

(2000) 05 AHC CK 0088

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13840 of 1986

Abdul Rahim Khan

APPELLANT

Vs

IIIrd Addl. District Judge, Shahjahanpur and Others

RESPONDENT

Date of Decision : 10-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(I)(b)

Citation : (2000) 05 AHC CK 0088

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of the prescribed authority dated 2491984 whereby the application a filed by the landlord petitioner has been rejected and the order of the appellate authority dated 2151986 dismissing the appeal against the aforesaid order.

2. The petitioner is landlord of the disputed building. He filed an application under Section 21(I)(b) of U.P. Act No. 13 of 1972 alleging that it is in a dilapidated condition. The prescribed authority rejected the application on the finding that it was not in a dilapidated condition. The petitioner preferred an appeal against this order and it has been dismissed on 2151986.

3. The main thrust of the argument of the learned counsel for the petitioner is that respondent No. 1 has recorded a finding on the basis of surmises and conjectures. The petitioner had submitted the report of Dund Bahadur, retired Executive Engineer, which proved that the disputed accommodation was in a dilapidated condition. The prescribed authority had also appointed a Commissioner and he submitted a report on 971984 which supported the version of the petitioner. The appellate Court has taken the view that the building remained intact since submission of report of the Commissioner in the year 1984 and as the building has not fallen down it cannot be taken as in a dilapidated

condition. The view taken by the Court is erroneous. The mere fact that the building does not fall down, itself does not prove that the building is in sound condition and is not in dilapidated condition. It is not necessary that the building is in imminent danger of falling down. The Court has to examine the entire nature of construction and whether it requires demolition and reconstruction keeping in view all the factors.

4. The second ground taken by the appellate Court is that the sister of the landlord is residing on the first floor and if the building is in a dilapidated condition why she was residing there. The petitioner is tenant of ground floor and unless the tenant of ground floor vacates, the first floor cannot be constructed. The fact that the sister of the landlord was residing there itself is not a ground to hold that the disputed accommodation is not in a dilapidated condition. This was to be decided on the basis of evidence on record. The petitioner had filed various photographs and the report of the Commissioner was also there on the record. The appellate Court could have decided the matter on the basis of such material.

5. In view of the above the writ petition is allowed. The order passed by respondent No. 1 dated 2151986 is hereby quashed. Respondent No. 1 will decide the appeal afresh in accordance with law and keeping in view the observation made above. Respondent No. 1 may either make local inspection himself or appoint a Commissioner for that purpose. As the matter is very old, the appellate authority shall decide the appeal expeditiously possibly within three months from the date of production of a certified copy of this order.