
(2014) 07 AHC CK 0240
In the Allahabad High Court
Case No : Writ-A No. 44178 of 2007

Kundan Lal	Vs	APPELLANT
District Judge		RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 24, 24(2), 3(c), 3(e)

Citation : (2014) 106 ALR 413

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Sharad Kumar Pandey, Advocate for the Appellant; Rakesh Pandey,
Advocate for the Respondent

Judgement

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Pankaj Mithal, J.—Heard learned Counsel for the petitioners and Sri Rakesh Pandey, learned Counsel for the respondents. The pleadings exchanged between the parties have also been perused.

2. The petition is directed against judgment and order dated 24.1.2006 passed by the Rent Control and Eviction Officer, Saharanpur and the appellate order thereto dated 17.8.2007 passed by the District Judge, Saharanpur.

3. The Rent Control and Eviction Officer by the impugned order dated 24.1.2006 has allowed the application of the tenant now represented by respondents No. 3, 4 and 5 under section 24(2) of U.P. Act No. 13 of 1972 (hereinafter referred to as the Act) for re-entry in the new building which has been reconstructed on demolition of the old building occupied by the tenants. The Appellate Court has allowed the appeal in part and while affirming the right to re-entry of the tenants has directed the Rent Control and Eviction Officer to fix rent payable by the tenants on re-entry.

4. In challenging the above orders three submissions have been advanced by the

learned Counsel for the petitioners.

5. The first argument is that the order passed by the prescribed authority under section 24(2) of the Act is without jurisdiction. The authority to pass an order under section 24(2) of the Act vests with the District Magistrate and not with the prescribed authority.

6. Secondly, it was argued that as the authorities below have failed to determine the rent payable by the tenants on re-entry, no right of re-entry could have been given.

7. The last argument of the Counsel for the petitioners is that in passing the order under section 24(2) of the Act, the authority was obliged to consider the requirement of the tenant. The appellate authority despite specific ground and argument on behalf of the petitioners in this regard failed to examine the correctness of the finding on the aforesaid aspect.

8. Section 24(2) of the Act authorises the District Magistrate to deal with an application of the tenant for re-entry on consideration of the requirement of the tenant.

9. The District Magistrate has been defined in section 3(c) of the Act to include an Officer authorised by the District Magistrate to exercise, perform and discharge all or any of his powers, functions and duties under the Act.

10. Rent Control and Eviction Officer is an Officer authorised by the District Magistrate to exercise, perform and discharge his powers, functions and duties under the Act. On the other hand the prescribed authority under section 3(e) of the Act refers to a Civil Judicial Officer or Judicial Magistrate authorised by the District Judge to exercise, perform and discharge duties and functions of the prescribed authority under the Act. Thus, there is a clear distinction within the prescribed authority and the delegated authority of the District Magistrate. The Prescribed Authority is a judicial officer whereas the delegated authority is an administrative office discharging quasi judicial function of the District Magistrate.

11. Therefore, Rent Control and Eviction Officer is simply a delegatory of the District Magistrate, within the meaning of section 3(c) of the Act and cannot be equated with the Prescribed Authority who is a Judicial Officer authorised to act under the Act by the District Magistrate.

12. The impugned order has been passed by the Rent Control and Eviction Officer as a delegated authority of the District Magistrate. It is not an order passed by the Prescribed Authority.

13. In view of above, the first argument of learned Counsel for the petitioner has no substance and fails.

14. The right of re-entry or allotment is subject to payment of monthly rent equivalent to one percent of the total cost of new construction. The Rent Control and Eviction Officer has not assessed the total cost of construction of the new

building so as to determine the rent payable on reallocation. It is for this reason the matter has been remanded by the appellate authority.

15. There appears to be no error or illegality on part of the appellate authority in remanding the matter on the above aspect.

16. Section 24(2) of the Act clearly provides that the District Magistrate on an application of the original tenant allot to him the new building which has been reconstructed after demolishing the old building on considering the requirement of the tenant.

17. The plain and simple language used in sub-section (2) of section 24 of the Act clearly establishes that in giving the right of re-entry or allotting the new building to the original tenant, the District Magistrate has to consider the requirement of the tenants i.e., his bona fide need for it.

18. The District Magistrate in passing the impugned order in a cursory manner has returned a finding that the tenant has no place to carry on his business of general merchandise and therefore, presuming his need to the genuine has ordered for the allotment of the new building.

19. This finding as returned by the Rent Control and Eviction Officer was specifically assailed by the petitioners in appeal but the Appellate Court has nowhere considered the said aspect of the matter.

20. The Appellate Court has not tested the correctness of the finding in this regard returned by the Rent Control and Eviction Officer and simply for the reason that the tenant has right to re-entry held his need to be bona fide. This is absolutely incorrect on part of the appellate authority and amounts to failure to consider the specific argument raised by the petitioner.

21. In view of above, the appellate order to the above extent stands vitiated in law.

22. Thus, looking to the fact that the appellate authority has not considered the need of the tenant in maintaining the order of allotment passed by the Rent Control and Eviction Officer and at the same time the finding on this aspect returned by the Rent Control and Eviction Officer appears to be cursory, I am of the opinion that in determining the rent payable by the tenant, the Rent Control and Eviction Officer shall also reconsider the need of the tenant for reentry in the new building.

23. Accordingly, the writ petition is disposed of with the direction to the Rent Control and Eviction Officer to reconsider the need of the tenant for re-entry in the new building under section 24(2) of the Act simultaneously with the fixation of rent as directed by the appellate authority.

24. The amount of Rs. 20,000/- deposited by the petitioners pursuant to the interim order of this Court dated 21.9.2007 shall remain deposited till the matter is reconsidered and decided by the Rent Control and Eviction Officer which shall

be decided expeditiously preferably within four months of the production of the certified copy of this petition. The writ petition stands disposed of accordingly.