
(2011) 03 AHC CK 0265

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16852 of 2011

Dwarika Lalwani

APPELLANT

Vs

Addl.District Judge, Varanasi and others

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Citation : (2011) 03 AHC CK 0265

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.

Heard learned counsel for the parties and perused the record.

This writ petition has been filed challenging the validity and correctness of the order dated 15.12.2010, passed by the Additional District Judge, Varanasi in Revision No. 01 of 2008 (Bal Krishna Aiyar vs. Rent Control & Eviction Officer/ Prescribed Authority, Varanasi.

The brief facts of the case are that one Ramesh Kumar filed an application before the Prescribed Authority for allotment of a portion of House No. 47/147 situated in Mohalla Ramapura, District Varanasi which was registered as Case No. 38 of 2003. The said portion is situated on ground floor consisting of 2 rooms, one kitchen, one latrine and bath room. After submission of the report by the Rent Control Inspector, the Prescribed Authority by his order dated 15.07.2004 declared vacancy in the said portion.

Thereafter, the petitioner also moved an application on 24.8.2007 along with appendix 1 dated 25.8.2007 for allotment of house in his favour on the ground that vacancy has been declared by order dated 15.7.2004 and he being a prospective allottee may be allotted the accommodation in dispute. He also moved an application dated 10.9.2007 for release of aforesaid accommodation under Section 16 (1) (b) of U.P. Rent Control Act.

By order dated 25.9.2007 the Prescribed Authority recalled the order dated 23.12.2004 by which case was dismissed in default and dismissed the application of the landlord/respondent for release of house in his favour. On 8.1.2008, Mahendra Nath Upadhyaya/respondent no. 3, appears to have moved an application for allotment of house in his favour.

The Prescribed Authority by his order dated 8.1.2008, after hearing both the applications filed by the petitioner and respondent no. 3, passed a detailed order in favour of the petitioner and dismissed the application of Mahendra Nath Upadhyaya.

Aggrieved by order dated 18.12.2007, the landlord/respondent/Bal Krishna Aiyar filed revision no. 01 of 2008 before the District Judge, Varanasi and against the order dated 8.1.2008, respondent no. 3 filed another revision no. 4 of 2008 before the same authority. The Additional District Judge, Varanasi, by his order dated 15.12.2010 set aside the order of allotment in favour of the petitioner and remanded the case to the Prescribed Authority for fresh consideration.

Against the said order dated 15.12.2010, the petitioner has filed present writ petition.

After hearing learned counsel for the parties and on perusal of record, it is evident that petitioner is prospective allottee. The vacancy had been declared by order dated 15.07.2004. The impugned order is of remand to the Prescribed Authority for deciding it afresh in accordance with law. Hence in the facts and circumstances of this case, the Court is not inclined to interfere against an order of remand in exercise of its power under Article 226 of the Constitution of India. As there appears no illegality or infirmity in the order passed by the Court below, the writ petition is, accordingly, dismissed. No order as to costs.