

(2004) 12 AHC CK 0232

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 47108 of 2004

Ganga Ram Singh

APPELLANT

Vs

Suresh Chand Mishra

RESPONDENT

Date of Decision: Dec. 14, 2004

Acts Referred:

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

Citation: (2005) 1 ARC 411

Hon'ble Judges: Anjani Kumar, J

Bench: Single Bench

Advocate: H.N. Singh and B.N. Singh, for the Appellant; M.K. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Anjani Kumar, J.

This writ petition under Article 226 of the Constitution of India is directed against the order passed by the appellate Court under the provisions of U.P. Act No. 13 of 1972 (in short the Act) whereby the appellate authority allowed the appeal filed by the landlord against the order passed by the prescribed authority.

2. The brief facts are that the respondent-landlords filed an application u/s 21 (1) (b) of the Act for release of the accommodation in question on the ground that the accommodation is in dilapidated condition and requires demolition and reconstruction. Before the prescribed authority the petitioner-tenant challenged the assertions made by the landlord to the fact that the building is not in dilapidated condition and therefore, cannot be released in favour of respondent-landlords. The prescribed authority, after exchange of pleadings, allowed the parties to file the report of expert regarding condition of building in order to arrive at a conclusion as to whether the building is in dilapidated condition or not. The petitioner tenant filed

report of Sri S.C. Nigam, an expert, who submitted report that the building only needs plaster and since there is not even a single crack in any wall or ceiling of the house under the tenancy of the petitioner-tenant, building cannot be said to be in dilapidated condition. On the other hand landlords filed report of Sri J.N. Dubey who stated that the building is in dilapidated condition and further stated that the building seems to be more than 60 years old and is constructed of lime mortar and brick work.

3. The prescribed authority arrived at a conclusion that the building since does not require demolition and can be repaired, therefore, cannot be said to be in dilapidated condition. Aggrieved by the order of the prescribed authority the landlords preferred appeal before the appellate authority. The appellate authority reversed the findings arrived at by the prescribed authority and found that the building is in such a condition that it requires demolition and reconstruction. The Appellate Authority has also recorded a finding that the building is more than 75 years old and also that the part of the building had already fallen down. The appellate authority considered the reports of both the experts and other materials on the record and arrived at the conclusion that the building is in dilapidated condition and requires demolition and reconstruction. Thus the appellate authority allowed the appeal filed by the landlords and directed eviction of the tenant for the purpose of demolition and reconstruction.

4. Learned Counsel for the petitioner emphasises on the finding arrived by the prescribed authority and submitted that since the finding arrived at by the prescribed has not been upset by the appellate authority, the appellate authority could not have recorded finding regarding dilapidated condition of the building without reversing the finding arrived at by the prescribed authority. The appellate authority has categorically recorded a finding in the following words:-

"In the instant case from the above discussion and considering the evidence adduced by the parties I am of the view that the building in question is in dilapidated condition and it requires reconstruction.....So I am convinced that the finding recorded by the prescribed authority in this connection is not accepted and I hold that the building is in dilapidated condition."

5. Learned Counsel for the petitioner-tenant has submitted that the appellate authority has refused to inspect the building in question on an application being filed by the landlords on the ground that:

"sufficient material is available on the record and I do not find any jurisdiction for getting the building inspected myself or getting inspected through advocate commissioner. Evidence adduced by the parties are already on the record. Therefore, application for inspection is rejected."

6. Learned Counsel appearing for the contesting respondents submitted that dilapidated condition does not mean that the building requires demolition. It is only

in the opinion of the appellate authority as contemplated u/s 21 (1) (b) of the Act that the building is in dilapidated condition which requires demolition and reconstruction,

7. Since the appellate Authority has arrived at a conclusion that the building is in dilapidated condition which requires demolition and reconstruction and the landlords satisfy other conditions, namely, financial resources etc. for construction of the building, I do not find any ground for interference under Article 226 of the Constitution of India with the order passed by the appellate authority, particularly in view of the law laid down by the Apex Court in the case of [Ranjeet Singh Vs. Ravi Prakash](#),

8. In view of the law laid down by the Apex Court in the case of Ranjit Singh (supra) I do not think that this Court has jurisdiction to sit in appeal over the findings arrived at by the appellate authority. The writ petition is accordingly dismissed.