
(1982) 05 AHC CK 0070

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1065 of 1982

Jokhan

APPELLANT

Vs

The District Judge and Others

RESPONDENT

Date of Decision : 20-05-1982

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 : (1982) AWC 549

Hon'ble Judges : K.M. Dayal, J

Bench : Single Bench

Advocate : G.C. Saxena and R.S. Parihar, for the Appellant; J.N. Misra and V.S. Saxena, for the Respondent

Final Decision : Allowed

Judgement

K.M. Dayal, J.—This writ petition has been filed by a tenant against an order of eviction passed in respect of his accommodation by the appellate authority. The application was filed by the landlord u/s 21(1)(b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction), Act 1972 (hereinafter referred to as the Act). The landlord claimed that the disputed accommodation was in a dilapidated condition and he wanted to construct it a new.

2. The Prescribed Authority came to a finding that requirements of Rule 17 framed under the Act aforesaid were not complied with and consequently the application was liable to be rejected. The appellate authority u/s 22 of the Act, reversed the judgment and held that the building was in a dilapidated condition. The requirements of Rule 17 were complied with and the Petitioner was liable to be evicted.

3. The Appellate Authority has relied upon a notice issued by the Municipal Board u/s 278 of the Municipalities Act. He has not given any finding on the evidence

adduced by the parties. The notice issued by the Municipal Board is not final and no finding can be given on the basis of the same that the disputed accommodation was in a dilapidated or dangerous condition. It is based merely on the opinion of the Board. The notice is not conclusive. It is just an averment. The authorities should have given the findings on the basis of evidence produced by the parties. There was no material on the record to show that the disputed premises were in a dilapidated condition. The other argument of the learned Counsel was about the compliance of provisions of Rule 17. So far as the sanction and plan was concerned, one plan was filed by the landlord; that plan was not legible. In spite of the averment of the Petitioner and finding of the Prescribed Authority that the plan was sanctioned in the year 1976 and the sanction was only for one year and there was no sanction on the date of application, the appellate authority acting on merely guess held that the sanctioned plan was only six months old. That finding is not supported by any material on record. So far as the objection about the estimate for demolition and reconstruction is concerned, that is a matter which depends on the estimates prepared by competent persons. That matter cannot be easily assailed in court.

4. The trial court has held that there was absolutely no evidence to prove that the landlord had the financial capacity to carry out the construction. That finding has not been set aside by the appellate authority. Under the circumstances the judgment of the appellate authority granting eviction of the Petitioner from the disputed accommodation cannot be sustained.

5. In the result, the present petition is allowed. The judgment of the appellate authority, District Judge Basti in Appeal No. 527 of 1981 is quashed. He is directed to decide the appeal afresh in the light of Rule, 17 and the condition of the building on the basis of evidence on record. No order as to costs.