
(1988) 10 AHC CK 0052
In the Allahabad High Court
Case No : Writ Petition No. 13801 of 1986

Bishambhar Nath Khanna and Others	APPELLANT
Vs	
IV Addl. District Judge and Another	RESPONDENT

Date of Decision : 10-10-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 10, 10(2), 21, 22

Citation : (1989) 1 AWC 462

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : V.D. Singh and Murlidhar, for the Appellant; SC and S.N. Verma, for the Respondent

Final Decision : Allowed

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India.

2. Before admission, counter and rejoinder affidavits have been filed.

3. I have heard Sri. Murlidhar, learned Counsel for the Petitioners and Sri. S.N. Verma, Senior Advocate on behalf of Respondent Export Promotion Council.

4. The only submission raised by Sri. Murlidhar is that all the material on record was available for the purpose of deciding the appeal on merits. The Appellate Authority has acted illegally and with material irregularity in exercise of its Jurisdiction in remanding the case for decision afresh to the Prescribed Authority.

5. Section 22 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) provides that any person aggrieved by an order u/s 21 of the Act may prefer an appeal to the District Judge, and in other respects, the provisions of Section 10 shall mutatis mutandis apply in relation to such appeal.

6. Section 10 Sub-clause (2) of the Act which is material for the purpose of the present case is as follows:

Section 10(2) The Appellate Authority may confirm, vary or rescind the order, or remand the case to the District Magistrate for rehearing, and may also take additional evidence, and pending its decision, stay the operation of the order under appeal on such terms, if any, as it thinks fit.

7. On reading Section 22 of the Act along with Section 10(2) of the Act, it is apparent that the Appellate Authority u/s 22 of the Act has been given very wide powers. It has the power to confirm, vary or rescind the order. It has also been given power to take additional evidence. It is, therefore, clear that the legislative intent was that the appellate authority shall have all the powers to decide questions of fact also after taking additional evidence, if so, required.

8. In *Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina*, , the Hon"ble Supreme Court has further laid down the law that the appellate authority when passing final orders on the release application, can also look into the subsequent events which have occurred during the pendency of the release application. It is therefore, clear that the appellate authority has all the powers to not only take a decision on the basis of the evidence on record but also after affording an opportunity to the parties permit additional evidence to be recorded and, thereafter decide the case. The remand in appeal, is, however, not excluded but that has to be done in very exceptional circumstances.

9. In the instant case, the appellate authority has only mentioned certain circumstances and situations, which according to him, should have been considered by the Prescribed Authority before recording finding in regard to bonafide need. These circumstances and situations could have been looked into by the appellate authority itself and this itself was no reason for sending back the case to the Prescribed Authority after setting aside the order of the Prescribed Authority. Similarly the appellate authority has observed that the landlord should have impleaded the new Council who is the successor of the tenant old Council, meaning thereby that the tenant who was the Export Promotion Council was succeeded by some other authority. If that be so, it is for the tenant to decide whatever defence it has to take in this regard, but the landlord cannot be compelled to make a person as a party when he does not accept such person as his tenant. On this question also, it was the appellate authority which ought to have given its own findings after hearing both the parties on this question.

10. In the interest of justice, I think it proper that in order to avoid any delay in the disposal of the release application, the appellate authority should dispose of the appeal on merits on the basis of evidence on record as expeditiously as possible.

11. In the result, the petition is allowed. The order dated 31st July, 1986 is, hereby, quashed. The case is remanded to the appellate authority for decision afresh on merits. If necessary, parties shall be given an opportunity of producing

additional evidence. The appellate authority shall dispose of the appeal as expeditiously as possible. The interim order dated 13-8-1986 is, hereby, vacated.