

(2011) 03 AHC CK 0204

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No, 13546 of 2011

Mahesh Prasad Gupta

APPELLANT

Vs

Arun Kumar Jaiswal

RESPONDENT

Date of Decision: March 8, 2011

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1)(a)

Hon'ble Judges: Rakesh Tiwari, J

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard counsel for the petitioner and perused the record.

2. This petition has been filed challenging the validity and correctness of the order dated 20.10.2010 passed on application dated 20.2.2008 for appointment of Advocate Commissioner to submit report on certain facts given in the application as well as the order dated 11.2.2011 passed on the amendment application dated 23.11.2010 in Rent Case No. 3 of 2006, Arun Kumar Jaiswal Vs. Mahesh Prasad Gupta.

3. The petitioner has also prayed for appointment of Advocate Commissioner to submit report on following points :

1.The extent of accommodation available on the ground floor of premises no. 31/93, Ghumni Bazar, Kanpur Nagar.

2.The extent of accommodation and its nature/use in occupation of the opposite party in premises no. 31/20 and 29/47, Mohalla Ghumni Bazar, Kanpur.

4. And permit him to make following amendment in his written statement between paragraph no. 24 and 25 :

"24A. That during the pendency of the present case the applicant/landlord has constructed IInd and IIIrd floor in the aforesaid disputed premises and he has let them out to the tenants Bal Krishna Gupta and Smt. Uma Jaiswal at monthly rent of Rs. 10,000/ for each floor. Thus the rental income of the applicant/landlord enhanced by Rs. 20000/ per month.

24B. That the applicant/landlord has also started business of shares in the share market in Kanpur Nagar and is earning a lot from his said new business.

24C. That as such the alleged need of the applicant/landlord has been fully satisfied. He has no need of the disputed shop to augment his own income."

5. It appears that application dated 20.2.2008 was moved by the petitioner praying for appointment of Advocate Commissioner to submit his report as to how much area of premises no. 31/93, 31/20 and 29/47, Ghumni Bazar, Kanpur Nagar is under the occupation and use of the respondent. The court below relying upon the decision in Rajeev Kumar and others Vs. Siddharth Bharadwaj (2010(2) A.R.C.553), has rejected the aforesaid application of the petitioner on the ground that Advocate Commissioner cannot be appointed for the purpose of collection of evidence for the disputing parties. The order passed by the court in this regard is thus :

6. As regards the order dated 11.2.2011 is concerned, it appears from the perusal of the order that petitioner had moved an application paper no. 45 stating that the plaintiff landlord has constructed second and third floor storey in the premises in dispute and has given the same on rent to two new tenants namely Sri Bal Krishna Gupta and Smt. Uma Jaiswal, which according to the petitioner, goes to show that respondent landlord has no bonafide need of the accommodation under tenancy and occupation of the petitioner on the ground floor.

7. The court below after considering the arguments of the parties, has come to the conclusion that application has been filed by the landlord respondent under section 21(1)(a) of U.P. Act no. 13 of 1972 and there is no dispute between the parties that there is relationship of tenant and landlord between them. Since this relationship is not in dispute, the landlord has to establish only two things, firstly that he has bonafide need of the accommodation in dispute on the ground floor and secondly that he would suffer comparatively more hardships than the tenant. The court below while considering the petitioner's application has recorded a finding that in so far as need of the landlord for the accommodation on the ground floor is concerned, it is not in dispute that it is under tenancy and occupation of the petitioner and construction of two floors and giving it on rent to the other tenants, will not adversely affect bonafide need of the landlord whose requirement is for the accommodation on the ground floor under the tenancy of the petitioner.

8. Admittedly, the landlord has set up his need of the ground floor and two floors appear to have been constructed by him after filing of the application. The landlord can augment his income by construction of two floors which may not be required by

him as need has been set up by him only for the ground floor.

9. Counsel for the petitioner has not been able to point out any illegality or infirmity in so far as need of the landlord regarding ground floor is concerned, for which he has moved the release application under section 21(1)(a) of U.P. Act No. 13 of 1972.

10. For all the reasons stated above, the writ petition is accordingly dismissed. No order as to costs