

(2000) 08 AHC CK 0087

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44068 of 1998

G.R.Laroiya

APPELLANT

Vs

Additional District Judge/Special Judge Anti Corruption (East)
Dehradun and Others

RESPONDENT

Date of Decision : 24-08-2000

Acts Referred:

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

Citation : (2000) 08 AHC CK 0087

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

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—By means of this petition filed under Article 226 of the Constitution of India, petitioner challenges the validity of the order dated 781990 passed by the Prescribed Authority allowing the application filed by Rajeshwar Nath, predecessor in interest of Respondent Nos. 3 to 5 under Section 21 (I)(a) 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, the order dated 2941999 whereby the appeal filed by the petitioner was dismissed ex pane by the appellate authority and the order dated 2191999 whereby restoration application filed by the petitioner was rejected by the appellate authority.

2. The facts of the case, in brief, are that Rajeshwar Nath, predecessor in interest of Respondent Nos. 3 to 5, filed the release application under Section 21 (I)(a) of the Act on the ground of his bona fide and genuine personal need before the prescribed authority. It was also pleaded that the petitioner also acquired a plot at Balbir road (measuring 17 Biswas), Dehradun and constructed a building on it. On receipt of the notices, the petitioner filed an objection contending that need of Rajeshwar Nath was neither genuine nor bona fide, the release application was therefore, liable to be dismissed. In support of their cases, the parties produced evidence before the prescribed authority. The prescribed authority after going

through the entire evidence on the record oral and documentary, recorded findings on the question of need and comparative hardship in favour of late Rajeshwar Nath and allowed the application by/ its judgment and order dated 781990: Challenging the validity of the said order, the petitioner filed an appeal before the appellate authority. During the pendency of the appeal. Rajeshwar Nath died leaving behind Respondent Nos. 3 to 5 as his heirs and legal representative who were substituted in place of Rajeshwar Nath in the appeal. The appeal filed by the petitioner was dismissed ex parte by judgment and order dated 2941999. The petitioner filed a restoration application for setting aside the ex pane order. Application filed by the petitioner was objected to and opposed by the contesting Respondent Nos. 3 to 5. The appellate authority upheld the objections filed by the said respondents and dismissed the application by its judgment and order dated 2191999, hence the present petition.

3. Learned Counsel for the petitioner vehemently urged that the petitioner has shown sufficient cause of the absence on the date fixed. The restoration application was therefore, liable to be allowed. The appellate authority has failed to exercise the jurisdiction vested in it by rejecting the restoration application. The judgment and order passed by the appellate authority was therefore, liable to be set aside.

4. On the other hand, learned Counsel appearing for the contesting respondents supported the validity of the impugned orders. It was urged that the prescribed authority recorded findings on the questions of bona fide and genuine need as well as on comparative hardship after perusing the entire evidence, oral and documentary on the record in favour of the landlord by its judgment and order dated 781990. It was urged that against the said judgment and order an appeal was preferred by the petitioner in the year 1990. Thereafter he managed to keep the said appeal pending for about nine years. It was further urged that the petitioner has been deliberately delaying the disposal of the appeal and inspite of the orders passed by the appellate Court, the substitution application was not filed within time prescribed for the same but long thereafter alongwith an application for condonation of delay. However, the said application was allowed on payment of costs. The petitioner thereafter did not pay the amount of costs and did not carry out the amendments in the memo of appeal as he was interested in keeping the said appeal pending as long as it was possible. Lastly, it was submitted that the petitioner utterly failed to show sufficient cause for setting aside the judgment and order dated 291. 1999. The Court below, therefore, rightly dismissed the application, and the present writ petition was also liable to be dismissed.

5. I have considered the submissions made by the learned Counsel for the parties and also perused the record.

6. The appellate authority after hearing the learned Counsel for the parties, held that Shri Rajeshwar Nath. landlord died on 551994. The petitioner failed to take steps for substitution of his heirs within the time prescribed under the law.

Ultimately, he was directed to take steps by order dated 6111998. The steps were to be taken on or before 11121998. Instead of taking steps within the time prescribed by the Court, the petitioner opted to seek adjournments and the substitution application was thereafter filed on 1021990 and it was allowed on 1621990 which" to payment of cost. The petitioner deliberately thereafter did not make payment of cost and incorporated the amendment in the memo of appeal within the time prescribed by the Court. It has been held that he has done all acts of omission and commission which could be helpful to delay the disposal of appeal. It has further been held that the petitioner kept the appeal pending for about nine years. The appellate authority therefore, had no option but to proceed ex pane and pass the order in accordance with law after perusing the material on the record. Learned Counsel for the petitioner failed to show that any relevant evidence was either not considered or not appreciated by the appellate authority. It has also been held that the petitioner was not willing to cooperate in the proceedings of appeal and failed to show sufficient cause for his absence through his Counsel on the date fixed.

7. Admittedly, petitioner had the knowledge of the pendency of the appeal as the same was filed by him. In the said appeal, as it is evident from the material on record, several dates were fixed for hearing. Even if the petitioner was suffering from cancer as claimed by him, no cause has been shown by him as to why he could not make arrangement for appearance and arguments in the appeal through a competent lawyer. His personal presence at the time of hearing of the appeal or the application for setting aside the ex pane order was legally not required. According to the findings recorded by the appellate authority, no sufficient cause has been shown for absence on the date fixed for hearing in the appeal. The appellate authority therefore, did not commit any error in law or jurisdiction in rejecting the application for setting aside the ex. pane judgment and order.

8. The findings recorded by the appellate authority are all findings of fact which are based on the relevant evidence on record. No case for interference under Article 226 of the Constitution of India is made out.

9. Lastly, learned counsel for the petitioner prayed that some reasonable time may be granted to the petitioner to vacate the building in question. Learned Counsel appearing for the contesting respondent has got no objection if six months time is granted to the petitioner to vacate the building in question subject to the condition the petitioner furnishes an undertaking in writing before the prescribed authority within 15 days from today that immediately on expiry of the aforesaid time or before that he will vacate the building in question and hand over vacant possession to the contesting respondent and shall also pay rent/damages for the period he remain in occupation of the building in question.

10. In view of the aforesaid fact it is hereby directed that for a period of six months from today the petitioner shall not be evicted from the building in question subject to the condition the petitioner furnishes an undertaking in

writing before the prescribed authority within a period of fifteen days from today to the effect that on the expiry of the aforesaid time or before that he shall hand over vacant possession of the building in question to the landlord and shall also pay the rent/damages for the building in question for the period he remains in occupation of the same. If the petitioner fails to comply with the aforesaid directions or any one of them this order shall be deemed to have been discharged and the law shall take its own course.

11. Subject to what has been stated above the writ petition fails and is dismissed. Interim order dated 12101999 is hereby discharged. No orders as to costs.