

CASE NO.:

Appeal (civil) 7254 of 1996

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PETITIONER:

Nutan Kumar and Ors.

RESPONDENT:

IInd Additional District Judge & Ors.

DATE OF JUDGMENT: 27/09/2002

BENCH:

S. N. VARIAVA & BRIJESH KUMAR.

JUDGMENT:

J U D G M E N T

S. N. VARIAVA, J.

These Appeals are against a Judgment dated 20th September, 1993 by which the Writ Petition filed by the Appellants has been dismissed. This Judgment dated 20th September, 1993 was based on a Judgment rendered by a Full Bench of the Allahabad High Court on 20th May, 1993. The questions which were referred and considered by the Full Bench were as follows:

"1. Whether an agreement of lease between the landlord and the tenant for letting and occupation of a building in contravention of the provisions of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is void?

2. Whether the said agreement is enforceable in law and a decree for ejectment of the tenant can be passed in favour of the landlord on the basis thereof?"

The Respondent has remained absent in spite of notice served. This Court therefore requested Mr. R. N. Trivedi, the Additional Solicitor General of India, to assist the Court as an Amicus Curie. Mr. Trivedi has very ably assisted this Court and the Court expresses its appreciation of the efforts put in by him and the very able assistance rendered by him.

At this stage the relevant facts must be briefly stated:

The Appellant is the landlord. In May, 1977 he let out the premises in question to the 3rd Respondent on a monthly rent of Rs. 70/-. The 3rd Respondent paid rent for the months of June, July and August 1977 and thereafter stopped paying any rent. The Appellant therefore gave a notice on 4th August, 1982 and filed a suit for ejectment under the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the said Act) on the ground of non-payment of rent.

By a Judgment dated 30th September, 1986 the trial Court found that the monthly rent was Rs. 70/- and that the 3rd Respondent had defaulted in payment of rent. The trial Court also held that the notice given by the Appellant was legal and valid. The trial Court still dismissed the Suit on the ground that the contract of tenancy was entered into in contravention of the provisions of the said Act and therefore the Appellant was not entitled to any relief.

The Appellant filed a Revision which was dismissed on 25th April, 1987. The Appellant then filed a Writ Petition in the High Court of Allahabad. As there was a conflict of decision the above mentioned two questions were framed and were referred to a Full Bench. It must be mentioned that before the Full Bench a number of authorities of

this Court were cited. These authorities were binding on the Full Bench. As some of these authorities related to the questions under consideration, they should have been conclusive. However, the Full Bench in its majority judgment thought that there were conflicting judgments of this Court. The majority Judgment held that the intransigent discord between the decisions of this Court had lead to an embarrassing situation. The majority Judgment held that in view of the conflicting decisions they could follow the Judgment of this Court which appeared to them to state the law accurately and elaborately. The majority Judgment then held as follows:

"1. An agreement of lease between the landlord and the tenant for letting and occupation of a building in contravention of the provisions of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is void.

2. The said agreement is unenforceable in law and no decree for ejection of the tenant can be passed in favour of the landlord on the basis thereof."

As stated above, pursuant to the majority Judgment of the Full Bench, the Writ Petition was dismissed. These Appeals impugn both Judgments dated 20th September, 1993 as well as the Judgment dated 20th May, 1993.

At this stage the relevant provisions of the said Act need to be set out. Sections 11, 12, 13, 17 and 31 read as follows:

"11. Prohibition of letting without allotment order. -

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

12. Deemed vacancy of building in certain cases.- (1)

A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if -

(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.

(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.

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(3-A) If the tenant of a residential building holding a transferable post under any Government or local authority or a public sector corporation or under any other employer has been transferred to some other city, municipality, notified area or town area, then such tenant shall be deemed to have ceased to occupy such building with effect from the thirtieth day of June following the date of such transfer or from the date of allotment to him of any residential accommodation (whether any accommodation be allotted under this Act or any official accommodation is provided by the employer) in the city, municipality, notified area or town area to which he has been so transferred, whichever is later.

(3-B) If the tenant of a residential building is engaged in any profession, trade, calling or employment in any city, municipality, notified area or town area in which the said building is situate, and such engagement ceases for any reason whatsoever, and he is landlord of any other building in any other city, municipality, notified area or town area, then such tenant shall be deemed to have ceased to occupy the first mentioned building with effect from the date on which he obtains vacant possession of the last mentioned building whether as a result of proceedings under Section 21 or otherwise.

(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of sub-section (1), or sub-section (2), or sub-section (3), sub-section (3-A) or sub-section (3-B), shall, for the purposes of this Chapter, be deemed to be vacant.

(5) A tenant or, as the case may be, a member of his family, referred to in sub-section (3) shall, have a right, as landlord of any residential building referred to in the said sub-section which may have been let out by him before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976 to apply under clause (a) of sub-section (1) of Section 21 for the eviction of his tenant from such building, notwithstanding that such building is one to which the remaining provisions of this Act do not apply.

13. Restrictions on occupation of building without allotment or release.- 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 than 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.

17. Conditions of making allotment order.- (1)
Where the District Magistrate receives an intimation, under sub-section (1) of Section 15, of the vacancy or expected vacancy of building any allotment order in respect of that building shall be made and communicated to the landlord within twenty-one days from the date of receipt of such intimation, and where no such order is so made or communicated within the said period, the landlord may intimate to the District Magistrate the name of a person of his choice, and thereupon the District Magistrate shall allot the building in favour of the person so nominated unless

for special and adequate reason to be recorded he allots it to any other person within ten days from the receipt of intimation of such nomination :

Provided that where the landlord has made an application under clause (b) of sub-section (1) of Section 16, for the release of the whole or any part of the building or land appurtenant thereto in his favour, the said period of twenty-one days shall be computed from the date of decision on that application or where an application for review or an appeal is filed against such decision, from the date of decision on such application or appeal.

(2) Where a part of a building is in the occupation of the landlord for residential purpose, or is released in his favour under clause (b) of sub-section (1) of Section 16 for residential purpose, the allotment of the remaining part thereof under clause (a) of the said sub-section (1) shall be made in favour of a person nominated by the landlord.

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31. Penalties.- (1) Any person who contravenes any of the provisions of this Act or any order made thereunder or attempts or abets such contravention, shall be punished on conviction with imprisonment of either description for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

(2) Whoever demolishes any building under tenancy or any part thereof without lawful excuse shall be punished, on conviction, with imprisonment of either description for a term which may extend to one year or with fine which may extend to five thousand rupees or with both.

(3) Where a person has been convicted for contravention of sub-section (1) of Section 4, the court convicting him may direct that out of the fine, if any, imposed and realised from the person so convicted, an amount not exceeding the amount paid as premium of additional payment over and above the rent for admission as a tenant or sub-tenant to any building may be paid to the tenant by whom such payment was made :

Provided that any amount so paid to the tenant shall be taken into account in awarding compensation or restitution to him in any subsequent claim."

In the case of Nanakram v. Kundalrai reported in (1986) 3 SCC 83 the question was whether a lease in violation of statutory provisions was void. It was held that in the absence of any mandatory provision obliging eviction in case of contravention of the provisions of the Act the lease would not be void and the parties would be bound, as between themselves, to observe the conditions of lease. It was held that neither of them could assail the lease in a proceeding between themselves. This authority was in respect of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949, whereunder also the landlord was obliged to intimate a vacancy to the Deputy Commissioner of the District and the Deputy Commissioner could allot or direct the landlord to let the house to any person. The

provisions were more or less identical to the provisions of the said Act. This authority has directly dealt with the questions under consideration and answered them. The majority Judgment takes note of this authority and holds as follows:

"With utmost humility and reverence it is stated that above observations are not compatible with provisions of Section 10 and 23 of the Contract Act. Otherwise also, it is most respectfully pointed that the statement of law contained in the said observation is, perhaps, in conflict with the law declared in the decisions of the Hon'ble Supreme Court in Waman Shrinivas Kini v. Rati Lal Bhagwan Das & Co., Shrikrishna Khanna V. Additional District Magistrate, Kanpur and others, and Manna Lal Khetan V. Kedar Nath Khetan."

Thus it is to be seen that the majority Judgment, with a pretence of humility and reverence refuse to follow a binding authority of this Court. It was not open for the Full Bench to comment that the authority was not compatible with provisions of Sections 10 and 23 of the Contract Act. The Full Bench also realised that there are no conflicting authorities. They therefore say that this authority is "perhaps in conflict with" the decisions in Waman Shrinivas Kini, Shrikrishna Khanna and Manna Lal Khetan. One must therefore see whether there is any conflict of decisions. If there is no conflict then judicial discipline and propriety required that the majority of the Full Bench followed the binding authority of this Court.

In the case of Waman Shrinivas Kini v. Ratilal Bhagwandas & Co. reported in (1959) Supp. 2 SCR 217, there was an agreement of lease which permitted subletting. However, Section 15 of the Bombay Hotel and Lodging Houses Rates Control Act, 1947 provided that it would not be lawful for any tenant to sublet the whole or any part of the premises let to him or to assign or to transfer in any other manner his interest thereon. Therefore in this case there was a specific provision of a statute which made subletting unlawful. In view of the specific provision this Court held that the provision of the statute would prevail over the contract. This authority, therefore, is not laying anything contrary to what has been laid down in Nanakram's case. It is in consonance with what has been laid down in Nanakram's case. What is more important is that the suit was filed by the landlord for recovery of the premises in spite of the contract which permitted subletting. This Court permitted the landlord to enforce his right of eviction. Thus, in spite of the contract between the parties, which is against a provision of law, ejectment proceedings were held to be maintainable. It must also be mentioned that Nanakram's case noticed Waman Shrinivas Kini's case and proceeded on the principles of Waman Shrinivas Kini's case.

In the case of Sri Krishna Khanna v. A.D.M., Kanpur reported in (1975) 2 SCC 361, the Appellant-landlord had intimated the District Magistrate about the vacancy. The Appellant-landlord applied for release of the shop because he needed it for his son. Another tenant of the landlord also applied for allotment of the shop to him. Whilst the matter was pending before the appropriate authority the landlord occupied the shop without any order in his favour. The appropriate authority then passed a formal order of allotment in favour of the tenant. The landlord filed a suit challenging the order of allotment. In this suit the landlord and the tenant arrived at a compromise as under:

"(a) That it is admitted by the defendant that at the expiry of 30 days from the date of intimation, the shop in dispute automatically stood released to the plaintiff and the allotment order dated September 18, 1962 was not at all effective vis--vis the rights of the plaintiff as a landlord to use the said premises.

(b) That the defendant has no objection if the plaintiff

continues to utilize the accommodations for his own business or a business of his son whether himself or in partnership with any person and till such time as the plaintiff and his son utilize the accommodation in this manner, the defendant will not be entitled to enforce his allotment order against him.

(c) That the plaintiff has agreed that if at any time he wants to discontinue the business established by him in the said shop and wants to let out the shop to any person, he will do so in favour of the defendant and unless he refuses to take the lease on reasonable terms, the plaintiff will not let out the shop to any third party.

(d) That the shop is already in possession of the plaintiff and the defendant will not be entitled to take any steps till the landlord himself desires to let out the shop to the defendant."

Thereafter the tenant filed an application under Section 7A for eviction of the shop by the landlord. This application was allowed by the Rent Controller by an ex-parte order dated 15th November, 1962. In the application the tenant had not disclosed the compromise arrived at between him and the landlord. A Review Application was filed by the landlord. This was dismissed by the Rent Controller. The landlord then filed a Writ Petition as well as an Appeal against the order of the Rent Controller. Both were dismissed. The landlord then approached this Court. This Court held by the majority of the Judges that so long as the Act and the Rules continued in force the control of letting vested in the appropriate authority and not in the parties. It was held that agreement of the kind embodied in the compromise petition could not curtail the powers of the appropriate authority. It was held that irrespective of the agreement between the parties the appropriate authority was entitled to exercise the powers of allotment vested in him. It must be mentioned that Justice Bhagwati, as he then was, in his minority and partly dissenting Judgment held that unless the consent decree was held to be invalid it would be binding on the tenant and even though the powers of the appropriate authority may not be curtailed, the tenant would be bound by the terms of the agreement between him and the landlord. This authority therefore also lays down nothing contrary to Nanakram's case. This authority merely deals with the right of the appropriate authority to exercise the powers given to him under the Act.

In the case of Mannalal Khetan v. Kedar Nath Khetan reported in (1977) 2 SCC 424 the Appellant and the Respondent therein were two branches of the Khetan family. The family held shares in Lakshmi Devi Sugar Mills Private Ltd., Maheshwari Khetan Sugar Mills Private Ltd. and Ishwari Khetan Sugar Mills Private Ltd. The shares stood in the names of M/s Ganesh Narayan Onkarmal Khetan, M/s Sagarmal Hariram Khetan, Sri Mannalal Khetan and Sri Radhakrishna Khetan. There were large income tax arrears and other tax liabilities outstanding against the firms and individual partners. The Income Tax Department issued a notice under Section 46(5)(e) of the Indian Income Tax Act, 1922 calling upon M/s Lakshmi Devi Sugar Mills Private Ltd. to pay to the Department any amounts due by them to the firm of M/s Ganesh Narayan Onkarmal Khetan or any of its partners. The Certificates of Attachment were also issued on 8th March, 1954 and 18/31st October, 1955 against shares, of M/s Lakshmi Devi Sugar Mills Private Ltd., belonging to the Khetans. On 31st July, 1957 the members of the Khetan family entered into an agreement amongst themselves by which they agreed to exchange lots of shares amongst themselves in settlement of their differences and disputes. The question before this Court was whether this agreement for transfer of shares could be enforced and whether such an agreement was in

violation of Section 108 of the Companies Act, 1946. It is in that context that it was held that the agreement was unenforceable not only because it was against the provisions of Section 108 of the Companies Act but also because of the orders of attachment. This case therefore has nothing to do with the question of enforceability of an agreement between a landlord and tenant and lays down nothing contrary to what has been laid down in Nanakram's case. It is thus to be seen that the principles laid down in Nanakram's case still hold the field. There is no contrary or conflicting decision or authority. The Full Bench was bound by the authority in Nanakram's case and could not have taken a contrary view.

As Nanakram's case was decided by three Hon'ble Judges of this Court, it would also be binding on us. We are therefore not going into the question of correctness or otherwise of such a view. We may however mention that the impugned Judgment dated 20th May, 1993, of the Full Bench, is not correct for another reason also. Section 13 of the said Act specifically provides that a person who occupies, without an allotment order in his favour, shall be deemed to be an unauthorised occupant of such premises. As he is in an unauthorised occupation he is like a trespasser. A suit for ejectment of a trespasser to get back possession from a trespasser could always be filed. Such a Suit would not be on the contract/agreement between the parties and would thus not be hit by principles of public policy also. In this view of the matter the decision of the Full Bench dated 20th May, 1993 cannot be sustained and is set aside. It is held that the law, as laid down in Nanakram's case, still holds the field. Thus unless the statute specifically provides that a contract contrary to the provisions of the statute would be void the contract would remain binding between the parties and could be enforced between the parties themselves. Consequently the Judgment dated 20th September, 1993 dismissing the Writ Petition is set aside. The matter is sent back to the High Court for deciding the Writ Petition in accordance with law. The Appeals stand disposed of accordingly. There will be no order as to costs.