

**(2006) 01 AHC CK 0101**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 69533 of 2005

Smt. Ashok Lata Mittal, Sarita  
Goel and Dr. Ravindra Goel

APPELLANT

Vs

District Cane Officer, State of  
U.P.

RESPONDENT

**Date of Decision:** Jan. 5, 2006

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2006) 3 AWC 2344

**Hon'ble Judges:** Anjani Kumar, J

**Bench:** Single Bench

**Advocate:** Pramod Kumar Jain, for the Appellant;

**Final Decision:** Allowed

### **Judgement**

@JUDGMENTTAG-ORDER

Anjani Kumar, J.

This writ petition under Article 226 of the Constitution of India has been filed by the landlords with the following prayers:-

- i. to issue a writ order or direction in the nature of certiorari quashing the order dated 10.1.2005 (Annexure-10) passed by R.C. & E.O. And order dated 27.10.2005 (Annexure-14) passed by appellate court so far as it relates to return of the file of trial court ad quash the proceeding of Misc. Case No. 4 of 2005 State of U.P. and Ors. v. Smt. Sarita Goel pending before Rent Control and Eviction Officer Muzaffarnagar;
- ii. to issue any other writ order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case; and
- iii. award costs of the petition to the petitioners.

2. It appears that landlord filed an application before the Rent Control and Eviction Officer u/s 21(1)(8) of U.P. Act No. 13 of 1972 (hereinafter referred to as the Act) for enhancing the rent which is allowed by the Rent Control & Eviction Officer by the order dated 20.12.2004. The petitioner tenant filed an application before the Rent Control and Eviction Officer dated 10.1.2005 with the prayer that the order of Rent Control & Eviction Officer dated 20.12.2004 be set aside on the ground of fraud and forgery. The petitioner-applicants further pray that the landlords be punished for committing fraud and forgery. This application has been registered as Misc. Case No. 4 of 2005. During the pendency of this application before the prescribed authority the tenants have also filed an appeal u/s 22 of the Act before the appellate authority challenging the order passed by the prescribed authority dated 20<sup>th</sup> December 2004. It is not disputed that the said appeal is still pending. Learned Counsel for the petitioners has taken the Court to the memorandum of appeal where same grounds are raised with the prayer of setting aside the order passed by the Rent Control & Eviction Officer dated 20.12.2004 and it is during the pendency of the appeal that the present writ petition has been filed challenging the order dated 10<sup>th</sup> January 2005 passed by the Rent Control and Eviction Officer whereby Rent Control and Eviction Officer has stayed his order dated 20.10.2004. The petitioner in this writ petition has also challenged the order dated 27<sup>th</sup> October 2005 passed by the appellate authority whereby the appellate authority directed that file of Misc. Case be sent to Rent Control and Eviction Officer in such manner that hearing of the appeal by the appellate authority may not be affected.

3. It is contended that once the respondents have availed the remedy of filing the statutory appeal u/s 22 of the Act, no application for review or recall of the order passed by the Rent Control and Eviction Officer is maintainable before Rent Control and Eviction Officer and the order passed by Rent Control and Eviction Officer dated 10.1.2005 is without jurisdiction which has been passed by Rent Control & Eviction Officer on the application filed by prescribed authority. It is submitted that the view taken by appellate authority in its order dated 27.10.2005 is contrary to law and deserves to be quashed.

4. This writ petition, therefore, is allowed. The order dated 27.10.2005 impugned in the writ petition and the proceedings of Misc. Case are quashed without entering into the merits of the grounds raised in appeal by the petitioner on the ground of pendency of the statutory appeal u/s 22 of the Act and also the proceedings of Misc. Case No. 4 of 2005 pending before Rent Control & Eviction Officer.

5. The appellate authority is directed to decide the appeal filed by petitioners and respondents being R.C. Appeal No. 19 of 2004 and R.C. Appeal No. 4 of 2005 within a month from the date of presentation of a certified copy of this order.