

(1979) 08 AHC CK 0040

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1546 of 1977

Mahboob Ahmad

APPELLANT

Vs

District Judge, Saharanpur and others

RESPONDENT

Date of Decision : 10-08-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21

Citation : (1979) 08 AHC CK 0040

Hon'ble Judges : B.D.Agarwal, J

Final Decision : Allowed

Judgement

B. D. Agarwal, J.

This petition under Article 226 of the Constitution has been filed by the petitioner Mahboob Ahmad, who is owner and landlord of shop No. 32/5451 (changed No. 13/1850) situate at Saharanpur. Mohammad Jan, opposite party No. 3, is the tenant in this shop. The petitioner also owns the adjoining shop No. 32/5450. The tenant of this shop is one Ali Jan, who is real brother of Mohammed Jan. The petitioner filed an application under Section 3 of U. P. (Temporary) Control of Rent and Eviction Act (U. P. Act No. III of 1947) against Mohammed Jan praying for permission to file a suit for eviction. This application was dated 9th of September, 1969. The application was rejected by the Rent Control and Eviction Officer. A revision was preferred by the petitioner against this order before the Commissioner. During the pendency of this revision, The U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U. P. Act No. XIII of 1972) (hereinafter referred to as the Act) came into force. By virtue of Section 43 (2) (m) of this Act, the revision stood transferred to the District Judge. The learned District Judge by his order dated 5th of August, 1974 rejected the revision.

On 22nd of April, 1975, the petitioner filed an application under Section 21 of the

Act, praying for an order of eviction of opposite party No. 3 from the shop in dispute on the ground of bona fide need. This application was duly contested by the tenant. Affidavits were filed by both the parties. Ultimately the Prescribed Authority vide its judgment and order dated 20th January, 1976 rejected the application. An appeal preferred by the petitioner under Section 22 of the Act was also dismissed by the learned District Judge, Saharanpur on 24th of May, 1977. Aggrieved, the petitioner has tiled the present writ petition under Article 226 of the Constitution. The relief claimed, inter alia, is for a writ of certiorari quashing the orders of the District Judge, Saharanpur. dated 24th of May, 1977 and that of the Prescribed Authority, Saharanpur dated 20th January, 1976.

I have heard Sri S. A. Khan, Counsel for the petitioner and Sri H. S. Nigara. Counsel for the tenant, opposite party. I am of the opinion that the matter deserves to be sent back to the learned District Judge, Saharanpur for a decision afresh in accordance with law.

It has been submitted by the counsel for the petitioner that the learned District Judge has failed to exercise his jurisdiction in not adjudicating upon the matter on merits but to have wrongly disposed of the appeal on the ground that earlier the application under Section 3 of U. P. No. III of 1947 having been finally rejected on 5th August, 1974, and, there being no change of circumstances, the principles of res judicata apply. Counsel has submitted, that, clearly on the very face of the application filed under Section 3 of U. P. Act No. III of 1947 and that filed later under Section 21 of U. P. Act No. XIII of 1972. It was abundantly clear that the grounds upon which eviction of tenant was sought were different and the learned District Judge committed an error on the face of it in taking the view that there was no change in the circumstances. According to learned counsel, the principles of res judicata were wrongly applied to the instant case. He has placed reliance upon Rule 18 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 made in exercise of powers under Section 41 of U. P. No. XIII of 1972. Rule 18 (1) along with its proviso reads:

"Where an application of a landlord against any tenant for permission to file a suit for eviction under Section 3 of the old Act, on any ground mentioned in Section 21 (1) has been finally allowed or rejected on merits either before or after the commencement of the Act. whether by the District Magistrate or on revision by the Commissioner or the State Government or under clause (i) or clause (m) of Section 4" (2) by the District Judge and the landlord instead of filing a suit for eviction makes an application under Section 21 of the same grounds within a period of six months from such decision or from the commencement of the Act, whichever is later, the Prescribed Authority shall accept the findings in those proceedings as conclusive:

Provided that the period during which the operation of any permission as aforesaid is stayed by order of any Court or authority shall be excluded in computing the said period of six months."

Counsel submitted that the application under Section 21 of the Act was filed by the petitioner after six months of the decision of the learned District Judge dated 5th of August, 1974 in the revision which stood transferred to him as a result of the coming into force of U.P. Act No. XIII of 1972 and this being so, the authorities were not bound to accept the finding in the earlier proceedings as conclusive and were required under law to decide the application under Section 21 of U. P. Act No. XIII of 1972 filed on 22nd of April, 1975, on its own merits.

It is now settled that the principles of *res judicata* apply also to quasi judicial proceedings. There is further no dispute that these principles will apply only to static conditions and not where there has been change of circumstances and conditions since the earlier decision. Subrule (1) of rule 18 lays down that where an application for permission under Section 3 of U. P. Act No. III of 1947, on any ground mentioned in Section 21 (1), has been decided on merits finally either before or after the commencement of U. P. Act No. XIII of 1972 then, if the landlord makes an application on the same grounds within a period of six months from such decision or from the commencement of the Act whichever is later, the prescribed authority shall accept the findings in those proceedings as conclusive. In order, therefore, to make the findings in the earlier proceedings conclusive in the latter proceedings, it is necessary to show that the later application under Section 21 of the Act was on the same grounds upon which the earlier proceedings under Section 3 of the old Act had been commenced. If the grounds are not the same, then, obviously, this part of the rule cannot be availed of for treating the findings in the earlier proceedings as conclusive.

An application under Section 3 of U. P. Act No. III of 1947 in the instant case stood finally decided by the order of learned District Judge, Saharanpur dated 5th of August, 1974. The later application under Section 21 of U. P. Act No. XIII of 1972 was filed on 22nd of April, 1975:, i.e., more than six months after the final decision of the earlier proceedings. Accordingly, what has next to be seen is as to whether the later application under Section 21 of the Act was filed on the same grounds On which the earlier application under Section 3 of the old Act had been filed. The application under Section 3 of old Act has been annexed as Annexure 1 to the petition while the later application under Section 21 of U. P. Act No. XIII of 1972 has been annexed as Annexure III to the petition I have perused these applications in order to find out as to whether both these applications are based on the same grounds. The former application was filed, inter alia, on the allegations that the petitioner had purchased two adjoining shops in order to set up his two sons in business. It was further alleged therein that the petitioner was finding difficulty with the residential accommodation available with him and that he wanted to raise constructions over the roof of the two shops to accommodate his family and also to build staircase between the two shops for having access to the accommodation proposed to be constructed. It was alleged by the petitioner that two of his sons have become major and were sitting idle. He wanted accommodation for the purposes of his sons this is clearly borne out from the application filed by the petitioner. It would be relevant

to mention that at the time of this application, the petitioner was in service as a painter in the Northern Railway. The Petitioner subsequently retired from railway service on 9th of June, 1970. In the later application under Section 21 (1) of the Act, the grounds stated inter alia, were that the petitioner had since retired from railway service where he was working as a painter; that he has a large family; that he is sitting idle since his retirement and that he wanted to set up his own business of painting in the shop in question. Upon a closer analysis of these two applications, it is abundantly clear that the grounds were different, much less same. In the first application the ground was for the need of setting up his two sons in business. The need asserted in the later application was that of the petitioner, for purposes of setting up his own business of painting in the shop in dispute. The judgment of the learned District Judge clearly, in my view, suffers from manifest error of law apparent on the face of the record, inasmuch, as, he, without going in the merits of the matter, applied the principles of res judicata on wrong assumption that there had been no change in the circumstances since the decision of the earlier proceedings. Further, the Prescribed Authority also by its order dated 20th January, 1976 has taken the view that the later application order Section 21 of U. P. Act No. XIII of 1972 was not maintainable and the findings in the earlier proceedings operated as res judicata, as according to the, there was no change in the circumstances. No doubt, the Prescribed Authority did compare the needs of the parties, but at the same time it is apparent from the order that he was greatly influenced by his view that the later application was not maintainable, and, that hearing of the case on merit would mean a review of the earlier proceedings.

In these circumstances, it appears necessary to quash both the orders of the Prescribed Authority as well as of the learned District Judge.

I, therefore, find merit in the writ petition. The order of the Prescribed Authority, Saharanpur dated 20th January, 1976 and the order of the learned District Judge, Saharanpur dated 24th of May, 1977 are quashed. The matter is sent back to the Prescribed Authority, Saharanpur, for decision of the application filed by the petitioner under Section 21 of U. P. Act No. III of 1972 afresh, in accordance with law.

The writ petition is, accordingly, allowed but in the circumstances of the case, there will be no order as to costs.