(2010) 4 AWC 3913

Allahabad High Court

Case No: C.M.W.P. No. 41799 of 2003

Radhey Shyam Rastogi		APPELLANT
	Vs	
Ashish Kumar and Another		RESPONDENT

Date of Decision: April 30, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1)
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 17

Citation: (2010) 4 AWC 3913

Hon'ble Judges: Devendra Pratap Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Devendra Pratap Singh, J.
Heard learned Counsel for the parties.

2. This petition is directed against concurrent orders dated 29.11.1997 and 6.9.2003 by which an application for demolition and reconstruction of the disputed premises u/s 21(1)(b) of U.P. Act No. 13 of 1972 has been allowed by both the courts below.

2A. It appears that respondent-landlord preferred an application registered as P. A. Case No. 26 of 1981 before the prescribed authority for release of the disputed accommodation u/s 21(1)(b) of the Act inter alia with the allegation that she had purchased the disputed premises through a registered sale deed dated 19.9.1980 which was more than 80 years old and was also in a dilapidated condition and, therefore, was required for demolition and reconstruction. The said application was contested by the petitioner tenant inter alia

stating that there was no compliance of the mandatory provisions of Rule 17 of the Rules framed under the Act and building was not in a dilapidated condition requiring reconstruction and in fact has a life of at least 25 years more. During the proceedings before the prescribed authority a report was submitted by the respondent-landlord with regard to the condition of the building. After contest the application was allowed vide order and judgment dated 29.11.1997.

3. Aggrieved, the petitioner preferred an appeal wherein he made an application for appointment of an advocate Commissioner for inspecting the disputed premises which was rejected and subsequently by order dated 6.9.2003, concurring with the findings recorded by the prescribed authority the appeal was also dismissed.

4. This petition was also dismissed by this Court on 13.2.2007 on misconception of facts but on an appeal the Apex Court set aside the order of the High Court and remitted it back with the observation that this Court should appoint an Engineer Commissioner for inspection of the disputed premises and after receipt of the report, it directed that the petition be reheard in accordance to law and be decided within two months.

5. On remand the matter was taken up on 9.1.2009 when the counsel for the petitioner submitted names of two advocates of this Court who were also holding Engineering Degree. On 27.1.2009 both the parties agreed to one name who was appointed, the fees was also fixed and he was directed to submit his report. The learned Commissioner submitted his report and objections were invited by the parties vide order dated 31.3.2009. However, the counsel for the petitioner got the matter adjourned on 6.7.2009, 27.7.2009, 24.10.2009, 7.11.2009, 16.11.2009, 30.11.2009, 15.12.2009, 4.1.2010 and finally the matter was heard on 30.3.2010. Thus, it is apparent that substantial delay has been caused only on account of the petitioner tenant.

6. It is urged on behalf of the petitioner that there is no clear finding of the court below that the building was beyond repairs and required reconstruction and therefore, in view of the judgment rendered in the ease of Smt. Chando Devi and Ors. v. IIIrd Additional District Judge, Mathura and Ors. 1984 ARC 10, the application could not have been allowed.

7. The case set up in the release application was that there were two tenants in the building. The petitioner was in occupation of the southern portion which is the disputed premises while one Smt. Sukh Devi was a tenant in the northern portion of the same building. It was pleaded that the northern portion of the building was also in a highly dilapidated condition and some portion had already fallen down and therefore, Smt. Sukh Devi vacated it and this fact was also proved by her affidavit filed in the proceedings. This fact has not been denied by the petitioner. The position which emerges is that northern portion of the building has already fallen down but construction cannot commence without demolishing the southern portion also. No doubt this Court in Chando Devi''s case has held that merely because a building is old or has outlived its utility was not enough, but

the condition should be such that it is beyond repairs to be released under Sub-section (1) (b). In the present case, both the courts below after going through the evidence of the parties including the Commissioner"s report and also considering the admission of the petitioner himself that the premises has completed its life, have recorded a finding of fact that the building was in a dilapidated condition and requires reconstruction as It was in imminent danger of collapse. The courts below, after relying upon the decision in the case of Suresh Chandra Vs. IVth Additional District and Sessions Judge, Muzaffarnagar and others, and Kishan Lal Gupta Vs. IXth Additional District Judge, Ghaziabad and others, has held that the landlord cannot be asked to wait till the entire or a part of the building collapses to apply for release. In fact, the petitioner himself admitted in his written statement filed in August, 1982 that the premises had a further life of 25 years. The Apex Court in the case of Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import, has held that admission, unless explained, is the best evidence on an issue. But, the petitioner never explained his admission. Once it was found even on the admission of the tenant, that the building has completed its life, it was a case of release under Sub-section (1) (b). On these facts, it was not necessary for the courts below to record a further finding that it was beyond repairs. So far as the report submitted by the Commissioner appointed by this Court is concerned, it is apparent that it is not a technical report. It is evident from the report and the photographs that the entire premises was freshly painted and lot of repairs was done to give it a sturdy look. However, some photographs give out the real story. There is seepage, the projections are hanging, the beams, despite being reinforced, are sagging etc. Thus, the finding of fact recorded by both the courts below do not require any interference on this ground.

8. It is then urged that after the death of the original landlord, her two grandsons were substituted but yet the ingredients of Rule 17 were not complied by them and since subsequent events are to be considered, they are bound to comply with the said Rule in view of the decision rendered in the case of Jai Prakash Gupta v. Riaz Ahmad 2009 (3) ARC 628 : 2010 (1) AWC 324 (SC).

9. No doubt, subsequent events, both of fact and law, which have a bearing on the entitlement of the parties to relief or for moulding of the relief, has to be considered by the Courts as held in Jal Prakash Gupta"s case (supra). The contention that once the original landlord had died and her heirs were brought on record, they also should have shown compliance of Rule 17 of the Rules, does not appear to be correct. It is apparent from the record that both the courts below have recorded categorical findings that Rule 17 was fully complied. The counsel for the petitioner has failed to point out any requirement of either law or equity that in such a case the heirs of the deceased landlord are also required to take fresh proceedings to show compliance of Rule 17 in their name. The sanctioning of map and financial capacity still exists unless something is brought on record to show otherwise, which is not the case here. In fact the heirs have also proved the requirement of Rule 17. Therefore, this argument also is bound to be rejected.

10. Lastly it is urged that since there is a status quo order in the pending Second Appeal No. 33 of 1997 of this Court, the petitioner cannot be evicted and in case he is evicted, a direction be issued for the reconstruction within a specified period and then renting out a portion to the petitioner in view of the decision of this Court in the case of Sinderlal Agarwal Dharmashala Trust v. District Judge 2009 (1) ARC 153 and 549.

11. It appears from the record that the petitioner set up a case that during the pendency of the case she had purchased the portion of his tenancy and filed a suit for partition but the suit was dismissed by the trial court and the appellate court. Whereafter he preferred a second appeal where an interim order has been passed on 9.11.2005. However, even in the said interim order it is clearly mentioned that "the order shall not be an impediment in other proceedings taken between the parties before the competent court of law for eviction of the appellant from the disputed property", thus eviction in these proceedings can be carried out. So far as letting out the newly constructed portion is concerned, the landlord has already given an undertaking to that effect and therefore, no further orders are required on this issue. It has to be kept in mind that the release was filed in 1981 now after about thirty years the cost of construction would have gone up manifold, therefore, no time limit as mentioned in Sinderlal Agarwal''s case (supra) can be fixed.

12. No other point has been urged.

13. For the reasons given above, this is not a fit case for interference under Article 226 of the Constitution of India. Rejected.

14. In the circumstances of the case, the respondent would be entitled to his cost.