Court i.e., upto 30.06.2024;

(ii) Defendant-petitioners are directed to deposit all decretal amount within a period of one month from today before **Judge Small Cause, Jhansi** as per the judgment and decree dated 19.05.2022. In case, any amount is already deposited, same shall be adjusted against the decretal amount;

(iii) Defendant-petitioners are also directed to pay regular rent of shop in question on month to month basis on or before 20th day of each month till the vacation of shop in terms of first two conditions;

(iv) It is made clear that the amount so deposited will be released in favour of the plaintiff-respondent (landlord) without furnishing any security.

(v) The respondent (landlord) is also directed to make the payment of amount as per decree passed by the trial court/ **Judge Small Cause, Jhansi** i.e., rent for a period of two years by way of compensation to the petitioners-tenant within a period of three months.

(vi) In case of failure of fulfillment of any conditions so imposed by the Court, this order would lost the effect and plaintiff- respondent is at liberty to proceed against the defendant- petitioners in accordance with law.

10. It is made clear that no liberty is given to the petitioners to file fresh petition for the very same cause of action.

Order Date :- 8.12.2023

Swati