

(2000) 08 AHC CK 0082

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4930 of 2000

Khamani Lal

APPELLANT

Vs

Vlth Addl. District & Sessions Judge, Moradabad and Others

RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(l)(bb), 2(l)(bbb), 21(l)(b)

Citation : (2000) 08 AHC CK 0082

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

Final Decision : Disposed Of

Judgement

R.H. Zaidi, J.—By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 7th October, 1996 whereby the release application filed by Respondent No. 3 was allowed by the Prescribed Authority, the Respondent No. 2 and the order dated 21st December, 1999 whereby the appeal filed by the petitioner was allowed and the case was remanded to the Prescribed Authority by the Appellate Authority for decision afresh.

2. It appears that an application under Section 21 (l)(b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. XII of 1972), for short the Act", was filed by the Respondent No. 3 for release of the shop in dispute which is in occupation of the petitioner. The said application was objected to and opposed by the petitioner. However, the same was ultimately allowed by judgment and order dated 7th October, 1996. Challenging the validity of the said order, petitioner preferred an appeal before the Appellate Authority which was allowed by judgment and order dated 21st December, 1999 and the case was remanded to the Prescribed Authority. Hence, the present petition.

3. Learned Counsel for the petitioner submitted that in view of the provisions of

U.P. Act No. 5 of 1995, clauses (bb) and (bbb) were added in subsection (1) of Section 2 of the Act. In view of the said amendment, the provisions of the Act ceased to apply over the shop in dispute. Therefore, there was no justification for the Appellate Authority to remand the case. The appeal should have been allowed outright. From the material on the record, except the averment made in the writ petition, it is not evident that the aforesaid question was raised before the Appellate Authority. The provisions of the Muslim Wakf Act have got no application in the present case. The property in dispute may be belonging to or vested in a public charitable or public religious institutions. However, the said facts are not on the record.

4. In view of the aforesaid facts, no case for interference under Article 226 of the Constitution of India is made out. It is however, observed that before the Prescribed Authority, it will be open to the petitioner to apply for amendment of the written statement. If such an application is made, the same shall be dealt with and decided in accordance with the law.

With these observations and directions, this petition stands finally disposed of. Petition disposed of.