
(1985) 07 AHC CK 0025
In the Allahabad High Court
Case No : Writ Petition No. 208 of 1980

Lalta Prasad and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-07-1985

Acts Referred:

Citation : (1985) 07 AHC CK 0025

Hon'ble Judges : D.N.Jha, J

Final Decision : Allowed

Judgement

D.N. Jha, J.—The petitioners who are the landlords of the disputed premises which is in the tenancy of opposite party No. 3 Guru Angad Prasad, have filed this petition under Article 226 of the Constitution, feeling aggrieved by the order passed by the 1st Additional District Judge, Faizabad, on 241179 by which he dismissed the petitioners application moved u/s 21 for release of the disputed premises.

2. This case indeed has a very unfortunate history inasmuch as a Marathon race has been going on for quite time. The petitioners had moved an application u/s. 21 of the U.P. Urban Buildings (Reg. of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as, the Act) for release of the premises in occupation of the opposite party No. 3. The application was originally allowed by the Prescribed Authority. The tenant went up in appeal and it was allowed by Sri R. S. Mathur, the then 1st Additional District Judge, Faizabad. The landlord approached this court by means of a writ petition. The appellate order was quashed and the case was sent back to the appellate court with a direction to decide it in accordance with Rule 16 framed under Act XIII of 1972. Sri R.S. Mathur appears to have been succeeded by another 1st Additional District Judge. In accordance with the order passed by the High Court he proceeded to dispose of the appeal by taking certain clauses of Rule 16 into consideration and ultimately allowed the appeal and dismissed the application. This is how this petition is before this court.

3. I have heard learned counsel for the parties and gone through the averments

and crossaverments made by the contesting parties. The learned counsel for the respondents vehemently argued that learned lower appellate court had meticulously devoted itself to every clause of Rule 16 and after consideration of the same he recorded a definite finding and, therefore, this court should not interfere in exercise of its extraordinary jurisdiction vested under Article 226 of the Constitution. The legal submission has some merit but on close scrutiny of the finding recorded by the lower appellate court as pointed out by the learned counsel for the petitioner, certain aspect relating to clause (b) of Rule 16 has been disposed of by the appellate court, in perfunctory manner inasmuch as he did not devote himself to the scrutiny of the likelihood of marriage. In the present writ petition an invitation card has been filed from which it transpires about marriage of a son, it was canvassed before learned appellate court that some more accommodation would be required. This marriage has been solemnised on 24180. The order is of 241179. Therefore, I am not prepared to agree with the assertions made by the learned judge that there was no requirement of law to consider for the likely marriage. It was not that the marriage was to take place after a couple of years but it appears that some preliminary ceremonies had been solemnised and only the formal marriage was to be performed. Therefore, in my opinion, the learned judge ought to have devoted himself to the requirement of subclause (b) of Rule 16 framed under the Act. He should have considered the accommodation in occupation of the contesting parties and after due consideration he should have weighed the need of the contesting parties. It is true that no court can lay down guidelines for consideration of respective needs nor can it lay down any golden scale but nonetheless the court must devote itself to consideration of material facts and record a finding. The learned judge felt satisfied by observing :

?The additional requirement of ?he accommodation to be considered in case of married sons of the landlord has been envisaged in subclause (b) of Rule 16 but no provision has been made that the need will also be considered for the likely marriage. Besides this there is no evidence that the marriage is to be solemnized?.

The observation quoted above clearly shows that the learned judge while disposing of the appeal did not think it proper in exerting himself to weigh the needs of the parties in the event of marriage of the son of the landlord.

4. It is no doubt true that sons of the respondents 2 to 4 are staying at Raunahi and their submission that there had been quarrel between them and, therefore,. Respondent wanted to shift his business to Faizabad has rightly been rejected by the lower appellate court. The petition is, therefore, allowed as the learned judge has not devoted himself properly to the consideration of requirement of subclause (b) of Rule 16 which obviously has now come into existence.

5. In view of the observations made above, the petition succeeds and is allowed. The order dated 241179 passed by the 1st Additional District Judge, Faizabad, contained in annexure 10 to the writ petition is quashed. The appeal will be

restored in its original number and the learned Additional District Judge will dispose of the same on the short question referred to in this order as expeditiously as possible. I, however, make no order as to the costs.