
(2001) 05 AHC CK 0171
In the Allahabad High Court
Case No : C.M.W.P. No. 16522 of 2001

Gorakh Prasad Rai

APPELLANT

Vs

6th Addl. District Judge, Kanpur Nagar and others

RESPONDENT

Date of Decision : 08-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(1), 21(1), 22

Citation : (2001) 2 AWC 1550 : (2001) AWC 1550

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : W.H. Khan, for the Appellant; S.C., Ravi Kiran Jain and P.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—The premises in dispute are three rooms, latrine, bath room on the ground floor of house No. 13/57 Parmit, Kanpur Nagar. Admittedly the respondent No. 3 is the landlady of the said house and she moved an application for release u/s 21 (1) (a) of U. P. Act No. 13 of 1972 alleging she is in bona fide need of the house. The application was allowed by the prescribed authority by judgment dated 26.5.1999. Annexure-2 to the writ petition. Aggrieved by it, the petitioner filed a rent appeal No. 114 of 1999 u/s 22 of U.P. Act No. 13 of 1972. The rent appeal has also been dismissed by order dated 5.3.2001. Annexure-1 to the writ petition. The petitioner has therefore invoked the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

2. I have heard Sri W.H. Khan, learned counsel for the petitioner, Sri Ravi Kiran Jain, senior advocate, assisted by Sri P.K. Gupta, learned counsel for the respondent No. 3 and the learned standing counsel.

3. There are concurrent findings of the both the courts below on the point that the need of the landlady is bona fide and that the hardship in her favour is more

than the hardship which may be caused to the petitioner in case the application is allowed. These concurrent findings of fact cannot be disturbed in this petition under Article 226 of the Constitution of India as stand taken in the following cases by this court as well as by the Apex Court :

Kamla Sarin v. Shyam Lal and others 1984 (2) All RC 344 , Muni Lal and Others Vs. Prescribed Authority and Others, , Natthu Lal v. Radhey AIR 1974 SC 1696 : Babhutmal Raichand v. Laxmibai AIR1975 SC 1296 ; Mrs Labhkuwar Bhagwani Shaha and Others Vs. Janardhan Mahadeo Kalan and Another, ; Ram Rakesh Pal and another v. I Additional District Judge and others, 1967 UPRCC 376, Jagan Prasad u. District Judge and another 1976 UPRCC 342. Laxmi Naratn v. IInd Additional District Judge and another. 1977 UPRCC 230 : Smt. Nirmala Tandon v. Xth Additional District Judge, Kanpur Nagar 1996 (2) ARC 409 and in the case of Kamleshwar Prasad v. Praduman Ji Agarwal 1997 (1) ARC 627.

4. However, the learned counsel for the petitioner has argued that the family of the landlady consists of six members. The respondent No. 3, her husband, three children and mother-in-law. That there is sufficient accommodation on the first floor and second floor of the house for the family. However, the need alleged by the landlady is that her mother-in-law is also living with her. who is very old and infirm and has been advised not to use the stair case. It is contended that, therefore, alleged need is for one room on ground floor for the mother-in-law of the landlady and court below has erred in releasing the entire accommodation. Learned counsel in support of the argument has referred to the Rule 16 (1) (d) of the Rules framed under the Act which provides that where the need of the landlord would be served by releasing one part of the accommodation, the prescribed authority shall release only that part. It is contended that both the courts below have erred in not considering this aspect.

5. Regarding this, it has been argued by Sri R.K. Jain, senior advocate that a commission was issued in this case, whose report alongwith sketch plan of the disputed house is Annexure No. 5. It shows that in this house there is big room, a small room and courtyard, latrine. bath room and two dilapidated rooms on the ground floor. That the dilapidated rooms are in dangerous condition and are not fit to be used. That as such there are only two rooms on the ground floor. That the location of the rooms is such that one room alone can not be used. It is further argued that the release of one room will not satisfy the need as the old mother-in-law of the landlady shall also require a latrine and bath room on the ground floor.

6. Considering the arguments, I am of the view that release of one room would not satisfy the need of the landlady and, therefore, the first argument of the learned counsel for the petitioner is without merit.

7. The next argument of Sri W. H. Khan, learned counsel for the petitioner is that in the appellate court, he moved an application for amendment and by amendment, he pleaded that there are two other vacant houses which are

available to the landlady. That one house is No. 13/157-A, Parmit which Is owned by mother-in-law of the landlady and the other house No. 13/130A, Parmit which is also owned by the landlady. That both these houses are available in vacant condition and, therefore, the house in dispute cannot be released. It has been argued in support of this plea the petitioner filed his own affidavit and also the assessment of Nagar Palika, Kanpur Nagar for the year 1987-92, Annexure-8 to the writ petition showing that the houses are vacant. That the judgment of the first appellate court shows that this document and affidavit were not at all considered, it is contended that the first appellate court has erred in not considering this evidence and therefore, the order of the first appellate court is liable to be quashed. Learned counsel in support of the argument has referred to Dhannu Kushwaha v. Mahendra Kumar Sahu and others. 2001 (1) ARC 415. It was held In this case that it is obligatory on the appellate court to consider the additional evidence filed in appeal.

8. I have considered the arguments. In this case, the additional facts were pleaded in the appellate court and additional evidence was filed in support of the additional facts. The additional facts pleaded was considered in para 16 of the judgment by the first appellate court. No doubt it is true that he has referred to the additional facts pleaded, but has not mentioned anything regarding the documentary evidence filed by the petitioner. On consideration of evidence of the landlady on this point, he has held that none of the two houses are vacant and available to the landlady. It is not necessary that every document which have been filed In the record should be referred to In the judgment. The material evidence was referred to by the appellate court and on its basis, he has concluded that the additional facts pleaded by the petitioner are not correct.

9. Considering the circumstances. I do not find any ground to interfere in the order of the courts below. The writ petition is hereby dismissed.