

(1976) 09 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2173 of 1974

Jagdish Chandra Yadav

APPELLANT

Vs

I Additional District Judge and Others

RESPONDENT

Date of Decision : 03-09-1976

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 22
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 17

Citation : (1976) AWC 819

Hon'ble Judges : Amitav Banerji, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amitav Banerji, J.—This writ petition is directed against an order of the 1st Additional District Judge, Allahabad, dated 21st January, 1974 in an appeal u/s 22 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 (hereinafter referred to as the Act).

2. The Petitioner is the landlord and owner of house No. 100 Sohbatibagh, Allahabad. The Respondents 3 and 4 are his two tenants in the said building. Each one of the tenants has one room and a Verandah in front of their rooms. This is the entire accommodation in the building. The Petitioner landlord made an application u/s 21(1) of the Act for the ejectment of the tenants and for the release of the building in order to demolish the same and make a fresh construction thereon. This application was opposed by the tenants, but they did not take the plea that there ought to be separate applications, one against each one of them. The Prescribed Authority after considering the material on the record concluded that the building was in a dilapidated condition and that the need of the landlord was established for the demolition and the construction of a fresh building. The two tenants filed a common appeal No. 364 of 1973 before the District Judge, Allahabad. The appeal was heard by the 1st Additional District

Judge, Allahabad. The appeal was allowed principally on the ground that there ought to have been two applications one against each of the tenants, and, as such, he set aside the order passed by the Prescribed Authority and remanded the case. The appellate authority also held that the Prescribed Authority had not given a definite finding on the four constituent elements of Rule 17 of the Rules made under the Act. He, therefore, allowed the appeal and remanded the case.

3. Learned Counsel for the Petitioner landlord contended that the order of remand passed by the appellate authority is manifestly erroneous in law. It was contended that one application for the ejectment of the two tenants was maintainable and the view taken to the contrary by the appellate authority was not stipulated by the provisions of Section 21(1) of the Act. It was further urged that the appellate authority erred in its interpretation to Section 21(1)(a) of the Act. Having heard the learned Counsel for the parties, I am of the opinion that the view taken by the appellate authority on this point is not correct and cannot be sustained. Section 2(1) of the Act stipulates that a landlord has to make an application for seeking eviction of a tenant from a building under tenancy on grounds mentioned in Clauses (a) and (b) of Section 21(1) of the Act. the use of the words "an application" and "a tenant" does not mean that there has to be an application for each tenant to be evicted, What is emphasised is that the order of eviction of a tenant from a building under tenancy can only be passed if the landlord makes an application setting forth one or more than one grounds mentioned in Clauses (a) and (b). It is well settled that the word used in singular may be read in plural and vice versa. The words "an application" only emphasise that there must be one application at least before an order u/s 21(1) can be passed. Similarly, the words "a tenant" include the particular tenant against whom the eviction was sought. Assuming that a landlord has given on tenancy a building to one or more tenants, the law does not envisage that the eviction can be sought only against one of them. The eviction can be sought against the entire body of tenants who hold that building under tenancy. Thus, the words "a tenant" do not relate to one single tenant but to the particular tenant against whom eviction is sought. There may be one or more tenants in a tenancy. Thus, the words "an application" and "a tenant" do not mean that there has to be a separate application for each tenant.

4. Further, where there are more than one tenant in a building and eviction of each one of them is sought on the same ground or cause of action, one application would be sufficient. There is nothing in Section 21(1) of the Act to show that the law envisages a separate application against each tenant. In the present case, the building comprised of two rooms and a Verandah It has two tenants. The entire building Was sought to be demolished, as it was in a dilapidated condition so that the Petitioner could build a fresh building, The ground for the eviction was the same against both of them. Further, in the present case, the two tenants had filed a common written statement. They had engaged a common lawyer. They had not raised any objection as to the maintainability of the application before the Prescribed Authority. They had

jointly led evidence. Thus, their plea at the appellate stage that the application was not maintainable on the ground that there should have been two applications was devoid of merits. An objection as to the maintainability of the application ought to be taken at the very first opportunity. No such objection was taken at the time when the written statement was filed. I, therefore, do not see that the tenants were justified in raising this objection before the appellate court and their objection ought to have been rejected on this ground alone. In my opinion, a common application for the eviction of the two tenants from a building which was sought to be demolished for the purpose of reconstruction was perfectly maintainable and was in accordance with law.

5. The second contention raised by the learned Counsel for the Petitioner was that the appellate authority erroneously recorded that the prescribed Authority had not given a finding on the four ingredients laid down in Rule 17 of the Rules made under the Act. He contended that the Prescribed Authority had considered the matter and had ultimately held in favour of the Petitioner. Although, the Prescribed Authority had not specifically given its conclusion separately on each of these four requirements of Rule 17, but had very clearly given a finding for believing and relying on the evidence of the Petitioner landlord. I find considerable force in this contention. I have perused the order of the Prescribed Authority and I find that he has applied his mind to the four requirements of Rule 17 and has given a cumulative finding in the words "these facts inspire confidence in the case of the applicant and the balance of the convenience goes in his favour." Earlier, he had held that the need for demolition of the building appeared to be genuine. I am satisfied that the order of the Prescribed Authority had dealt with the requirements envisaged in Rule 17, and it cannot be said that he has failed to give a finding thereon. The Additional District Judge was the appellate authority exercising the powers u/s 22 of the Act. It was a court of facts. It could certainly appraise the evidence and come to a different conclusion if the material on the record warranted such a finding. The appellate court could have given its own conclusion. Thus, the order of remand, in my opinion, was wholly unnecessary. The order passed by the 1st Additional District Judge, Allahabad contains a manifest error of law apparent on the face of the record and his order, therefore, cannot be sustained. The case will have to be sent back to the Additional District Judge with a direction that the appeal be heard afresh and decided in accordance with law.

6. In the result, therefore the writ petition succeeds and is allowed. The impugned order of the appellate authority dated 21st January 74, is quashed and set aside and a direction is issued that the appeal shall be heard afresh by the appellate authority in accordance with law keeping in view the observations made above. The appeal shall be heard and decided expeditiously. However, in the circumstance of the case, I make no order as to costs.