

(1982) 07 AHC CK 0059

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No's. 1885 and 2355 of 1982

Kumari Shardha Devi

APPELLANT

Vs

Shyama Charan Tripathi and
Others

RESPONDENT

Date of Decision: July 8, 1982

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 33
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 10, 22, 24

Hon'ble Judges: S.C. Mathur, J

Bench: Single Bench

Advocate: Umesh Chandra and Krishna Chandra, for the Appellant; P.L. Misra, for the Respondent

Final Decision: Allowed

Judgement

S.C. Mathur, J.

These two petitions raise common question of law and, therefore, they are being decided by this common order. The two writ petitions arise from two applications for release of residential accommodation filed by Sri. Shyama Charan Tripathi. The dispute in these two petitions relates to House No. 2-A Sarojini Naidu Marg, Lucknow.

2. Different portions of the above house were in the tenancy of Km. Shardha Devi and Smt. Sarla Devi. Shyama Charan Tripathi made separate applications in respect of the two tenements against Km. Shardha Devi and Smt. Sarla Devi. Sri. Tripathi's case was that he was residing in a rented accommodation and order of eviction had been passed against him and therefore he required the tenements occupied by the two tenants for his personal use. The Prescribed Authority, while disposing of the two applications together, provided that the tenement occupied by Smt. Sarla Devi

shall be released in favour of the landlord and Smt. Sarla Devi shall be accommodated in the portion occupied by Km. Shardha Devi. Against this order appeals were preferred before the learned District Judge by Km. Shardha Devi as well as by Smt. Sarla Devi. The learned District Judge was of the opinion that the order of the Prescribed Authority required modification. He, however, felt that in an appeal u/s 22 of the Act he could not vary or modify the order of the Prescribed Authority and, therefore, the only course open to him was to remand the case to the Prescribed Authority. After making some observations with regard to the bonafide requirement of the landlord and with regard to the manner in which the requirement of the landlord could be satisfied, he allowed the two appeals and ordered for remand of the case to the Prescribed Authority. Against this order of remand Km. Shardha Devi filed writ petition No. 1885 of 1982. The landlord Sri. Shyama Charan Tripathi has filed Writ Petition No. 2355 of 1982. Notices of the petition were issued to the respective parties. I have heard Sri. Umesh Chandra on behalf of Km. Shardha Devi and Sri. R.P. Srivastava on behalf of Smt. Sarla Devi and Sri. Puttu Lal Misra on behalf of the landlord Sri. Shyama Charan Tripathi.

3. The material question that arises for consideration in these two petitions is whether the learned District Judge was justified in observing that while exercising powers u/s 22 of the Act he could not vary or modify the order of the Prescribed Authority. It is apparent from his order that if he were of the opinion that he could vary the order, he would have finally disposed of the appeals and would not have remanded the cases to the Prescribed Authority.

4. Section 22, under which the appeals were preferred, reads as follows:

22. Appeal-Any person aggrieved by an order u/s 21 or Section 24 may within thirty days from the date of the order prefer an appeal against to the District Judge, and in other respects, the provisions of Section 10 shall mutatis mutandis apply in relation to such appeal.

In view of the above provision Section 10 will have to be considered in order to find out the powers of the District Judge while exercising appellate jurisdiction. Sub-section (2) of Section 10 provides as follows:

The appellate authority may confirm, vary or rescind the order or remand the case to the District Magistrate for re-hearing, and may also take any additional evidence, and pending its decision, stay the operation of the order under appeal on such term, if any as it thinks fit.

From the above it is apparent that the appellate authority can not only confirm the order or rescind the order, but it can also vary the same. It was, therefore, possible for the learned District Judge to substitute his own order in place of the order passed by the Prescribed Authority. Sri. R.P. Srivastava, learned Counsel for Km. Shradha Devi, however, argued that even if this variation was possible, it could be done only if appeal had been preferred by the landlord also, and no appeal having

been preferred by the landlord, the variation contemplated by the learned District Judge was not possible to be done. I am unable to agree with the submission of the learned Counsel. Even though Order 41 Rule 33 of the CPC has not been specifically applied to the appeal preferred u/s 22 of the Act, in my opinion, the principles of the said provision can be applied to such appeals. Order 41 Rule 33 provides as follows:

33. Power of Court of Appeal-The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the Respondents or parties, although such Respondents or parties may not have filed any appeal or objection (and may, where there have been decrees in cross-suits or where two or more decrees are passed in one, suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees), provided

5. In view of the above provision it is competent for the Appellate Authority to pass an appropriate order even though one of the parties to the proceedings in the Court below had not preferred any appeal. In the present case before the Prescribed Authority as well as before the learned District Judge the cases were being heard together and all the relevant parties were before the Court. In the circumstances it was open to the learned District Judge to pass an appropriate order substituting his own order in place of the order of the Prescribed Authority.

6. In view of the above both the writ petitions are allowed and the order of remand made by the learned Additional District Judge is hereby set aside. The learned Addl. Distt. Judge shall re-hear both the appeals and decide the same in accordance with law taking into account the observations made herein above. The appeals were decided by Sri. S.B. Singh who was then VI Additional District Judge Lucknow. I have been informed that Sri. S.B. Singh is still posted locally but not as VI Additional District Judge but as VII Additional District Judge. Since he is available locally the appeals shall be heard by him. In view of the fact that the order of eviction is going to be executed against the landlord by 15th of July, 1982, I fix a date for the disposal of the appeals by the court below. These appeals shall be heard on 19th July, 1982. The Joint Registrar of this Court shall send intimation of this order to the learned District Judge, Lucknow, expeditiously who shall arrange transfer of the relevant files to the Court of Sri. S.B. Singh. Any of the parties to the two petitions may also inform the learned District Judge for similar action. Costs of this petition shall be easy.