
(2008) 04 AHC CK 0149

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34649 of 1999

Bachi Lal

APPELLANT

Vs

Addl. Chief judicial magistrate-ii/upper civil judge (sd)
prescribed authority

RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 21(1)(b)

Citation : (2008) 04 AHC CK 0149

Hon'ble Judges : Dilip Gupta, J

Final Decision : Allowed

Judgement

Dilip Gupta, J.—This petition has been filed by the tenant for setting aside the judgment and order dated 28th May, 1999 passed by VIth Additional District Judge, Jhansi by which the appeal filed by the landlord for setting the order passed by the Prescribed Authority was allowed.

2. The records of the writ petition indicate that the landlord had filed an application under section 21 (1) (a) and (b) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter referred to as the "Act"). It was stated that not only the building was bona fide required for the landlord but it was also in a dilapidated condition and was required for the purposes of demolition and new construction. The application was contested by the tenant.

3. „The Prescribed Authority rejected the application filed by the landlord holding that neither the need of the landlord was not bona fide and nor was the building in a dilapidated condition. Feeling aggrieved, the landlord filed an appeal under section 22 of the Act. The appeal was allowed holding that the building was in a dilapidate and that it was bona fide required by the landlord. ,

4. I have heard Sri B.K. Narain, learned Counsel for the petitioner and V.D. Ojha, learned Counsel appearing for the respondents.

5. Sri V.D. Ojha, learned Counsel appearing for the respondents landlord, however, submitted that there is no infirmity in the order passed by the Appellate Court.

6. Learned Counsel for the petitioner submitted that the requisite condition under section 21 (1) (b) of the Act was not satisfied inasmuch as the only finding that has been recorded by Appellate Court is that the building is in a dilapidated condition and there is no finding that the building is required for the purposes of demolition and new construction and in support of his contention, he has placed reliance upon the judgment of this Court Abdul Hai v. Ilhd Additional District Judge, Basti and others., 2001 (44) ALR154. Learned Counsel for the petitioner further submitted that even the finding of bona fide need recorded by the Appellate Authority is perverse and deserves to be set aside.

7. A perusal of section 21 (1) (b) of the Act shows that the landlord may file an application for eviction of the tenant from the building, if the building is in a dilapidated condition and is required for the purposes of demolition and new construction. It is, therefore, imperative that a finding must be recorded that the building is in a dilapidated condition and also that it is required for the purposes of demolition and new construction. This is what was observed by this Court in Abdul Hai v. Hlrd Additional District Judge, Basti and others, 2001 (44) ALR 154.

"The learned Counsel for the petitioner contended that the finding recorded by the Prescribe Authority as well as Appellate Authority was simply that the building was in dilapidated conditions, but the dilapidated condition of the building itself is not sufficient to allow the application under section 21 (1) (b) as it has also to be considered by the Prescribed Authority that the building required demolition as required by Rule 17 (1) of the Rules. It has been held by this Court in the case of Pyare Lal v. IVth Additional District Judge, Bijnor and others, 1980 ARC 240. that the requirements of Rule 17 are mandatory and the Prescribed or Appellate Authority has to find that the building "requires demolition". The Prescribed Authority has not considered the applicability of Rule 17 (1) at all while the appellate authority had noted the contents of Rule 17 (1) and thereafter discussed the question whether the premises were or were not in dilapidated condition. After considering the material it has recorded the finding that it is, therefore, a dilapidated building and requires reconstruction after demolition and the landlord has made compliance of Rule 17. The above observation of the appellate authority shows that it equated compliance of Rule 17 (1) with the dilapidated condition of the building. The trend of the finding is that if a building can be found to be dilapidated, it would follow that it requires demolition. This is not correct. The connotation of the phrase requires demolition is clearly not the same as of it is required for the purposes of demolition and reconstruction which occurs in section 21 of the Act. Indeed if it were coextensive with the meaning of either of the two conditions in the section there would be no need to provide this third condition by a rule. The fact that "requires demolition" is more objective brought out in a number of decisions relating to

provisions under the various Rent Control Acts permitting release where landlord bona fide required the premises for reconstruction. It was emphasised in these cases that the landlord's bona fide requirement for reconstruction was not the same thing as that the building required demolition and reconstruction. The words in section 21 (1) (b) are slightly different from those in the statutes considered in the above cases but in substance the phrase is the same."

"The appellate authority and the prescribed authority in the instant case have simply recorded that building was in dilapidated condition as mentioned in the report of Commissioner, but it has not recorded finding that building also required demolition."

8. Thus, even if the finding of the Appellate Court that the building was in a dilapidated condition is taken to be correct, then too, in view of the fact that the Appellate Court has not recorded any finding that the building was required for the purposes of demolition and new construction, the Appellate Court committed an illegality in allowing the application filed by the landlord on this ground.

9. The next submission that has to be examined is about the bona fide need of the landlord. The Prescribed Authority, after a careful perusal of the evidence on record, came to the conclusion that the accommodation available with the landlord was sufficient to meet his requirement and there was no need for any additional accommodation. It rejected the contention of the tenant that since the motherinlaw and daughterinlaw were not in good terms, the need of the landlord was bona fide as it found that the building was a double storey building with an additional room on the third floor, and so the motherinlaw and the daughterinlaw could peacefully reside on separate floors.

10. The Appellate Court first considered whether the landlord required any space for parking his car and came to the conclusion that there was no space available with the landlord. In this context, the tenant had specifically pleaded that an adjoining house was available with the landlord, which could be utilized for this purpose. This contention has been rejected by the Appellate Court holding that it was for the landlord to choose the place to park his car. The said finding cannot be sustained as the adjoining house can well be utilised for the purpose of parking the car.

11. The Appellate Court, then held that when there is a dispute between the motherinlaw and daughterinlaw, the need of the landlord should be taken to be bona fide. The Appellate Court has not at all recorded any finding as to whether there exists any dispute between the motherinlaw and the daughterinlaw and only on the presumption that there is a dispute, has proceeded to hold in view of the certain decisions that the need of the landlord was bona fide. The Prescribed Authority had elaborately dealt with this issue but without any discussion, the Appellate Authority, only on a presumption has found the need of the landlord to be bona fide. Thus, the finding recorded by the Appellate Authority regarding bona fide need of the landlord cannot be sustained.

12. The matter is, therefore, required to be remanded to the Appellate Authority to examine all the contentions afresh and pass an appropriate order.

13. The judgment and order dated 28th May, 1999 passed by the Additional District Judge VI, Jhansi is set aside. The Appellate Authority shall decide the appeal afresh. The writ petition, therefore, succeeds and is allowed to the extent indicated above. Since the matter is old, it is expected that the Appellate Court shall decide the matter expeditiously.