

(1999) 07 AHC CK 0088

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 22805 of 1988 and C.M.W.P. No. 10442 of 1987

Munawar Ali; Malti
Devi and Others;

APPELLANT

Vs

District
Judge, Shahjahanpur
and Others

RESPONDENT

Date of Decision: July 14, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(l)(b)

Hon'ble Judges: A.K.Yog, J

Final Decision: Allowed

Judgement

A. K. Yog, J.

Proceedings under Section 21(l)(a) and (b) under U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972, (U.P. Act No. 13 of 1972) (for short "the Act") were initiated by one Ghanshyam Das Gupta against Munawar Ali and Umer Ali being tenants of one of his shops and against Sumer Chand tenant of another shop on the ground that the accommodation in tenancy of the said persons was in a dilapidated condition which required demolition and reconstruction. The landlord, Respondent No. 3, also claimed release of the accommodation on the ground that he required these accommodations (two shops) for settling his sons and, as such, it was bona fide required for his personal use and that by denying release of the accommodation in question landlord will suffer more hardship as compared to that of the tenants. The said release application under Section 21(l)(a) and (b) of the Act was registered as case No. 35 of 1982.

2. Munawar Ali and Umer Ali (Opposite Parties No. 1 and 2) in the release application filed their written statement with respect to the shop in their tenancy. Another written statement with respect to the other tenancy was filed by Smt. Malti Devi (widow of Sumer Chand Opposite Party No. 3 in the release application) (Annexure 1 to petition) in this case.

3. Parties led evidence in support of their respective cases and after affording opportunity, as contemplated under law, Prescribed Authority allowed aforesaid release application vide judgment and order dated 10th July, 1986 against all the Opposite Parties including the present petitioners.

4. Feeling aggrieved two Appeals, Civil Appeal No. 63 of 1986 (Malti Devi Widow of Sumer Chand and others v. Ghanshyam Das and others) and Civil Appeal No. 65 of 1986 (Munawar Ali v. Ghanshyam Das and others) under Section 22 of the Act, were preferred and the Appellate Authority (District Judge, Shahjahanpur, Respondent No. 1) vide judgment and order dated April 27, 1987 dismissed both the appeals. It has led to the filing of above Civil Misc. Writ petition No. 22805 of 1988 (Munawar Ali v. The District Judge, Shahjahanpur and others and Civil Misc. Writ Petition No. 10442 of 1987 (Malti Devi and others v. The District Judge, Sahajahanpur and others).

5. Smt. Malti Devi filed Writ Petition No. 10442 of 1987 which was admitted and an interim order was granted by this Court on May 22, 1987, whereby her eviction was stayed. Writ petition No. 22805 of 1988 was filed subsequently in this Court and the same was also admitted and connected with earlier writ petition vide this Court's order dated 24.11.1988. Under aforesaid circumstances, both writ petitions have been listed together for hearing. Both writ petitions are being decided by means of present judgment, as the facts, necessary for deciding both writ petitions, are identical. Both the writ petitions arise from one and same judgment passed by the Appellate Authority.

6. Heard Sri Ramendra Asthana and Sri Anshu Choudhary, holding brief of Sri N.S. Choudhary, Advocates, learned Counsels for the Petitioners and Sri Ranjit Saxena, learned Counsel for the Respondents in both the petitions. Learned Counsel for the petitioners have joined in making their submissions in support of their respective cases.

7. The first attack is in respect to the findings of the Court below on the grounds whether accommodation in question is dilapidated as contemplated under the provisions of the Act. Learned counsel for the Petitioners submitted that the findings of the both the Court below recorded by Respondent Nos. 1 and 2 on this aspect cannot be sustained, inasmuch as the said contention has been recorded without dealing with the evidence and material filed on behalf of the tenants specifically referring one by one. In none of the writ petitions it is mentioned that which affidavit or material filed by any of these tenants has not been referred by the

Courts below in spite of reference being made to said material on record at the time of hearing. Secondly, perusal of the judgments, rendered by Respondent Nos. 1 and 2 (Annexure 3 and 4 to this petition) filed by Munawar Ali, shows that both authorities have meticulously referred the evidence led by the parties and it had considered the same. The Appellate Authority, while affirming the finding on the issue recorded by prescribed authority, independently referred to the reports of the Engineer filed by respective parties and discussed other relevant material on record while considering the question. Whether a building is dilapidated, is a finding of fact. Learned Counsels for the Petitioners have not been able to point out as to how the said finding of fact, concurrently recorded by Respondent Nos. 1 and 2, is vitiated. This Court is not required to reappraise the evidence while exercising jurisdiction under Articles 226/227, Constitution of India. The submission of the learned Counsel for the Petitioners, on this score, fails. It may, however, be noted that Respondent Nos. 1 and 2 have concurrently accepted the case of the landlord under Section 21(l)(a) of the Act.

8. A Supplementary Affidavit has also been filed in which it is stated that accommodation in building has not fallen to the ground and exists as such even today. The fact that building has not fallen, will not vitiate judgment of the authorities (Respondent Nos. 1 and 2) inasmuch as a building, which is dilapidated may fall any moment and on the other hand it is also possible that by grace of God, it may remain standing for considerable span of time. Nobody can predict when a building, which is dilapidated, shall fall. The circumstance sought to be brought on record by means of the supplementary affidavit cannot be taken into account for finding fault with the findings rendered by the two Courts below. Even otherwise this Court is not to test the veracity of the judgments of Courts below on the basis of subsequent circumstance. Veracity of the judgments is to be tested on the basis of record, which existed before the authorities at that stage. Reference may be made to the decision reported in 1999 (1) ARC page 188 (SC).

9. The Prescribed Authority has intermingled the issues namely, "bona fide need" and "comparative hardship". It is well settled that Prescribed Authority must determine both issues separately. This not having been done, judgments and orders dated 10th July, 1986 and 27th April, 1987 passed by Respondent Nos. 2 and 1 respectively (Annexure 3 and 4 to the petition) are set aside to the extent it dismissed the release application under Section 21 (l)(a) of the Act. Judgments and orders dated 10th July, 1986 and 27th April, 1987 passed by Respondent Nos. 2 and 1 respectively (Annexure 3 and 4 to the petition) are affirmed to the extent it allowed release application under Section 21(l)(b) of the Act. Writ Petition, therefore, allowed in part as indicated above. No order as to costs.

10. This judgment shall also govern, and be placed in record of, Writ Petition No. 10442 of 1987 Malti Devi and others v. The District Judge, Shahjahanpur and others.

11. After judgment was dictated in open Court a request was made by learned Counsel for the Petitioner that six months time may be allowed to the Petitioner for vacating the shop in question. Learned Counsel for the Respondent, Sri Ranjit Saxena, submitted that if Court is inclined to grant time, the same may not be more than three months.

12. Taking into account the circumstances of the present case, and that the parties are agreeable, the tenantpetitioner be allowed some time to vacate the same as prayed. Petitioners' dispossession is protected up to 712000 provided

1. The tenantpetitioners file/s before concerned Prescribed Authority, within one month from today, an application along with his affidavit giving an unconditional undertaking to comply with all the conditions mentioned hereinafter.

2. Petitionertenant shall not be evicted from the accommodation in his tenancy in six months i.e. up to 712000. Tenantpetitioner shall vacate without objection and deliver possession of the accommodation in question on or before 712000 to the landlord (or landlord's nominee representative, if any, appointed and intimated by the landlord) by giving prior advance notice to the landlord by Registered A.D. post on his last known address or as may be disclosed by the landlord in writing before the concerned Prescribed Authority.

3. Petitioners shall deposit entire amount due towards rent up to date/.e. all the arrears of the past, if any, as well as the rent for the period ending on 7th January, 2000 within one month from today.

4. Petitioners and everyone claiming under him undertake not to "change" or "damage" or transfer/alienate/assign in any manner, the accommodation in question.

5. In case tenantpetitioners fails to comply with any of the conditions/or directions contained in this order, landlord shall be entitled to evict the tenantpetitioners forthwith from the accommodation in question by seeking police force through concerned Prescribed Authority.

6. Defaulting party shall pay Rs. 25,000 (Rupees Twenty five thousand only) as damages to the other party if there is violation of the undertaking or anyone or more of the conditions contained in this order. Petition allowed partly.