

(2000) 08 AHC CK 0068

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 38497 of 2000 connected with 38500 of 2000

Brij Kishore Rastogi

APPELLANT

Vs

IVth Addl. District Judge, Shahjahanpur and Others

RESPONDENT

Date of Decision : 30-08-2000

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21(1)(b), 22, 24

Citation : (2000) 08 AHC CK 0068

Hon'ble Judges : R.H.Zaidi, J

Final Decision : Disposed Of

Judgement

R. H. Zaidi, J.—In both these petitions common questions of law and fact are involved, they were therefore, heard together and are being disposed of by this common judgment.

By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the judgment and order dated 29/7/2000 passed by the Appellate Authority allowing the appeal filed by the respondent No.3 under Section 22 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. XIII of 1972), for short the Act.

2. It appears that the respondent No. 3 filed application under Section 21 (1) (b) of the Act for release of the shops in dispute. It was pleaded that the shops in dispute were in dilapidated condition and consequently they were required for demolition and reconstruction to the said respondent. The application filed by the respondent No. 3 was objected to and opposed by the petitioner. It was denied that the shops in question were in dilapidated condition or demolition of the same was at all needed. The parties, in support of their cases, produced evidence, oral and documentary. The Prescribed Authority, after going through the material on record, recorded finding on the relevant issues against

respondent No.3 and dismissed the application by its judgment and order dated 251990. Challenging the validity of the said order, respondent No. 3 filed an appeal before the Appellate Authority. The Appellate Authority, after reversing the findings recorded by the Prescribed Authority, allowed the appeal by the judgment and order dated 2972000, hence the present petition.

3. Learned Counsel for the petitioner submitted that the judgment and order passed by the authorities below are bad in law. It was submitted that in the application for release it was not stated that after reconstruction of the building, shops shall be provided to the petitioner, therefore, release application was liable to be dismissed. It was also urged that the shops, which are proposed to be constructed are lesser in the area than of existing shops, the writ petition is, therefore, liable to be allowed. On the other hand, learned Counsel appearing for the contesting respondent No. 3 supported the validity of the judgment and order passed by the authorities below. It was submitted that the Appellate Authority has recorded findings of fact on the relevant questions in favour of said respondent, which are based on the evidence on record. It was also urged that in view of the provisions of Section 24 of the Act it was not necessary to make any averment in the release application that after reconstruction of the building, the shops of the same size shall be provided to the petitioners. Learned Counsel for the respondent No. 3 also submitted that the said respondent is willing to provide the shops to the petitioner after reconstructing the same over an area of 105 sq. feets. The present area, it is alleged, is about 110 sq. feets only.

4.1 have considered the submissions made by learned Counsel for the parties.

5. The authorities below have recorded clear and categorical findings on the question of condition of buildings. It has been held that the two shops in question were in dilapidated condition and the same were required to be demolished by the petitioner for demolition and reconstruction. Right of reentry has been ensured by the Act itself under Section 24 of the Act. Even if no averment is made in the application to provide the building after its reconstruction Section 24 of the Act provides as under:

?24. Option of reentry by tenant.(1) Where a building is released in favour of the landlord and the tenant is evicted under Section 21 or an appeal under Section 22, and the landlord either puts or causes to be put into occupation thereof any person different from the person for whose occupation according to the landlord's representation, the building was required, or permits any such person to occupy it, or otherwise puts it to any use other than the one for which it was released, or as the case may be, omits to occupy it within one month of such extended period as the Prescribed Authority may for sufficient cause allow from the date of his obtaining possession or, in the case of a building which was proposed to be occupied after some construction or reconstruction, from the date of completion thereof, or in the case of a building which was proposed to be demolished, omits to demolish it within two months or such extended period as the Prescribed Authority may for sufficient cause allow from the date of his

obtaining possession, then the Prescribed Authority or, as the case may be, the District Judge, may, on an application in that behalf within three months from the date of such act or omission, order the landlord to place the evicted tenant in occupation of the building on the original terms and conditions, and on such order being made, the landlord and any person who may be in occupation thereof shall give vacant possession of the building to the said tenant, failing which, the Prescribed Authority shall put him into possession and may for that purpose use or cause to be used such force as may be necessary.

(2) Where the landlord after obtaining a release order under clause (b) of subsection (1) of Section 21 demolishes a building and constructs a new building or buildings on its site, then the District Magistrate may, on an application being made in that behalf by the original tenant within such time as may be prescribed, allot to him the new building or such one of them as the District Magistrate after considering his requirements thinks fit, and thereupon that tenant shall be liable to pay as rent for such building an amount equivalent to one per cent per month of the cost of construction thereof (including the cost of demolition of the old building but not including the value of the land), and the building shall, subject to the tenant's liability to pay rent as aforesaid, be subject to the provisions of this Act, and where the tenant makes no such application or refuses or fails to take that building on lease within the time allowed by the District Magistrate, or subsequently ceases to occupy it or otherwise vacates it, that building shall also be exempt from the operation of this Act for the period for the remaining period, as the case may be, specified in subsection (2) of Section 2.

6. In the aforesaid facts and circumstances of the case, it is provided that petitioner shall vacate the shops in dispute on the date the map of the building in question is sanctioned by the competent authority and shall hand over vacant possession of the shops to the landlord respondent No.3. The respondent No. 3, thereafter, shall construct the two shops over an area measuring 105 sq. feets (one half in each shop), shall complete the construction of the shop in question by 3062001 and permit the petitioner to occupy the same in accordance with and under the terms and conditions of Section 24 of the Act.

With these observations and directions, this petition stands finally disposed of.