
(2000) 02 AHC CK 0085

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10825 of 1988

Mahmood Ahmad

APPELLANT

Vs

Vth Addl. District Judge, Allahabad and Others

RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (2000) 02 AHC CK 0085

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Partly Allowed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of the Prescribed Authority dated 178985 whereby he allowed the release application of the landlord Respondent No. 3 and the order of the appellate authority dated 2621988 dismissing the appeal against the aforesaid order.

2. Briefly, stated the facts, are that Respondent No. 3 filed an application under Section 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act) with the allegations that he is residing in a portion of House No. 622 Dariyabad, Allahabad consisting of one Kothri and Dalan. His family consists of himself, his wife, four sons and three daughters. The tenant petitioner is also occupying another portion of the same house consisting of one Kothri and Dalan. He required the disputed accommodation bona fide for residential purposes.

3. The petitioner contested the application. It was alleged that Respondent No. 3, is, in fact, residing in House No. 433. Dariyabad which consists of six rooms. He has also another House No. 618 which is lying vacant. He denied that Respondent No. 3 is residing in House No. 622.

4. The Prescribed Authority had appointed a Commissioner to inspect the premises. The Advocate Commissioner inspected the premises and in his report made observation that Respondent No. 3 is in occupation of House No. 433 and

some of the members of the family were found there. The Prescribed Authority rejected the application on 2781971. Respondent No. 3 filed an appeal against the said order. The appellate authority remanded the matter on 2821984 holding that the report of the Advocate Commissioner was *exparte* and could not be relied upon. After the remand, the Prescribed Authority allowed the application on the finding that the Respondent No. 3 is residing in a portion of House No. 622 and the accommodation with him is hardly sufficient considering the members of his family. The petitioner preferred an appeal against the said order and the appellate authority has dismissed the appeal by the impugned order dated 2621988. These orders have been challenged in the present writ petition.

5. I have heard Sri M.A. Qadeer, learned counsel for the petitioner and Sri M.K. Gupta, learned counsel for the contesting respondent.

6. Learned counsel for the petitioner contended that the landlordrespondent is owner and in possession of House No. 433, Dariyabad, Allahabad. There are six rooms in the said house by the Advocate Commissioner and the Respondent No. 3 was found living in the residential portion of the said house. The appellate authority, while remanding the matter on 2821984, had held that the said report cannot be relied upon as it was an *expane* without affording opportunity to Respondent No. 3. The petitioner, thereafter, did not get another commission issued. Respondent Nos. 1 and 2, on consideration of material evidence on record, came to the conclusion that in House No. 433, Dariyabad there were three rooms which were occupied by graves and in one room there was ? Imambara?. The said house was not available for residential purposes to Respondent No. 3. This finding does not suffer from any manifest illegality.

7. Respondent No. 3 is in possession of small portion of House No. 622 alleged to be consisting of two rooms while his family members were nine at the time of filing of the application in the year 1980 and his family members have further grown up. It has been found that he *bona fide* requires the disputed accommodation. This finding does not suffer from any illegality.

8. Learned counsel for the respondent contended that Respondent No. 3 is owner of House No. 618, Dariyabad, Allahabad and he may be permitted to occupy the premises there. The contention of the learned counsel for the respondent is that no accommodation exists there at present. The *exparte* report of the Commissioner indicates that there was boundary wall in premises No. 618. He was informed that there was roof in the building but now it is not existing. The petitioner is prepared to take the said premises and will make his own constructions only to the extent of on ?Kothri? and a ?Dalan? which is in his occupation in the disputed accommodation. This, however, requires appointment of a fresh Commissioner to make a local inspection.

9. In view of the above, the writ petition is partly allowed. The order dated 2621988 is hereby quashed. The finding as to the *bona fide* need of the landlord is affirmed. The appellate authority shall, however, examine the contention raised

by the petitioner in respect of the allotment of premises No. 618. The petitioner can be permitted to raise constructions at his own cost to the extent of the accommodation which is already in his possession. The appellate authority may appoint a Commissioner to make local inspection of premises No. 618, Dariyabad, Allahabad and after giving opportunity to the parties concerned, will pass an appropriate order keeping in view the observations made above. In case the petitioner is permitted to make his construction on such premises, the appellate authority shall also determine the rent keeping in view all the factors and circumstances of the case.

10. As the matter is very old, the appeal shall be decided within two months from the date of production of a certified copy of this order. Petition partly allowed.