
(2003) 04 AHC CK 0145

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13411 of 2003

Basanti Devi and others

APPELLANT

Vs

Addl.District Judge, Room No.Allahabad and others

RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 22

Citation : (2003) 04 AHC CK 0145

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—This writ petition has been filed by the petitioners under Article 226/227 of the Constitution of India, inter alia, praying for quashing the order dated 6.3.2003 (Annexure No. 6 to the writ petition) passed by the learned Addl. District Judge, Court No. 6, Deoria (Appellate Authority) in Rent Control Appeal No. 185 of 1995.

2. The dispute relates to a twodoor shop in House No. 48, Ahmadganj, Allahabad. The said shop has hereinafter been referred to as" the disputed shop".

3. From the allegations made in the writ petition, it appears that Smt. Shakuntla Devi, predecessorininterest of the respondent Nos. 2 to 10 had filed release application under section 21(1) (a) of the U.P. Act No. XIII of 1972 (in short "the Act") against Sangam Lal, predecessorininterest of the petitioners for the release of the disputed shop. The said release application was registered as P.A. Case No. 48 of 1993. Copy of the said release application has been filed as Annexure No. 1 to the writ petition.

4. The said Sangam Lal, predecessorininterest of the petitioners contested the said release application and filed written statement, copy whereof has been filed as Annexure No. 2 to the writ petition.

5. It further appears that the learned Prescribed Authority, by the judgment and

order dated 6.5.1995, allowed the said release application filed by Smt. Shakuntla Devi, predecessorininterest of the respondent Nos. 2 to 10.

6. Thereupon, it appears that the said Sangam lal, predecessorininterest of the petitioners filed an appeal under section 22 of the Act which was registered as Rent Control Appeal No. 185 of 1995.

7. It further appears that during the pendency of the said Appeal No. 185 of 1995, the said Smt. Shakuntla Devi died and the respondent Nos. 2 to 10 were brought on record as the heirs and legal representatives of the said Shakuntala Devi. Further during the pendency of the said appeal, the said Sangam lal died, and the petitioners as the heirs and legal representatives of the said Sangam lal were brought on record.

8. It further appears that during the pendency of the said appeal, an application for issuance of a commission for spot inspection was filed on behalf of the petitioners. By the order dated 27.7.1999, the said application was rejected by the learned Appellate Authority.

9. Thereafter, it appears that the petitioners filed a writ petition before this Court being Civil Misc. Writ Petition No. 35314 of 1999. The said Writ Petition No. 35314 of 1999 was dismissed by a learned Single Judge of this Court on 19.8.1999 making certain observations. The relevant portion of the said order is quoted below:

".....prayer for issuing commission for local inspection. It further appears that same prayer was also pressed before the appellate authority and finding no sufficient ground for issuing commission the said application has been rejected. Commission for local inspection cannot be issued for collecting evidence, therefore, the order rejecting petitioner's application for that purpose requires no interferenc. If any subsequent events have occurred during the pendency of appeal having a bearing on the bona fide need of the landlord, it shall be open for the petitioners to place those events before the appellate authority by moving a proper application and if such an application is made, the same shall be decided in accordance with law.

With these observations, this writ petition is dismissed".

10. Thereafter, it appears that the petitioner filed an application dated 9.9.1999 (No. 52C), inter alia, praying for admitting on record the affidavit, accompanying the said application, in evidence regarding subsequent events. Copy of the said application dated 9.9.1999 and its accompanying affidavit have been filed as Annexure No. 4 to the writ petition. It further appears by the order dated 4.11.1999, the said affidavit filed alongwith the said application dated 9.9.1999 (No. 52 Ga) was taken on record.

11. It further appears that the petitioner moved another application dated 5.3.2003 (No. 157C), inter alia, praying for admitting on record the affidavit filed alongwith the said application in regard to subsequent events. Copies of the said

application dated 5.3.2003 alongwith its accompanying affidavit have been filed as Annexure No. 5 to the writ petition. By the order dated 6.3.2003, the learned Appellate Authority rejected the said application dated 5.3.2003 (No. 157C).

12. Thereafter, the petitioners have filed the present writ petition seeking the reliefs mentioned above.

13. I have heard Sri K.M. Asthana, learned Counsel for the petitioners and Sri Pankaj Mittal, learned Counsel for the respondent Nos. 9 and 10 at length.

14. Sri Asthana, learned Counsel for the petitioners submits that the order dated 6.3.2003 is illegal as the affidavit which was sought to be brought on record deals with various subsequent events and the learned Appellate Authority ought to have taken the said affidavit on record.

15. In my opinion, it is not necessary to go into the merits of the order dated 6.3.2003 in the present writ petition, as it will be open to the petitioners to challenge the said order, in case, the said Rent Appeal No. 185 of 1995 filed by the petitioners is decided against the petitioners, and they challenge the final order passed in the said Rent Control Appeal No. 185 of 1995.

16. Therefore, without going into the merits of the order dated 6.3.2003, this writ petition is dismissed on the ground that it will be open to the petitioners to challenge the said order dated 6.3.2003, in case, the said Rent Control Appeal No. 185 of 1995 is decided against them and they file writ petition against the final order passed in the said Rent Control Appeal No. 185 of 1995.

17. It is, however, observed that as the said appeal was filed in the year 1995, the learned Appellate Authority will endeavour to decide the same expeditiously.