

(2011) 11 AHC CK 0237
In the Allahabad High Court
Case No : Writ A. No. 33198 of 2010

Anil Kumar and others

APPELLANT

Vs

District Judge and others

RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

Citation : (2011) 11 AHC CK 0237

Hon'ble Judges : Shashi Kant Gupta, J

Final Decision : Dismissed

Judgement

Shashi Kant Gupta & Shashi Kant Gupta, JJ.—By means of the present writ petition the petitioners have approached this Court for issuance of a writ of certiorari quashing the judgments and order dated 30.4.2010 and 13.11.2003 passed by the respondent no. 1, District Judge, Meerut and the respondent no. 2, Prescribed Authority./Judge Small Causes Court, Meerut respectively whereby the release application filed by the landlord respondents under section 21(1) (b) of U.P. Act no. 13 of 1972 (For short the " Act") has been allowed.

2. The brief facets of the case are as follows:

3. The respondents landlord filed an application under section 21(1)(b) of U.P. Act No. 13 of 1972 (for short the "Act") for release of the building in dispute on the ground that it was in a dilapidated condition. The said case was numbered as P.A. Case No. 152 of 1999. The tenant petitioners filed their written statement and contested the matter. Apart from filing their affidavits, reports of the Architects were filed by the respective parties.

4. After considering the material available on record, the Prescribed Authority by its judgement and decree dated 8.12.2004 allowed the release application of the landlord and recorded a finding that the building in question is in a dilapidated condition and requires demolition and reconstructions and therefore the same be released in favour of the landlord.

5. Being aggrieved and dissatisfied with the said judgement and order of the Prescribed Authority, the tenant petitioners filed an appeal before the appellate court which was allowed vide judgement and order dated 8.12. 2004. Against the said order the respondent landlord filed a writ petition, being Civil Misc. Writ Petition No. 4334 of 2005, Raman Gupta and others Vs. Anil Kumar and others which was allowed by this court on 4.12. 2009 and the order dated 8.12. 2004 was quashed, and the matter was remanded back to the appellate court for deciding the matter afresh within three months from the date of presentation of a certified copy of that order in view of the observations made therein as well as on the basis of relevant record. While passing the said order the writ court also granted liberty to the parties to lead their evidence regarding condition of the building in question.

6. After remanding the matter by this court, the respondents landlord filed three reports; one report of Rakesh Gupta dated 21.11.1999, another report dated 24.11.2000 and third report dated 24.12. 2009 of Sri B.B.Gupta and photographs 156C2/5, 156C2/6, 156C2/7, 156C2/8. They also filed inspection reports dated 1.11. 2000 and 3.3.2010 given by Sri Anil Sabbarwal, B.E. Architect and photographs of house (papers No. 150C2 to 154C2) and both the parties filed their respective affidavits.

7. The appellate court, after considering the material available on record, dismissed the appeal and affirmed the judgement and decree passed by the prescribed authority.

8. Learned counsel for the petitioners has submitted that this court while remanding the matter to the appellate court had directed the appellate authority to decide the appeal afresh on the basis of the relevant record granting liberty to the parties to lead fresh evidence regarding condition of the building in question. He further submits that the appellate court while passing the impugned order has not at all considered the inspection reports dated 1. 11. 2003 and 3.3. 2010 as well as the reports dated 21.11.1999 given by the Architect Mr. Anil Sabbarwal B.E., 24.11. 2000 given by Mr. Rakesh Gupta and report dated 24.12.2009 by Mr. B.B. Gupta and also the affidavits filed by the petitioners. He further submitted that the appellate court further misread the statements of the witnesses Deepak Pathak and Ail Kumar.

9. Per contra, learned counsel for the respondent landlord has supported the findings recorded by the courts below and submitted that the impugned orders are just and proper and the same have been passed in accordance with law.

10. Heard learned counsel for the parties and perused the record.

11. Admittedly the petitioners are tenants of the building in question. It was not disputed that the release application was filed in the year 1999 and the building in question is 70 years old. From perusal of the impugned orders it is evident that the appellate court while passing the impugned order has not at all considered the various reports of the Architects as well as the photographs

submitted by the parties, whose reference has been made by the appellate court in para 7 of its judgement and based its decision merely on the basis of the statements of the witness of the tenants namely Deepak Pathak and Anil Kumar.

12. From perusal of the order of this court dated 4. 12. 2009, it is apparent that the matter was to be decided afresh after considering the evidence to be produced by the parties and from perusal of para 7 of the judgement of the appellate court, it transpires that several affidavits and reports of the Architects were filed by the respective parties but the same have not been considered and discussed while passing the impugned order by the appellate court though it was obligatory on the part of the appellate authority to have considered and discussed the said evidence while deciding the matter afresh in light of the observations made by the writ court and as such the appellate court has committed error apparent on the face of record while passing the impugned order and the impugned order passed by the appellate authority to this effect regarding nonconsideration of the evidence adduced by the respective parties, whose reference has been made in para 7 thereof cannot be sustained and the same is liable to be quashed.

13. In view of what has been discussed herein above, the writ petition succeeds and is allowed and the impugned judgment and order dated 30.4.2010 passed by the respondent no. 1, District Judge, Meerut is hereby quashed and the matter is remanded back to the appellate authority to decide the appeal afresh in view of the observations made herein above considering the relevant record, particularly the reports of the Architects filed by the respective parties, whose reference has been made in para 7 of the impugned order dated 30.4.2010 passed by the appellate court. Since the matter is pending since last nearly 12 years, the appellate court is directed to decide the appeal within a period of three months from the date of production of a certified copy of this order.