
(1989) 01 AHC CK 0027

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 21978 of 1988

Lalta Prasad Khinni Lal

APPELLANT

Vs

IVth Addl. District Judge and Others

RESPONDENT

Date of Decision : 12-01-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1), 24(2)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 17

Citation : (1989) 1 AWC 355

Hon'ble Judges : N.N. Mithal, J

Bench : Single Bench

Advocate : A.N. Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

N.N. Mithal, J.—An application for release of accommodation u/s 21 of U.P. Act XIII of 1972 having been allowed and the tenant's appeal having failed, the said two orders are being challenged in this petition under Article 226 of the Constitution mainly on the ground that the landlord had failed to comply with the requirements of Rule 17 of the Rules framed under the Act.

2. Initially the landlords had filed an application under the provisions of Section 21(1)(a)(b) both. However, later on the plea regarding personal need was given up and the application was confined to the plea that the building needs demolition and reconstruction.

3. Before an application u/s 21 can be allowed, it is necessary that the landlord must satisfy the conditions as are laid down in Rule 17 of the Rules framed under the Act. Rule 17 is in the following terms:

17. Application for release on the ground of demolition and new constructions-(I)
Before allowing an application for release of building u/s 21(1)(b) on the ground

that it is required for purposes of demolition and new construction, the prescribed authority shall satisfy itself-

- (i) that the building requires demolition,
- (ii) that a proper estimate of expenditure over the proposed demolition and new construction has been prepared,
- (iii) that a plan has been duly prepared and conforms to the bye-laws or regulations of the local authority or other statutory authority under any law in that behalf for the time being in force, and
- (iv) that the landlord has the financial capacity for the proposed demolition and new construction.

4. The first condition that the building requires demolition has not been seriously challenged in this petition. It appears that this controversy was live when the matter was pending before the prescribed authority but since the building fell down during the pendency of the proceedings and now it is only a roofless structure, it must be held that condition No. (i) of Rule 17 has been satisfied. Learned Counsel for the Petitioner has also very candidly not pressed about the non-compliance of the third condition of Rule 17 which requires a plan to be prepared in accordance with the regulations of the local authority.

5. The main stress of Sri. S.N. Verma who appeared for the Petitioner was that conditions (ii) and (iv) of Rule 17 have not been complied with in accordance with law. The second condition requires that an estimate of expenditure over the proposed demolition and new construction should have been prepared. What is contended is that although there is proof of estimate of expenditure over reconstruction, there is no proof about the likely expenditure of demolition. According to the learned Counsel, it was necessary that an estimate in respect of demolition also should have been prepared alongwith the estimate of reconstruction and this not having been complied with, the Respondents were not entitled to the release of the accommodation. With the counter affidavit, estimate prepared by one A.S. Agarwal, Chartered Engineer, has been filed which consists of two parts. The first is the inspection report and the second is the estimate for cost of construction. Both these have been prepared on the same date and were filed alongwith the affidavit by the said Engineer a few days later. Both in his affidavit as well as inspection report, he has mentioned that cost of demolition and for removing the debris will be approximately Rs. 5000/-. The argument was that this is not an estimate prepared as is required under condition (ii) of Rule 17. Although very strictly speaking, it may be true that an estimate of demolition and estimate of reconstruction should be prepared in a proper way and should not be mentioned only in the inspection report or in any other document, but since there is no rule prescribing the manner in which the estimate has to be prepared and submitted, the Court must take a practical view of the matter. In this case, the affidavit of the Engineer coupled with his inspection note and the estimate of construction certainly complied with the basic

requirements of condition (ii) of Rule 17. Both the courts have felt satisfied about this aspect. The appellate court has also mentioned that since the roof of the building has already fallen down, hardly any amount will be required for demolition of the existing walls and for removal of the debris. Therefore, in the light of the above, it cannot be said that the requirements of the said Rule have not been satisfied.

6. It was next contended that according to condition (iv) of the Rule, it must be established that the landlord has financial capacity for the proposed demolition and new construction. In this respect, the Petitioner's contention is that there was no evidence on the record barring the own statement of one of the applicants that he had the financial capacity to meet the likely expenses. Financial capacity in Rule 17(iv) does not require that the finance necessary for demolition and reconstruction of the building must belong to the landlord or that he had the money ready with him. All that is required is that either he himself should have the means or at least he should have the capacity to raise the necessary funds to meet the expenses needed for demolition and reconstructions of the building. The word "capacity" must, therefore, be given a wider and more comprehensive meaning some thing akin to the landlord being in a position to meet the desired object. The Court should only ensure that the claim of the owner in this regard was not merely a device or a ruse to evict the tenant.

7. Whether in a given case, the landlord has succeeded in satisfying the court about his capacity to finance the scheme must necessarily depend upon the facts of each case. The laying down of any firm or inviolable rule in this regard is neither feasible nor desirable. Such matters cannot be fit into a strait-jacket formula but must be left to be decided in the facts and circumstances of each case.

8. This aspect has already been considered in several decisions of this Court. To cite only a few, reference may be made to the case Smt. Kailash Devi v. III Addl. District Judge, Kanpur 1978 ARC 392 where Hon"ble K.C. Agarwal, J. had this to say on this question:

The word used in Sub-rule (iv) of Rule 17 is "capacity". It refers only to the faculty, capability, ability or opportunity of collecting money for the purposes of construction.

9. In that case, a near relation of the Petitioner had promised to advance money and this was taken as a sufficient proof of landlord's capacity to raise the constructions. There is another decision of Hon"ble K.C. Agarwal, J. in Chaudhary Mohd. Usman v. Prescribed Authority, Farrukhabad 1979 ARC 60 where the learned Judge held:

The word "capacity" in Rule 17(iv) can not be interpreted to mean that the person, who makes an application under Clause (b), must establish that the money which would be needed for reconstruction must belong to him personally. In my opinion, the requirement of Clause (iv) of, Rule 17 would be satisfied if the

landlord could show, that he had means to get the building demolished and reconstructed. The Dictionary meaning of the word "capacity" is position enabling one to do something.

10. Thus the legal position is amply clear that neither the landlord is supposed to have ready money with him nor the money with which he wants to raise construction must belong to him in order to satisfy the condition of Rule 17(iv). What he should do is to satisfy the court about his capacity to raise finances to meet the cost of construction. As a matter of fact the basic purpose of Rule 17 appears to be to avoid frivolous application being made u/s 21(1)(b) or the said provision being misused by unscrupulous landlords. It is for this purpose that the Prescribed Authority must be satisfied about the four requirements mentioned in Rule 17. If all those requirements have been satisfied then only the prescribed authority can release the accommodation under this section.

11. The landlords have filed a number of documents including their Income and wealth-tax assessment orders. Referring to these papers, the learned Counsel for the Petitioner urged that hardly any fluid money was available to the owners and the mere fact that they own property was not sufficient to hold that they had the capacity to raise the constructions. In this connection, one significant fact can not be ignored. The landlords own a huge property covering nearly 600 sq. yds. of land. Nearly 450 sq. yds. land has already been reconstructed and building upto first floor has been raised. It is only the portion which is in possession of the Petitioner that has not been reconstructed because of the pendency of these proceedings. The fact that the landlords have exhibited their capacity to raise construction over 450 sq. yds. land is ample proof of their capacity to raise the remaining construction on 150 sq. yds. land. It was faintly urged that even if the landlords had some finances, the same must have been exhausted while constructing the adjoining property. This may be so but in the instant case in paragraph 5 of the affidavit of Ramesh Chandra (Annexure CA-3) it has been stated that the rental income which is being derived from the newly constructed adjoining building was in the neighbourhood of Rs. 20000/- per month. Apart from this, admittedly the landlords own a huge residential building in which each of them had 1/4th share. The Respondents are Kirana Merchants and one cannot ignore the fact that the income from such business is not too meagre. Thus all the evidence which has been considered by the Prescribed Authority and the appellate court could justify a finding that the landlords had the financial capacity to meet the expenses of demolition and reconstruction. Thus there is no merit in any of the submissions made by the Petitioner.

12. In the end, the Petitioner's learned Counsel pointed out that the landlord had offered to provide an accommodation to the tenant after reconstruction. That stand has not been given up. It was also submitted that some time limit must be prescribed within which the landlord should complete the constructions after the same is vacated by the tenant. Sri. K.M. Dayal, learned Counsel for the Respondents, submitted that since the Respondents have to construct the

basement for the building it will require some more time than is ordinarily needed for constructing buildings. According to him, it will take about 6 months to the landlord to complete the basement part of the building after the site is handed over to them. The submission appears to be reasonable to an extent. In the circumstances, it is directed that the Petitioner shall vacate the disputed premises within a period of one month from today and make it over to the landlord Respondents by 13 of February 1989. The Respondents will complete the construction of basement within a period of four months after getting possession and the ground floor construction will be completed by them within three months thereafter. As soon as the construction of the ground floor has been completed, a suitable accommodation will be made available to the tenant in accordance with the provisions of Section 24(2) of the Act. With these observations the petition is dismissed.

13. A certified copy of the order may be made available to the learned Counsel for the parties on payment of requisite charges within one week.