A ASHOK KAPIL

v.

SANA ULLAH (DEAD) AND ORS.

SEPTEMBER 25, 1996

B [KULDIP SINGH AND K.T. THOMAS, JJ.]

Rent control and Eviction—U.P. Urban Buildings (Regulation of Letting, rent and Eviction) Act 1972—Sections 3 and 16—Building—Allotment—Objected by the landlord—Since roofless structure not to be considered C *as a building—Held, concurrent finding of the fact that structure was a roofed building when it fell vacant and the roof of the building was pulled down by the landlord subsequently, thereby rendering it a roofless structure- A building, even after losing the roof can continue to be a building in its general meaning—Taking recourse to such general meaning in the present context would help to prevent a mischief—Liberal interpretation of law is necessary to prevent* D *a wrong doer from taking advantage of his own wrong.*

MAXIMS

"Nullus Commodum Capere Potest de Injuria Sua Propria" (No man E *can take advantage of his own wrong)—One of salient tenets of equity—Held, Respondent cannot secure the assistance of a court of law for enjoying the fruit of his own wrong.*

Sana Ullah, the father of contesting respondents was the landlord of the suit premises. D was the tenant and on the expiry of his tenancy, the F **appellant applied to the District Magistrate for allotment of suit premises in his name. The landlord raised objections that the structure was not a "building" as it had no roof then. But his objections were rejected and the District Magistrate found that the structure was still a building and passed an order of allotment in the name of the appellant.**

G **On a revision petition to the District Judge, the case was remanded back to the District Magistrate for arriving at certain findings on facts. Finally it was found that the building was a roofed structure when D vacated it, but subsequently its tin roofs were dismantled by the owner of the building and the structure remained roofless even on the date of** H **allotment order. The District Magistrate passed an allotment order and**

the appellant occupied the building. A

In the revision, the District Judge confirmed the allotment order holding that the District Magistrate had jurisdiction to allot such a structure.

A writ petition filed in the High court by the landlord was allowed B **and the allotment order was quashed. The High Court was of the opinion that the legislature did not confer power of allotment in respect of a construction which ceased to be a building at the time of allotment and hence the order of allotment made in favour of appellant was set aside. The High Court took the view that an order of allotment under section 16** C **of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 can be made only in respect of a building and not with respect to a construction which was a building at the time when it was vacated but subsequently ceased to the so. Hence this appeal.**

Allowing the appeal, this Court D

HELD : 1.1. It is clear from the definition of 'Building' under section 3(1) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972, that any structure without roof cannot fall within the ambit of the definition. The factual position is that the structure remained a roofed E **building when it became vacant but the roof was later dismantled by the owner. So as on the date of allotment order it remained roofless. If the crucial date is the date of allotment order, the structure was not a building as defined in the Act. But, the respondent cannot be assisted by a court of law to take advantage of the mischief committed by him. The maxim, "*Nullus Commodum Capere Potest de injuriea sua propria*" (No man can take** F **advantage of his own wrong) is one of the salient tenets of equity. Hence, in the normal course, respondent cannot secure the assistance of a court of law for enjoying the fruit of his own wrong. [772-F-H]**

1.2. Jurisdiction of the District Magistrate is in respect of a building G **which is either vacant or which "has fallen vacant" or is about to fall vacant as per Section 16(1), If a structure was a building as per the definition at the time when it fell vacant, the District Magistrate, no doubt, gets jurisdiction to initiated proceedings for passing allotment order. [773-F]**

2.1. If the District Magistrate has commenced exercising jurisdiction H

under Section 16 of the Act, in respect of a building which answered the description given in the definition of Section 3 (i), he would well be within his jurisdiction to proceed further notwithstanding the intervening development that the building became roofless. A liberal interpretation to prevent a wrong doer from taking advantage of his own wrong is necessary. A building even after losing the roof, can continue to be a building in its general meaning. Taking recourse to such general meaning in the present context would help to prevent a mischief. [774-D-E]

Victoria City v. *Bishop of Vancourer Island*, **(1921) AC 384, referred to.**

Stroud's "Judicial Dictionary" **(Vol. I 5th edn);** *Black's Law Dictionary* **(5th edn), referred to.**

2.2. The structure without roof will cease to be building as per Section 3(i) of the Act. But a roofless structure can still continue to be building outside the fixed borders of the definition. Section 3 of the Act prefaces with the words "unless the context otherwise requires". Thus the legislature, which fixed contours for different expressions through the definition clauses has also provided sufficient play at the joints for contextual adaptations. Contextual variations are not impermissible under the act if such variations are necessary to achieve the object of the enactment. Outside the definition in Section 3 of the Act the word "building" need not necessarily be a roofed structure for even roofless structures are sometimes, used a buildings in certain circumstances. [773-G-H; 774-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 527 of 1979.

From the judgment and order dated 4.12.78 of the Allahabad High Court in C.M.W.P. No. 524 of 1976.

M.C. Dhingra and P.K. Jain for the Appellant.

Satish Chandra and J.P. Goyal R.P. Goyal and S.K. Jain for the Respondents.

The Judgment of the Court was delivered by

THOMAS, J. The controversy between the parties in this appeal has

narrowed down to a very short question. A building became roofless before "allotment order" was passed under Section 16(1) of U.P. Urban Buildings [Regulation of Letting, Rent and Eviction] Act, 1972 (for short' the Act). The question now remains in this appeal is : should the structure have necessarily bean a roofed one on the date of allotment order?

A summary of facts, out of which the said question has emerged, is given below :

A building situated at Meerut City owned by the contesting respondents' father (Sana Ullah) was let out to one Deep Chand Gupta for a period of 5 years. On the expiry of lease period i.e. 3.8.1974. Deep Chand Gupta surrendered vacant possession of the building to the landlord. On 20.8.1974, the present appellant moved an application before the District Magistrate (who is the competent authority for passing allotment order under the Act) for allotment of the said premises to him. Sana Ullah filed his objections on 3.9.1974, in which he contended, inter alia, that the structure was not a "building" inasmuch as it had no roof then. The District Magistrate found that the structure was still a building and hence appellant was entitled to its allotment. The case had thereafter passed through a chequered career. District Judge (the revisional authority under the Act) remanded the case on two occasions to the District Magistrate for arriving at certain findings on facts. Finally it was found that the building was a roofed structure when Deep Chand Gupta Vacated it, but subsequently its tin roofs were dismantled by the owner of the building and that the structure remained roofless even on the date of allotment order. Nevertheless, allotment order was passed by the District Magistrate. Pursuant thereto the appellant occupied the building. In the revision learned District Judge held that District Magistrate had jurisdiction to allot such a structure to the tenant and confirmed the allotment order.

Landlord filed a writ petition before the Allahabad High Court challenging the aforesaid order. The High Court declined to interfere with the finding on facts that the roof of the building was removed by the appellant after Deep Chand Gupta vacated the premises but took the view that "an order of allotment under Section 16 can be made only in respect of a building and not with respect to a construction which was a building at the time when it was vacated but subsequently ceased to be so." According to the learned Single Judge "as the legislature did not confer power of

A allotment in respect of a construction which ceased to be a building at the time of allotment the order of allotment made in favour of respondent 4 was liable to be set aside." Writ petition was hence allowed and the allotment order was quashed. The said judgment of the Allahabad High Court is now being challenged in this appeal by special leave.

B Before we proceed to consider the question set out earlier we may observe that learned counsel for the respondents assailed the concurrent finding of fact that roof of the building was pulled down by the landlord. But we made it clear that in view of the clear finding made by the District Magistrate and the learned District Judge on that issue and in view of the C fact that High Court declined to disturb that finding, we would not go into that aspect in this appeal.

"Building" is defined in Section 3(i) of the Act thus ;

> "building, means a residential or non-residential roofed structure D and includes -
>
> (i) any land (including any garden), garages and out-houses, appurtenant to such building;
>
> E (ii) any furniture supplied by the landlord for use in such building;
>
> (iii) any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof".

It is clear from the definition that any structure without roof cannot F fall within the ambit of the definition of building. Here the factual position is this : The structure remained a roofed building when it became vacant but the roof was later dismantled by the owner. So on the date of allotment order it remained roofless.

G If the crucial date is the date of allotment order, the structure was not a building as defined in the Act. But can the respondent be assisted by a court of law to take advantage of the mischief committed by him? The maxim "*Nullus commodum copere potest de injuria sua propria*" (No man can take advantage of his own wrong) is one of the salient tenets of equity. Hence, in the normal course, respondent cannot secure the assistance of a H court of law for enjoying the fruit of his own wrong.

While considering the question whether District Magistrate would cease to have jurisdiction to pass allotment order in respect of a roofless structure we may refer to the relevant provisions of the Act. A

Chapter III of the Act contains a fasciculus of provisions (Sections 11 to 19) dealing with allotment etc. under the heading "Regulation of Letting". Section 11 prohibits the letting of any vacant building except in pursuance of an allotment order issued under Section 16. Section 12 enumerates cases in which there would be deemed vacancy of buildings. Section 13 declares that if any person occupies a building which fell vacant otherwise than under an order of allotment he would be deemed to be an unauthorised occupant of the building. Section 15 casts an obligation on the landlord as well as the tenant to give notice of vacancy of the building to the District Magistrate. (Landlord has to give such notice within 7 days of the occurrence of such vacancy, whereas the tenant has to give the notice within 15 days prior to the date of vacancy.) Section 16(1) reads thus : B C

> "16(1). Allotment and release of vacant building. - (1) Subject to the provisions of the Act, the District Magistrate may by order - D
>
> (a) require the landlord to let any building which is or has fallen vacant or is about to fall vacant, or a part of such building but not appurtenant land alone, to any person specified in the order (to be called an allotment order);" E

Jurisdiction of the District Magistrate, therefore, is in respect of a building which is either vacant or which "has fallen vacant" or is about to fall vacant. If a structure was a building as per the definition at the time when it fall vacant, the District Magistrate, no doubt, gets jurisdiction to initiate proceedings for passing allotment order, but would he lose jurisdiction merely because the structure became roofless subsequently? No doubt, if we go by the definition in section 3(1) *stricto sensu*, the structure without roof will cease to be building. But a roofless structure can still continue to be building outside the fixed borders of the definition. It is now necessary to notice that section 3 of the Act, which contains all the definition clauses, prefaces with the words "unless the context otherwise requires". Thus the legislature, which fixed contours for different expressions through the definition clauses has also provided sufficient play at the joints for contextual adaptations. In order words, contextual variations are not impermissible under the Act if such variations are necessary to achieve F G H

A the object of the enactment. Outside the definition in section 3 of the act the word "building" need not necessarily be a roofed structure for even roofless structures are, sometimes, used as buildings in certain circumstances.

B *Stroud's "Judicial Dictionary"* (Vol. I of the 5th edn.) states that "what is a building must always be a question of degree and circumstances". Quoting from *Victoria City* v. *Bishopo of Vancouver Island,* (1921) AC 384, at P.390, the celebrated lexicographer commented that "the ordinary and natural meaning of the word building includes the fabric and the ground on which it stands". In *Black's Law Dictionary* (5th edn.) the meaning of C the building is given as "a structure or edifice in closing a space within its walls, and usually, but not necessarily, covered with a roof" (emphasis supplied). The said description is recognition of the fact that roof is not a necessary and indispensable adjunct for a building because there can be roofless buildings. So a building, even after losing the roof, can continue to be a building in its general meaning. Taking recourse to such general D meaning in the present context would help to prevent a mischief.

The upshot is, if the District Magistrate has commenced exercising jurisdiction under Section 16 of the Act, in respect of a building which answered the description given in the definition in Section 3(i), he would E well be within his jurisdiction to proceed further notwithstanding the intervening development that the building became roofless. We are inclined to afford such a liberal interpretation to prevent a wrong doer from taking advantage to his own wrong.

F We, therefore, allow this appeal and set aside the judgment of the Allahabad High Court. There will be no order as to costs.

However, considering the importance of the locality in which the building is situate and the palpably low rent which appellant is now paying, we have no doubt, in the interest of justice, the appellant should pay higher G rent. After hearing the counsel on both sides regarding this aspect, we fix the monthly rent of the building at Rs. 500. Appellant shall pay rent at the enhanced rate from 1.8.1996 onwards.

M.K. Appeal allowed.

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