

Jaspal Singh vs Additional District Judge, ... on 28 September, 1984

Equivalent citations: 1984 AIR 1880, 1985 SCR (1) 889, AIR 1984 SUPREME COURT 1880, 1985 ALL. L. J. 179, 1985 SCFBRC 33, (1985) 2 RENTLR 363, 1985 UJ(SC) 33, 1985 ALL CJ 37, (1985) 1 RENTLR 52

Author: R.B. Misra

Bench: R.B. Misra, E.S. Venkataramiah

PETITIONER:

JASPAL SINGH

Vs.

RESPONDENT:

ADDITIONAL DISTRICT JUDGE, BULANDSHAHR AND ORS.

DATE OF JUDGMENT 28/09/1984

BENCH:

MISRA, R.B. (J)

BENCH:

MISRA, R.B. (J)

VENKATARAMIAH, E.S. (J)

CITATION:

1984 AIR 1880 1985 SCR (1) 889

1984 SCC (4) 434 1984 SCALE (2) 538

CITATOR INFO :

R 1986 SC 600 (9)

ACT:

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, ss. 3(a), 3(g), 11, 13, 14 and 15- Whether tenancy rights can be devised by a "Will"

Words and Phrases-"heir"-Meaning of.

HEADNOTE:

Section 14 of the U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act (For short, the Act) as it stood prior to its amendment in 1976 and also after its amendment by the U.P. Act No. 28 of 1976 deals with regularisation of occupation of existing tenants. The unamended section 14 of the Act provided that a person must

satisfy two conditions in order to get the benefit of this section, namely, (i) that he was a tenant in occupation of a building with the consent of the landlord immediately before the commencement of this Act and (ii) that he was not a person against whom proceedings under section 7A of the old Act are pending immediately before such commencement. The amended section 14 of the Act lays down that a person shall be deemed to be an authorised licensee or tenant of building if (i) any licensee or tenant is in occupation of a building with the consent of the landlord immediately before the commencement of the Act as amended by the U.P. Act No. 28 of 1976 and (ii) that he was not a person against whom any suit or proceeding for eviction is pending before any court or authority on the date of such commencement. Section 3(a) of the Act provides that a tenant in relation to a building means a person by whom its rent is payable, and on the tenant's death, in the case of a non-residential building, his heirs.

On the death of Naubat Singh-a tenant in a shop situated in Bulandshahr, the landlord started eviction proceedings u/s. 12 read with s. 16 of the Act for the release of his shop. The appellant a nephew of the deceased tenant, resisted the eviction application on the grounds: (i) that he was entitled to get the benefit of the amended and/or unamended section 14 of the Act since he had been helping the deceased tenant in his business for the last several years and remained in continuous possession of the disputed shop after his death; and (2) that he was an heir of the deceased tenant on the basis of a will executed by the deceased tenant in his favour and therefore he was a tenant within the meaning of section 3(a) of the Act.

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The Rent Control and Eviction officer rejected the application holding that the appellant was entitled to get the tenancy rights under the unamended s. 14 of the Act. In revision the Additional District Judge held that, since even after the death of Naubat Singh on 31st August 1974, the appellants been, permitted to continue in possession of the premises, he got the benefit of amended s. 14 of the Act and therefore dismissed the revision petition. Thereupon the landlord filed a writ petition under Article 226 in the High Court against the orders of the two authorities below. The High Court negatived all the contentions of the appellants, allowed the writ petition and quashed the orders of the authorities below and directed the Rent Control and Eviction officer to decide the release application afresh in accordance with the law. Hence this appeal by special leave.

Dismissing the appeal,

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HELD: (1) Admittedly Naubat Singh was the tenant of the shop on the date immediately preceding the commencement of the Act, that is, 15th July 1972 and he was alive and therefore no question of the appellant being regularised as

a tenant arises. The appellant also could not get the benefit of amended sec. 14, since at the relevant time the application for release filed by the landlord against the appellant was pending in the court of Additional District Judge by way of revision petition wherein the landlord had contested the claim of tenancy by appellant. [893 H; 894, B-C]

(2) The word 'heir' has been construed both in a wider as well as in a narrower sense. Which sense will be applicable to the facts of a particular case will depend upon the intention and scheme of a particular legislation in which the question occurs. [895 G]

Smt. Rukmani v. III Addl. District Judge, Kanpur (1) 1977 ARC 72 and Munni Lal v. Smt. Shiva Devi 1981 ARC (S.N. 13); referred to

Gulzara Singh v. Smt. Tej Kaur, AIR 1961 Punjab 288, approved.

(3) It is clear from a survey of ss 3(g), 11, 12, 13 and 15 of the Act that there are restrictions placed by the Act on the right of the tenant to transfer or sublet the tenancy rights and he can keep possession of the building or premises for himself and for the purpose of his family, for his business and for the business of his family members. He obviously cannot be allowed to transfer a tenancy right. A fortiori, the scheme of the Act does not warrant the transfer of the tenancy right to be effective after his lifetime. [897 G-H]

(4) In the instant case, the appellant was neither a tenant of the disputed shop nor he was an heir of the deceased tenant since he is not a member of the family of the deceased tenant as defined u/s. 3(g) of the Act. Besides, on a plain reading of the will it is evident that the will has been executed in respect of other properties including his business but not in respect of the tenancy right. Therefore, this Court sees no reason to differ from the finding of the High Court. [898 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1275 of Appeal by Special leave from the Judgment and Order dated the 27th March, 1979 of the Allahabad High Court in Civil Misc. Writ No. 1416 of 1977.

Mr. E.C. Agarwala, Advocate for the Appellant. Mr. J. P. Goyal, Mr. S. R. Jain and Mr. Rajesh, for the Respondent.

The Judgment of the Court was delivered by MISRA, J. The present appeal by special leave against the judgment of the Allahabad High Court dated 27th of March, 1979 centers round a shop No. 270 situate in Grouceganj, Bulandshahr. This shop was owned by Ratan Lal and Naubat Singh was a

tenant of the shop. Nabuat Singh died on 31st of August, 1974. He had no male issue but had four daughters, all of whom were married and were residing with their husbands outside Bulandshahr. He also left behind his widow who was residing in village Rampur, district Bulandshahr. He was carrying on some business in the disputed shop during his lifetime. On his death Ratan Lal, the landlord, filed an application under s. 12 read with s. 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 (for short, referred to hereinafter as 'the U.P. Act No. 13 of 1972') for a declaration that the shop was vacant and he required the same for his personal need.

The application was resisted by Jaspal Singh, the present appellant, on the ground that he was the heir of Naubat Singh deceased and was in occupation of the disputed shop; that on 4th of July 1973 Naubat Singh before his death executed a will conveying all his rights and properties including the tenancy rights in the disputed shop to him; that he had been helping Naubat Singh in his business for the last several years and remained in continuous possession of the disputed shop after the death of Naubat Singh and so he was entitled to get the benefit of s.14 of the U.P. Act No. 13 of 1972.

The Rent Control and Eviction officer rejected the application holding that Jaspal Singh the, appellant, had been living with the deceased Naubat Singh and was also assisting him in doing the business in the disputed premises to the full knowledge of the landlord, and so he was entitled to get the tenancy rights under s. 14 of the U.P. Act No. 13 of 1972, as it stood prior to its amendment made by U.P. Act No. 28 of 1976.

Feeling aggrieved the landlord preferred a revision before the District Judge, Bulandshahr,, which was transferred to the Additional District Judge, who dismissed the same on 8th of July, 1976. He, however, did not agree with the finding of the Rent Control and Eviction officer that Jaspal Singh was entitled to the benefit of original s. 14 of the U.P. Act No. 13 of 1972 but since even after the death of Naubat Singh, on 31st of August 1974 Jaspal Singh had been permitted to continue in possession of the premises he got the benefit of amended s. 14, as amended by U.P. Act No. 28 of 1976.

Undaunted by his failures, the landlord filed a petition under Art. 226 of the Constitution challenging the orders of the two authorities below. The High Court endorsed the finding of the Additional District Judge that Jaspal Singh could not get the benefit of the unamended s. 14 of the U.P. Act No. 13 of 1972 inasmuch as on the date immediately preceding the commencement of the Act, i.e., on 14th July, 1972 Naubat Singh was very much alive and admittedly he was the tenant of the premises in question and as such no question of regularisation of Jaspal Singh as tenant could arise. The High Court also held that Jaspal Singh was not even entitled to get the benefit of the amended s. 14 as it stood amended by the U.P. Act No.28 of 1976, which came into force on 5th of July, 1976. According to the High Court the benefit of amended s. 14 would be available to Jaspal Singh, the appellant, only when he was living in the premises with the consent of the landlord provided that no proceedings for his eviction were pending. The landlord, however, in the instant case immediately after the death of Naubat Singh started the proceedings for the release of the premises in 1974. The High Court took exception to the assumption of the learned Additional District Judge regarding the consent of the landlord. According to the High Court consent of the landlord cannot be assumed or presumed, it must be proved as a fact but there was no proof of the

consent of the landlord. The High Court after construing the scheme and the various provisions of the Act also held that the appellant could not be an heir on the basis of the will executed by Naubat Singh nor could Naubat Singh execute any will in respect of the tenancy rights. On these findings the High Court held the possession of Jaspal Singh to be unauthorised. Consequently, the High Court allowed the writ petition and quashed the orders of the authorities below and directed the Rent Control and Eviction officer to decide the release application afresh in accordance with the law. Jaspal Singh has not approached this Court by special leave, and the counsel for the appellant has reiterated the same points before us.

The first question which calls for consideration is whether Jaspal Singh, the appellant is entitled to the benefit of the unamended and amended s. 14 of the rent Act. It would be appropriate at this stage to read the old unamended and amended s. 14 of the Act. Section 14 as it stood originally in the U.P. Act No. 13 of 1972 read:

"14. Regularisation of occupation of existing tenants.- Notwithstanding anything contained in and general order made under sub-section (2) of section 7 of the old Act, any tenant in occupation of a building with the consent of the landlord immediately before the commencement of this Act, not being a person against whom proceedings under section 7-A of the old Act are pending immediately before such commencement, shall be deemed to be in authorised occupation of such building. Section 14 of the Act as amended by the U.P. Act No. 28 of 1976 reads:

"14. Regularisation of occupation of existing tenants.- Notwithstanding anything contained in this Act or any other law for the time being in force, any licensee (within the meaning of Section 2-A) or a tenant in occupation of a building with the consent of the landlord immediately before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent, and Eviction Amendment) Act, 1976 not being a person against whom any suit or proceeding for eviction is pending before any court or authority on the date of such commencement shall be deemed to be an authorised licensee or tenant of such building."

A bare perusal of s. 14 as it stood prior to its amendment in 1976 would indicate that in order to get the benefit of this section a person must satisfy that (1) he was a tenant in occupation of a building with the consent of the landlord immediately before the commencement of this Act and that he was not a person against whom proceedings under s. 7A of the old Act are pending immediately before such commencement, i.e., on 14th July, 1972 (date of commencement of the Act being 15 July, 1972). Admittedly Naubat Singh was the tenant of the shop on the date immediately preceding the commencement of the Act (i.e., 15th July, 1972) and he was alive and therefore no question of Jaspal Singh being regularised as a tenant arises.

In order to attract s. 14 as it stood after the amendment in 1979, Jaspal Singh had to prove that he was a licensee or a tenant with the consent of the landlord immediately before the commencement of the U.P. Act No. 28 of 1976 which came into force on 5th July, 1976. At the relevant time, however, the application for release filed by the landlord against Jaspal Singh was pending in court

of Additional District Judge by way of revision petition wherein the landlord Ratan Lal had contested the claim of tenancy by Jaspal Singh. The appellant, therefore, could not get the benefit of amended s. 14 as well and the High Court was right in so holding.

This leads us to the next contention that the appellant is a tenant within the meaning of s. 3(a) of Act No. 13 of 1972:

"3. In this Act, unless the context otherwise require-

(a) "tenant" in relation to a building, means a person by whom its rent is payable, and on the tenant's death-

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death; (2) in the case of a non-residential building, his heirs:"

The appellant would be a tenant within the meaning of s. 3 (a) only when he is an heir. The appellant is not a son but only a nephew of Naubat Singh. He, however, claims to be an heir on the basis of a will executed by Naubat Singh conveying all his rights and properties including the tenancy rights in respect of the disputed shop in his favour and that he had been helping Naubat Singh in his business for the last several years and continued to remain in possession of the shop even after the death of Naubat Singh. Accordingly he was entitled to the benefit of s. 14. We have already dealt with the question whether the appellant was entitled to the benefit of s. 14 as it stood prior to its amendment in 1976 and also of the amended provisions of s. 14 and we have negatived the contention of the appellant. Therefore, the precise question for consideration would be whether the appellant is an heir within the meaning of s. 3(a) on the basis of the will executed in his favour by Naubat Singh. There seems to be a cleavage of opinion on this point in various High Courts. The Allahabad High Court in *Smt. Rukmani Devi v. III Addl. District Judge, Kanpur* and *Munni Lal v. Smt. Shiva Devi* held that the question as to who are heirs of the deceased tenant, will be decided in accordance with the personal law of the tenant, as this Act does not lay down the list of heirs on whom the tenancy should devolve. In some of the Rent Control Acts list of the heirs has been specified for the purpose of devolution of tenancy on the death of the tenant. A Division Bench of the Punjab and Haryana High Court in *Gulzara Singh v. Smt. Tej Kaur* on the other hand held:

"Generally speaking 'heirs' are those persons whom the law declares to be entitled to the estate of a deceased person, and in common legal parlance the word 'heir' like the expression 'heir at law' undoubtedly connotes and is suggestive of a person who succeeds to the estate in case of intestacy under the statutes of succession. But in common speech this word is also not infrequently used to indicate those who come in any manner to the ownership of any property by reason of the death of the owner or persons upon whom the property devolves on the death of another either by law or by will."

In other words, it is indicative of persons entitled by will or otherwise to share the estate of the deceased. It is thus true that technically the word 'heir' may be distinguishable from the word 'legatee' but it is also at times used in its more general and comprehensive sense as indicating the person upon whom the property devolves on the death of another and hence when the intent is clear the word 'heir' may well be treated as equivalent to 'Legatee' or devised'. The true scope, effect and significance of this word is, therefore, in all cases a question of intention which has to be determined principally on a consideration of the objection and purpose of the statute in which it is used."

Thus, the word 'heir' has been construed both in a wider as well as in a narrower sense. Which sense will be applicable to the facts of a particular case will depend upon the intention and scheme of a particular legislation in which the question occurs. This will also raise an allied question whether the tenancy rights could be devised by a will. It will be relevant at this stage to refer to material provisions of the Act.

The word 'family' has been defined in s. 3(g) of the Act:

(g) "family" in relation to a landlord or tenant of a building, means, his or her-

(i) spouse,

(ii) male lineal descendants,

(iii) such parents, grand parents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her, and includes, in relation to a landlord, any female, having a legal right of residence in that building;"

Section 11 deals with the prohibition of letting without allotment order. It reads:

"Save as hereinafter provided, no person shall let any building except in pursuance of an allotment order issued under Section 16."

Section 12 deals with a deemed vacancy of building in certain cases and reads:

"(1) A landlord or a tenant of a building shall be deemed to have ceased to occupy the building or a part thereof

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family,
or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

(2) In the case of non-residential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building."

Section 13 provides for restrictions on occupation of building without allotment or release, and reads:

"Where a landlord or tenant ceases to occupy a building or part thereof, no person shall occupy it in any capacity on his behalf, or otherwise then under an order of allotment or release under Section 16, and if a person so purports to occupy it, he shall, without prejudice to the provisions of Section 31, be deemed to be an unauthorised occupant of such building or part."

Section 15 casts an obligation on the landlord or the tenant to intimate vacancy to the District Magistrate. Section 16 deals with allotment and release of a vacant building. Section 20 puts a bar of suit for eviction of a tenant except on specified grounds enumerated therein.

From a survey of these provisions it will be clear that if a tenant parts with possession of the premises in his possession, the same would be treated as vacant. There are restrictions in the case of a residential building that the tenant will live only with the members of his family and after he has allowed the same to be occupied by any person who is not a member of his family, the tenant shall be deemed to have ceased to occupy the building. In the case of a non-residential building, when a tenant is carrying on business in the building, admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building. If a tenant subjects the premises, he is able to ejectment. Obviously, therefore, there are restrictions placed by the Act on the right of the tenant to transfer or sublet the tenancy rights and he can keep possession of the building or premises for himself and for the purpose of his family, for his business and for the business of his family members. He obviously, cannot be allowed to transfer a tenancy right. A fortiori, the scheme of the Act does not warrant the transfer of the tenancy right to be effective after his lifetime. Thus, the appellant was neither a tenant of the disputed shop nor he was an heir of Naubat Singh, the original tenant. Besides, on a plain reading of the will it is evident that the will has been executed in respect of other properties including his business but not in respect of the tenancy rights. The High Court also recorded a finding to the effect that there was no will in respect of the tenancy rights of the disputed shop.

Having given our anxious consideration to the questions involved in the case we see no reason to differ from the finding of the High Court. The appeal is accordingly dismissed but in the circumstances of the case the parties are allowed to bear their own costs.

M.L.A. Appeal dismissed.