

(1992) 11 AHC CK 0088

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 41932 of 1992

Babu Lal Sahu

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 05-11-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 21

Citation : (1993) 1 AWC 656

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : K.K. Dubey, for the Appellant;

Final Decision : Disposed Of

Judgement

R.R.K. Trivedi, J.—Heard learned Counsel for the Petitioner.

2. This writ petition has been filed for a direction to Respondents No. 1 and 2 not to proceed further in proceedings u/s 24 of U.P. Act No. 13 of 1972 which have been initiated on the application of Respondents No. 3 to 5. Further it has also been prayed that the orders dated 29th May, 1992 and 20th October, 1992 passed by Prescribed Authority and the appellate authority be quashed.

3. The facts giving rise to this writ petition are that the Petitioner filed an application u/s 21(1) (a) and (b) of U.P. Act No. 13 of 1972 (here-in-after referred to as the "Act") for release of the shop in dispute in his favour. The Prescribed Authority, Jhansi by order dated 28th October 1989, allowed the application of the Petitioner against which Respondents No. 3 to 5 filed an appeal. The appellate authority dismissed the appeal of the tenants by order dated 11th December, 1991, on the basis of the undertaking given by Petitioner that he shall demolish the shop and reconstruct the same and hand over possession of the newly constructed shop within two months from the date the

possession is handed over Operative part of the appellate order is being quoted below:

The appeal is dismissed. The order passed by the learned Prescribed Authority is modified to this extent that the tenant opposite party is directed to hand over the possession of the accommodation in question to the landlord within a month from today and the Respondent landlord shall hand over possession of the newly constructed shop of the measurements of 10 x 15 fit. at the place of the accommodation in question to the tenant-Appellants within two months of his obtaining possession of the shops in question after newly constructing it at the same rent at which the present tenant is occupying the accommodation as undertaken by him. The costs of the appeal shall remain easy. The affidavit 14-A filed in this Court shall form part of this order.

4. It is not disputed that the order of the appellate authority has become final as writ petition filed against the same was dismissed by this Court and the learned Counsel for the Petitioner stated that the matter went upto Hon"ble Supreme Court and the order of the appellate authority has been maintained. The Petitioner has stated that in pursuance of the order of the Court he got possession of the shop in dispute on 22nd February, 1992. However he failed to construct the shop as ordered and in these circumstances Respondents No. 3 to 5 filed an application before the Prescribed Authority for enforcing the order. A copy of the application is filed as Annexure-4 to the writ petition. In this application the relief sought is that the undertaking given by the Petitioner Babu Lal Sahu and the order of the appellate authority be enforced and Petitioner may be punished for committing contempt of Court and not fulfilling the undertaking given by him. Further they have claimed damages at the rate of Rs. 100/- per day and also that the possession of the shop in dispute may be given through the help of the police. On this application, the Prescribed Authority issued notice to the Petitioner fixing 29th May, 1992 and after hearing the parties passed the order on 29th May, 1992 directing the Petitioner to construct the shop within two months from the date of the order and further it was ordered that in case of default, necessary action will be taken against him. This order was challenged in appeal by the Petitioner. The appeal has been dismissed by order dated 20th October, 1992 against which this writ petition has been filed.

5. In my opinion, since Petitioner filed an affidavit and gave undertaking to reconstruct the shop in dispute and to hand over possession of the same to the tenants within the time fixed by the Court and the Court acting on the said affidavit, directed tenants to hand over possession, which has been complied with by tenants. The Petitioner is bound to reconstruct the shops and hand over possession of the same to tenants towards compliance of the order. The landlord Petitioner has admittedly obtained possession and has demolished the shops and at this stage he can be permitted to raise pleas to avoid compliance of the order. Learned Counsel for Petitioner submitted that one son of the Petitioner has filed a partition suit in which order has been passed directing Petitioner to maintain

status-quo and in view of the order of civil Court Petitioner has not been able to raise construction. Appellate authority has considered this aspect and has repelled the same with the finding that no effort has been made on the part of the Petitioner to get the order of the civil Court vacated and the suit appears to be collusive. In my opinion, appellate authority is fully justified in taking the aforesaid view in the facts and circumstances of the case.

6. Petitioner obtained orders from the appellate authority in his favour on the basis of the undertaking given by him and also got possession and has admittedly demolished the shops. His conduct in not constructing the shops at this stage cannot be appreciated. It appears that he is now avoiding to reconstruct the shops on one ground or the other so that tenant's claim of re-entry may be frustrated. Prescribed Authority by the impugned order dated 29th May, 1992 directed the Petitioner to reconstruct the shops within the period of two months. This further period of two months has also been availed by the Petitioner but he has made no efforts either to get the interim order passed by civil Court vacated nor has he shown any inclination to raise construction. At the time of hearing of this writ petition, a question was put to the learned Counsel for the Petitioner as to whether Petitioner needs further time to fulfill his undertaking by constructing shops but learned Counsel did not reply from which it appears that Petitioner has no willingness towards complying the order. In such facts and circumstances, the authorities under the act cannot be said to be powerless under Rule 21(f) of the U.P. Urban Building (Regulations of Letting, Rent and Eviction) Rules, 1972. The Prescribed Authority as well as appellate authority have inherent powers u/s 151 CPC to make any order for the ends of justice or to prevent the abuse of the process of the authorities concerned. The authorities are not expected to sit quietly in these circumstances and have rightly proceeded to enforce the order passed by them. Even though the order of re-entry cannot be passed u/s 24 of the U.P. Act No. 13 of 1972 as the old shop has been demolished and the new shop has not been constructed and re-entry on the open land cannot be permitted. Prescribed Authority in exercise of its inherent powers may determine the suitable amount of compensation to tenants so as to compensate them for the loss they are suffering or they may suffer for being deprived of their shops which were their source of livelihood. Tenants cannot be allowed to remain without shops for indefinite period. Prescribed Authority is rightly proceeding and should take immediate action to prevent loss to the tenants. Thus in case Petitioner fails to construct the shops as promised and continues to avoid compliance of the order of the appellate authority, the Prescribed Authority may determine suitable amount of compensation payable by Petitioner. The application moved by tenants to maintainable in law.

7. It may be further observed that in such cases of contraventions of the orders passed by the authority under the provisions of the Act the criminal proceedings may also be initiated u/s 31 of U.P. Act No. 13 of 1972. The Prescribed Authority may also consider this aspect of the matter and if deemed necessary, may write to District Magistrate to file a complaint u/s 33 of the Act.

8. In my opinion, Petitioner is not entitled for any relief. Petitioner by his conduct has disintitiled himself for any equitable relief from this Court and no interference is called for u/s 226 of the Constitution of India.

9. For the reasons recorded above, the writ petition is disposed of finally subject to aforesaid observations/directions.

10. A copy of this order shall be sent to the Court of Prescribed Authority for immediate compliance of the order.