Neutral Citation No. - 2023:AHC:175067
A.F.R.

Reserved On 17.05.2023
Delivered On 04.09.2023

Case :- MATTERS UNDER ARTICLE 227 No. - 3002 of 2019
Petitioner :- Smt. Prema Devi
Respondent :- Devi Deen (Since Deceased) And 6 Others
Counsel for Petitioner :- Arvind Kumar Yadav,Nikhil Kumar
Counsel for Respondent :- Girish Singh

Hon'ble Neeraj Tiwari, J.

1. Heard Sri Nikhil Kumar, learned counsel for the petitioner and Sri Ashish Kumar, learned counsel for the respondents.

2. Present petition has been filed challenging the impugned order dated 23.01.2019 passed by 9th Additional District and Sessions Judge, Kanpur Nagar in Rent Revision No. 70 of 2011.

3. Brief facts of the case are that a release application was filed, which was registered as Case No. 1 of 2009 upon which vacancy order dated 10.03.2010 has been passed and thereafter, release order dated 08.06.2011 has also been passed. Against the said orders, respondent-defendant had filed Rent Revision No. 70 of 2011, which was allowed vide order dated 23.01.2019.

4. Learned counsel for the petitioner submitted that impugned order is bad on two grounds. Firstly, without reversing the finding of Rent Control & Regulatory Officer (hereinafter referred to as "Regulatory Authority"), revision has been allowed. He next submitted that vacancy order and release order have been passed on the ground that petitioner is having her own house and residing in that also. He pointed out that Suit No. 893 of 1993 is pending between respondent-defendant and his sister in which he has filed written statement on oath with specific averment that he is living as sole owner in the said House No. 85/183. A vacancy order has been passed relying upon the admission made by the respondent-defendant in the said suit, but without reversing this finding, impugned order has been passed. Once, it is admitted in proceeding pending before another Court about the ownership of

house as well as residence cannot be ignored by the Revisional Court without giving any specific finding upon that. Secondly, in paragraph 13 of the affidavit filed along with the petition, petitioner has taken specific plea that respondent-defendant is residing in House No. 85/183. This fact has also been admitted in paragraph 13 of the counter affidavit filed before this Court, but without considering the same, impugned order has been passed. In support of his contention, he has placed reliance upon the judgment of the Apex Court in the matter of ***Basant Singh Vs. Janki Singh and others; [1967] 1SCR1*** as well as judgment of this Court in the matter of ***Dr. Dinesh Chandra Vs. Krishna Kumar Goel*** **in Civil Revision No. 214 of 2013 decided on 27.05.2013.** He has also placed reliance upon the judgment of Apex Court in the matter of ***Premlata @ Sunita Vs. Naseeb Bee and others; (2022) 6 Supreme Court Cases 585.***

5. He next submitted that remand order cannot be passed in routine manner except if there is exceptional circumstances to pass such order.

6. Sri Ashish Kumar, learned counsel for the respondents-defendants (tenant) vehemently opposed and submitted that Section 12(3) of U.P. Act No.13 of 1972 provides that vacancy can only be declared in case alternative accommodation is vacant. In the present case, same is not vacant as there is dispute between the defendant and his sister upon which Court has passed the order of status quo, therefore, in light of Section 12(3), there is no illegality in the order.

7. He next submitted that as per Section 16 (2) of U.P. Act No. 13 of 1972, it is required on the part of rent authority to consider the bonafide need, which has not been considered by the SCC Court, therefore, revision has rightly been allowed. He next submitted that in light of Section 101 of Indian Evidence Act, 1872, it is required on the part of plaintiff to establish his own case and any affidavit/ statement filed in another Court cannot be read as evidence against the defendant. In support of his contention, he has placed

reliance upon the judgment of this Court in the case of ***Gopal Singh vs. Rent Control and Eviction Officer, Dehradun and others passed in Civil Misc. Writ Petition No. 29155 of 1991 decided on 8.2.1993.***

8. Learned counsel for the respondents further submitted that in light of Section 14 of U.P. Act No. 13 of 1972, defendant is statutory tenant, therefore, no proceeding may be initiated against him. In support of his contention, he has placed reliance upon the judgment of Apex Court in the case of ***Chetar Sen Jain vs. Additional District Judge III, Dehradun and other reported in ARC 1992 (2)***

9. In his rejoinder argument, Mr. Nikhil Agarwal, learned counsel for the petitioner submitted that the plea of bonafide as well as maintainability of release application has never been questioned in written statement filed against the release application or in revision, therefore, at this stage, same cannot be raised upon which learned counsel for the respondents submitted that it is pure legal issue, therefore, he can raise the same at any point of time.

10. I have considered the rival submissions advanced by learned counsel for the parties and perused the provisions of law as well as judgments cited above.

11. Basic fact of the present case is undisputed that Original Suit No. 893 of 1993 is pending between the respondent-defendant and his sister in which he has filed written statement on oath with specific averment that he is living as sole owner in the said House No. 85/183.

12. Now the question before the Court is that what would be sanctity of statement given by the respondent-defendant in Original Suit No. 893 of 1993 on oath and applicability of Section 12 (3) of U.P. Act 13 of 1972. For reference, Section 12 (3) of U.P. Act 13 of 1972 is being quoted below;

> *"(3) In the case of a residential building if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his*

tenancy:

Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.

[Explanation— For the purposes of this sub-section :--

(a) a person shall be deemed to have otherwise acquired a building, if
he is occupying a public building for residential purposes as a tenant, allottee or licensee;

(b) the expression 'any member of family' in relation to a tenant, shall
not include a person who has neither been normally residing with nor is wholly dependent on such tenant.]1"

13. The language of Section 12 of U.P. Act 13 of 1972 is very much clear that in case, tenants or his family members, have taken a residence, not being temporary, deemed vacancy shall be treated.

14. So far as written statement or admission before any other Court of law is concerned, this matter was considered time and again by the Apex Court as well as this Court.

15. Apex Court has considered this issue in the matter of ***Basant Singh (Supra)*** and has taken a view that admission made by a party in a pleading may be used as evidence against him in other suits. Paragraph 6 of the said judgment is quoted below;

"Thus, even under the English law, a statement in a pleading sworn, signed or otherwise adopted by a party is admissible against him in other actions. In Marianski v. Cairns(1) Macq. 212., the House of Lords decided that an admission in a pleading signed by a party was evidence against him in another suit not only with regard to a different subject-matter but also against a different opponent. Moreover, we are not concerned with the technicalities of the English law. Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by a party in a pleading and other admissions. Under the Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. In other suits, this admission cannot be regarded as conclusive, and it is open to the party to show that it is not true."

16. This issue was before this Court in the matter of ***Dr. Dinesh Chandra (Supra)*** and while considering the different judgments of Apex Court, Court has held that no one can be permitted to approbate and reprobate. Relevant paragraphs are being quoted below;

"No one can be permitted to approbate and reprobate. It is doctrine of estoppel. When petitioner obtained benefit of the agreement in his writ petition against electricity authorities, he cannot be permitted to say that the agreement is not binding upon him or is not admissible in evidence. No reservation was made in the said writ petition regarding any clause of the tenancy agreement. No one can be permitted to say that he must be given benefit of an agreement to which he is signatory but if there is anything against him in the said agreement, then the same shall not be read against him due to the reason that the agreement is not on sufficiently stamped paper and is not registered even though required to be registered. Permitting such contradictory pleas to be raised will amount to granting premium on dishonesty. "

17. This issue was again before the Apex Court in ***Premlata @ Sunita (Supra)*** and after considering in detail, Apex Court has taken the very same view that no one can be permitted to approbate and reprobate and to take just contrary stand taken earlier. Relevant paragraph is quoted below;

"*At the outset, it is required to be noted and it is not in dispute that the plaintiff instituted the proceedings before the Revenue Authority under Section 250 of the MPLRC. These very defendants raised an objection before the Revenue Authority that the Revenue Authority has no jurisdiction to deal with the matter. The Tehsildar accepted the said objection and dismissed the application under Section 250 of the MPLRC by holding that as the dispute is with respect to title the Revenue Authority would not have any jurisdiction under MPLRC. The said order passed by the Tehsildar has been affirmed by the Appellate Authority (of course during the pendency of the revision application before the High Court). That after the Tehsildar passed an order rejecting the application under Section 250 of the MPLRC on the ground that the Revenue Authority would have no jurisdiction, which was on the objection raised by the respondents herein – original defendants, the plaintiff instituted a suit before the Civil Court. Before the Civil Court the respondents – original defendants just took a contrary stand than which was taken by them before the Revenue Authority and before the Civil Court the respondents took the objection that the Civil Court would have no jurisdiction to entertain the suit. The respondents – original defendants cannot be permitted to take two contradictory stands before two different authorities/courts. They cannot be permitted to approbate and reprobate once the objection raised on behalf of the original defendants that the Revenue Authority would have no jurisdiction came to be accepted by the Revenue Authority/Tehsildar and the proceedings under Section 250 of the MPLRC came to be dismissed and thereafter when the plaintiff instituted a suit before the Civil Court it was not open for the respondents – original defendants thereafter to take an objection that the suit before the Civil Court would also be barred in view of Section 257 of the MPLRC. If the submission on behalf of the respondents – defendants is accepted in that case the original plaintiff would be remediless. The High Court has not at all appreciated the fact that when the appellant – original plaintiff approached the Revenue Authority/Tehsildar he was nonsuited on the ground that Revenue Authority/Tehsildar had no jurisdiction to decide the dispute with respect to title to the suit property. Thereafter when the suit was filed and the respondents -defendants took a contrary stand that even the civil suit would be barred. In that case the original plaintiff*

would be remediless. In any case the respondents – original defendants cannot be permitted to approbate and reprobate and to take just a contrary stand than taken before the Revenue Authority. Therefore, in the facts and circumstances of the case, the learned trial Court rightly rejected the application under Order 7 Rule 11 CPC and rightly refused to reject the plaint. The High Court has committed a grave error in allowing the application under Order 7 Rule 11 CPC and rejecting the plaint on the ground that the suit would be barred in view of Section 257 of the MPLRC. The impugned judgment and order passed by the High Court is unsustainable and is liable to be set aside. "

18. Argument of learned counsel for the respondents-defendants (tenant) about the applicability of Section 12(3) of U.P. Act No.13 of 1972 cannot be accepted as there is no dispute on the point that written statement filed in Original Suit No. 893 of 1993, it is admitted that respondents- defendants (tenant) is residing in House No. 85/183 in the capacity of owner. In light of judgment given by Apex Court as well as this Court, he cannot take a different stand and be permitted for approbate and reprobate. Therefore, this Court is of the view that once, written statement has been filed by the tenant in Original Suit No. 893 of 1993, it has to be treated a valid evidence and deemed vacancy has to be treated.

19. So far as Section 16 (2) of U.P. Act No. 13 of 1972 is concerned, it requires bonafide need. In the present case, this defense is not available. Once it is held that tenant is having his own residence in light of Section 12(3) of U.P. Act No. 13 of 1972, judgment of **Gopal Singh (Supra)** is of no use in the present matter only for the reasons that in the said case, facts are entirely different and in written statement, there are two factual averments contradictory to each other.

20. Learned counsel for the respondents made submission about the applicability of Section 14 of U.P. Act No. 13 of 1972 and as per the said section, defendant is statutory tenant, therefore, no proceeding can be initiated against him. This argument can also not be accepted for the very simple reason that once, in light of Section 12(3) of U.P. Act No. 13 of 1972, respondents- defendants (tenant) had occupied permanent accommodation, there is no occasion to consider the applicability of Section 14 of U.P. Act No. 13 of 1972.

21. So far as judgment of **Chetar Sen Jain (Supra)** is concerned,

in that case, facts are entirely different as the issue was related to before the commencement of U.P. Act No. 13 of 1972 and also in part, tenancy was admitted. In that case, earlier tenant was residing at the place in dispute and thereafter vacated the same, but along with new oral agreement, he had retained the accommodation in question for godown purpose. Therefore, Court in light of new enactment i.e. U.P. Act No. 13 of 1972 had decided the case in favour of tenant.

22. Learned Revisional Court while remanding the matter before Regulatory Authority, has not given any finding as to why admission made in Original Suit No. 893 of 1993 by respondents-defendants (tenant) about having permanent accommodation cannot be accepted. Therefore, revisional order is bad and cannot be sustained. If Revisional Court is of the view that affidavit given in Original Suit No. 893 of 1993 cannot be accepted, there must have been specific finding to this effect along with reasons, which is missing in the impugned order.

23. Therefore, in light of Section 12(3) of U.P. Act No. 13 of 1972 as well as law laid down by the Apex Court and this Court, I am of the firm view that any affidavit given before any Court of law be read as conclusive evidence in subsequent proceeding before any Court of law, if related to that controversy.

24. In present case, it is admitted by the respondents-defendants (tenant) in Original Suit No. 893 of 1993 that he is having permanent alternative accommodation, therefore, no case is made out to quash the order of Regulatory Authority and remand the matter for fresh consideration.

25. Therefore, in light of facts as well as law discussed herein above, impugned order dated 23.01.2019 passed by 9th Additional District and Sessions Judge, Kanpur Nagar is bad in law and is hereby set aside.

26. Accordingly, petition is **allowed**. No order as to costs.

Dt.04.09.2023
Arvind/-