

(1996) 02 AHC CK 0123
In the Allahabad High Court
Case No : C.M.W.P. No. 34156 of 1995

Kanhaiya Lal and Others

APPELLANT

Vs

IVth Addl. District Judge and Others

RESPONDENT

Date of Decision : 12-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 17

Citation : (1996) 02 AHC CK 0123

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Prem Prakash Chaudhary and Ravi Kant, for the Appellant; V.P. Mathur and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 19.10.1995 passed by Respondent No. 1 allowing appeal against the order of prescribed authority and releasing the disputed premises in favour of landlord-Respondent No. 3, u/s 21(1)(b) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act).

2. It is admitted that Thakur Ram Janki Mandir, Bahelia Tola, Mangal Bazar, Ward No. 3, Purani Basti, Respondent No. 3 is the landlord of the premises in question situate in Mohalla Mangal Bazar, Tappa Haveli, Pargana and District Basti. The Petitioner has taken the shop on rent. Respondent No. 3 filed an application in the year 1983 u/s 21(1)(b) of the Act on the allegation that the premises in question was constructed more than 50 years ago. It is in a dilapidated condition. The walls of the building have developed cracks. Its ceiling has also given way at several places. It was alleged that the map for reconstruction was submitted to the Municipal Board and it has been sanctioned. Respondent No. 3

has financial capacity to reconstruct the shop.

3. This application was opposed by the Petitioner. It was denied that the disputed shop was in a dilapidated condition. It was further alleged that the landlord has not complied with the requirements as given under Rule 17 of the Rules framed under the Act.

4. The prescribed authority inspected the premises in question on 13.9.1984 and 3rd November, 1989. Respondent No. 3 also filed affidavit in support of its averment that the disputed shop was in a dilapidated condition. The Petitioner filed counter-affidavit. The prescribed authority rejected the application by order dated 3.11.89. The Prescribed Authority took the view that necessary repairs can be made and Respondent No. 3 has not given the estimate of demolition and further has not shown its financial capacity. The application was accordingly rejected.

5. Respondent No. 3 filed an appeal. The appellate authority has reversed the findings recorded by the prescribed authority vide its order dated 19.10.1995 and he allowed the appeal and released the disputed premises in favour of Respondent No. 3. The Petitioner has challenged this order in the present writ petition.

6. The appellate authority, during the pendency of appeal, himself inspected the premises and after making local inspection and considering the other material evidence on the record, came to the conclusion that the disputed premises was in a dilapidated condition and requires demolition and reconstruction. This finding is based on his inspection note as well as the affidavit filed by the parties and the report of the prescribed authority dated 13.9.1984 and 3.11.1989. This finding does not suffer from any error of law.

7. Learned Counsel for the Petitioner submitted that Respondent No. 3 did not prove that the map submitted by it conforms to the bye-laws or Regulation of the local authority or other statutory authority under the law and in absence of any such evidence, the court below acted illegally in allowing the application filed by the landlord.

8. Respondent No. 3, in para 9 of its application, categorically stated that the shops will be constructed according to the plan. The map has been prepared and has been submitted for sanction. An affidavit was filed and in para 14 of the affidavit, it was stated that the map has been sanctioned by the Nagar Palika, Basti and there has been full compliance with Rule 17. A truly sanctioned map by the Municipal Board, Basti was filed in the case. On behalf of the Petitioner, an affidavit dated 28.2.1984 was filed and in para 3 of the affidavit, it was stated that the disputed shop is situate within the city of Basti which is under the District Development Authority and only the District Development Authority had jurisdiction to sanction the map.

9. The Petitioner failed to prove by any cogent evidence that Municipal Board,

Basti was not an authority to sanction the map. The question, however, is whether the map as submitted by the Petitioner did conform to the bye-laws and Regulations of the local authority. Respondent No. 3 had categorically stated that the map had been sanctioned by the Municipal Board and it complies with Rule 17. There was no averment made on behalf of the Petitioner that the map as submitted by Respondent No. 3 did not conform to the bye-laws or the Regulations of the local authority or any statutory authority which was to sanction the map. Rule 17, Clause (iii) does not provide that before passing the order by the prescribed authority u/s 21(1)(b) of the Act, the plan should have been sanctioned. The only requirement is that the map or the plan which has been submitted before the court should conform to the bye-laws or Regulations of the local authority or any statutory authority under that law in that behalf.

10. In *Anil Kumar Jain v. District Judge, Saharanpur and Ors.* 1995 (1) ARC 22, it was held that if the plan has been submitted, it is the duty of the party assailing the plan to point out the precise bye-law which was flouted by the plan, and then, of course, the prescribed authority would be duty bound to examine and come to the conclusion whether or not it conforms to the said provision.

11. The Petitioner, in the affidavit filed before the prescribed authority, nowhere alleged that the plan did not conform to the bye-laws or Regulation of the local authority. Even in this writ petition, the Petitioner has not pointed out as to how the plan submitted by Respondent No. 3 does not conform to the bye-laws of the local authority, particularly when the Municipal Board has sanctioned the plan.

12. The second submission of the learned Counsel for the Petitioner is that Respondent No. 3 had submitted the estimate of the construction which was prepared by the Engineer Sri B.R. Singh on behalf of Respondent No. 3. The estimate only gives the cost of reconstruction and not the cost of demolition. Clause (ii) of Rule 17 provides that a proper estimate of expenditure over the proposed demolition and new construction is to be prepared. The estimate which has been submitted on behalf of Respondent No. 3 indicates that the cost of construction of the shop will be Rs. 15,924.78. The shop in question has been found in totally dilapidated condition. Taking into consideration the nature of construction, the cost of demolition will be much less in comparison to the cost of construction. The appellate authority has recorded a finding that it is a trust property and Respondent No. 3 has sufficient means to reconstruct the same.

13. Considering the entire facts in the present case, there is a substantial compliance with Clause (ii) of Rule 17 of the Rules. There is no averment by the Petitioner in the writ petition that the cost of demolition will be such which Respondent No. 3 would not be able to incur while reconstructing the shop in question.

14. In *Om Prakash Kashyap v. Additional District Judge, Dehradun and Ors.* 1991 (I) ARC 81, wherein the cost of demolition was not separately given, it was held that if the landlord-Respondent prepared an estimate of new construction even

though specifically no separate estimate of demolition is given, Rule 17 (ii) will be taken to have been complied with, and the High Court will not interfere under Article 226 of the Constitution of India.

15. The third submission of the learned Counsel for the Petitioner is that Respondent No. 3 is a trust. Respondent Nos. 4 to 8 are its trustees. The trustees filed an affidavit indicating that they are prepared to make construction for Respondent No. 3. The contention of the learned Counsel for the Petitioner is that the financial capacity of the trustees was not relevant unless it is shown that Respondent No. 3 has its own financial resources to construct the shop in question. Bharat Lal, one of the trustees, filed affidavit and in para 10 of the affidavit, he stated that the trustees have fund and they are prepared to incur the expenses of reconstruction. This fact was not denied by the Petitioner. It is not necessary that the landlord must prove before filing application u/s 21(1)(b) of the Act that it possesses fund. He may indicate the circumstances from where he can manage to get the construction done.

16. In Mohammad Farooq v. Moin Udin 1979 U.P. Rent Control Cases 437, it was held that "financial capacity" does not mean that the landlord must have ready cash available with him at the time when the application is filed by him or when the application comes up for disposal before the prescribed authority. The expression "financial capacity" only means "capability". He can prove that he is capable of making construction.

17. in Zaheer Ahmad v. Ist Additional District Judge, Muzqffarnagar and Anr. 1985 (1) ARC 203, it was held that Rule 17 merely requires the landlord to establish that he has requisite means and capacity to raise necessary fund required for demolition and reconstruction. The capability has to be judged taking into consideration various facts. Respondent No. 3 is a trust and it can raise fund through the trustees. The trustees filed affidavit and they categorically stated that they are prepared to incur the expenses for the raising of the proposed construction. This affidavit has been believed by the appellate authority. The cost of construction has been found to be about Rs. 16,000. There is no averment that the estimate of reconstruction as prepared by the Engineer of Respondent No. 3 is incorrect. The finding of Respondent No. 1 that Respondent No. 3 had financial capability to make construction does not suffer from any illegality.

18. The Petitioner in the writ petition has challenged also the order dated 19.8.1995 passed by Respondent No. 1 holding that the appeal does not abate. Nothing has been shown that this order is illegal.

19. No other point has been raised. The writ petition is accordingly dismissed.