

(2000) 09 AHC CK 0064

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43396 of 2000

Dina Nath @ Ramesh and Others

APPELLANT

Vs

Xth Addl. District Judge, Kanpur Nagar and Others

RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2)(a), 20(4)

Citation : (2000) 09 AHC CK 0064

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

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—Heard learned Counsel for the parties.

By means of this petition filed under Article 226 of the Constitution of India, petitioners challenge the validity of order dated 7111987 whereby the suit filed by the contesting respondent was decreed by the trial Court and the order dated 26111998 whereby the revision filed by the petitioners was dismissed by the Court below.

2. It appears that the contesting Respondent Nos. 3 and 4 filed a suit for ejectment on the ground of default. The suit was contested by the petitioners. The trial Court after going through the material on the record, decreed the suit. Challenging the validity of the decree passed by the trial Court, petitioners filed a revision. The Revisional Court also dismissed the revision by its judgment and order dated 26111998. Hence the present petition,

3. Learned Counsel for the petitioners vehemently urged that the payment as required under subsection (4) of Section 20 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 was made, therefore, the petitioners were not liable to be ejected from the building in question. The Courts below have recorded concurrent findings of fact which are based on the material on the record to the effect that it was not proved that the provisions of sub section (4) of Section 20

of the Act were applied. On the other hand it has been held by Courts below that in the meanwhile one of the family members of the petitioners has acquired a residential building therefore, the provisions of subsection (4) of Section 20 of the Act were not applicable to the case which reads as under:

?20. Bar of suit for eviction of tenant except on specified grounds.(1),.....,.....

(4) In any suit for eviction on the ground mentioned in clause (a), subsection (2), if at the first hearing of the suit the tenant unconditionally pays or tenders to the landlord or deposits in Court the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under subsection (1) of Section 30, the Court may in lieu of passing a decree for eviction on that ground pass an order relieving the tenant against his liability for eviction on that ground:

Provided that nothing in this subsection shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition any residential building in the same city, municipality, notified area or town area.?

4. In the present case, firstly, the petitioners failed to prove that provisions of subsection (4) of Section 20 of the Act were complied with and the requisite money was deposited on the first date of hearing. Secondly, one of the members of the family of the petitioners has acquired residential house, therefore, the Courts below did not commit any error of law or jurisdiction in decreeing the suit and dismissing the revision filed by the petitioners. The finding regarding acquisition of the residential house by a member of the family is based on relevant evidence on record and does not suffer from any error of law. Thus, in view of the proviso to subsection (4) of Section 20 of the Act, the petitioners were not entitled to claim benefit of subsection (4) of Section 20 of the Act. I do not find any illegality or infirmity in the impugned orders. No case for interference under Article 226 of the Constitution of India is made out.

The writ petition fails and is hereby dismissed. Petition dismissed.