
(2003) 11 AHC CK 0087
In the Allahabad High Court
Case No : Writ Petition No.4450 (R/C) of 1982

Mohd.Sharif

APPELLANT

Vs

Waqf Madarsa Ahmadia Hanfia, Faizabad and Another

RESPONDENT

Date of Decision : 20-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 22

Citation : (2003) 11 AHC CK 0087

Hon'ble Judges : N.K.Mehrotra, J

Final Decision : Allowed

Judgement

N,K, Mehrotra, J.—This is a writ petition under Article 227 of the Constitution for quashing the judgment and order dated 31.8.1982 passed by the First Additional District Judge, Faizabad in Misc. Civil Appeal No.17of 1980 (Rent Appeal) Waqf Madarsa Ahmadia Hanfia Mughalpura v. Mohd. Shareef.

2. The opposite party No.1 through its Mutwalli Maulana Faizullah Sahab moved an application before the Prescribed Authority under U.P. Urban Buildings Act, 1972 (hereafter referred to as the Act) under Section 21(1)(a) and (b) of the Act against the petitioner-tenant for the release of the part of the house No.269 under the tenancy of the petitioner. Admittedly the disputed premises is Waqf Property. It was alleged by the opposite party that there is no appropriate place for the teachers of Waqf Madarsa Ahmadia Hanfia and therefore the teachers of this Madarsa do not stay for long in the Madarsa. It was alleged that the disputed accommodation is required for the residence of the teachers and hostel of the students getting education in the Madarsa of the Waqf opposite party. It was also alleged that the House No.269 is in dilapidated condition and it was required for the teachers of the Madarsa after reconstruction.

3. The petitioner-defendant filed objections alleging therein that the House No.269 is a three-storied building consisting of four rooms in the lower story which

is being used for classes of the students. There is one another room, which was being used for the residence of the Mutwalli and his family members. There has never been more than three teachers in Madarsa Ahmadia Hanfia Mughalpura and they are permanent resident of City of Faizabad and have been residing in their own houses. This Madarsa imparts education up to Class 5 and the students up to the age of 10 to 11 years are studying. All the students are day scholars and do not require hostel accommodation. The house No.269 is not in dilapidated condition and there is no need for its reconstruction for the next 50 years. Madarsa Ahmadia Hanfia is a Waqf whose Board is at Lucknow. There are three members in the Committee of the Waqf, there was no resolution of the committee of the waqf for filing the release application for eviction of the tenant.

4. The Prescribed Authority dismissed the release application vide judgment dated 22.12.1979 as contained in Annexure No.10. The prescribed authority recorded the finding that as per Commissioner Report the religious education is being imparted in the four rooms of the premises of the Madarsa and in the other two rooms in the upper story Mutwalli Head Master is in occupation for his residence. The upper story consists of four rooms one courtyard, open room, latrine and bathroom. There are five teachers including one Mutawalli Headmaster and his daughter. The prescribed authority has further held that there is accommodation in the second story of the building in use of Madarsa and the Mutwalli can fulfil his requirement after raising construction in the second story. After taking into consideration the affidavit of the witnesses it has been held that the disputed premises is situated at the distance of 3 Kms from the building being used for Madarsa and the premises in suit can not be said to be appropriate for the purpose of the hostel which is at a distance of 3 Kms from the school. It has been further held that there is no inconvenience to the students of this Madarsa for want of hostel and there is no such need that students from outside are required to come and reside in the hostel. The learned Prescribed Authority has further held that the affidavits of the witnesses of the landlord are worth believing. The Prescribed Authority has further held that it is not proved by the report of the Commissioner that the disputed premises is not worth residing and there is no force in the statement of the land lord that the building in the tenancy of the petitioner is in dilapidated condition and is required reconstruction.

5. The opposite party landlord filed an Appeal, which has been allowed, vide judgment dated 21.8.1982 as contained in Annexure No.11. It is against this judgment that this Writ petition has been filed.

6. Section 21(1)(a)(b) are as follows:

"21. Proceedings for release of building under occupation of tenant (1) The Prescribed authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely

(a) That the building is bonafide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;

(b) That the building is in a dilapidated condition and is required for purposes of demolition and new construction."''

7. The aforesaid provision provides that where the landlord is the trustee of the public charitable trust, the building can be released for the object of the trust. There was no Waqf Deed either before the Prescribed Authority or before the Appellate Authority. There is no averment in the release application about the object of the trust and there is no resolution of the committee of the Waqf for filing of this application for release under Section 1 of the Act. The learned counsel for the opposite party has pointed out that in the release application it is averred that the House No.269 is Waqf Madarsa and it indicates that building is required for object of the Waqf.

8. I find no force in the argument of the learned counsel for the opposite party No.1. In order to establish bonafide requirement the opposite party/landlord was required to file the Waqf Deed to show the object of the trust and at the same time the opposite party/landlord was required to file the resolution of the Committee authorizing Mutwalli to file application for the release. This aspect of the matter has not been considered by the learned Appellate Judge at the time of allowing the appeal.

9. The case of the petitioner is that during the pendency of the writ petition the Act was amended by U.P. Act No.5 of 1995 by which the Waqf Allal Aulad" has been exempted from the operation of the Act and therefore the order of the appellate authority has become inoperational. The learned counsel for the opposite party No. 1 has also placed this argument by saying that now the tenant/ petitioner can not claim any protection available under the Act. I find no force in the contention raised by both the counsel. I am of the view that the amendment in the Act by U.P. Act No.5 of 1995 is not retrospective in operation.

10. A perusal of the impugned judgment as contained in Annexure No. 11 goes to show that there is a patent error in the judgment of the appellate Judge. The learned appellate Judge has passed his judgment by alleging finding of the prescribed authority by observing, "the learned prescribed authority found the need of the appellant to be genuine." A perusal of the judgment of the prescribed authority goes to show that there is no finding of the prescribed authority that the need of the landlord is genuine.

11. The learned prescribed authority has placed reliance on the affidavits of Mohd. Ismail, Abdur Rasheed, Mohd. Shareef and Shareef Ahmad for rebutting the alleged need of the landlord. The appellate judgment has not considered the affidavits of Abdur Rasheed, Mohd. Shareef and Shareef Ahmad. The copies of

the affidavit to these three witnesses are Annexures No.5, 6 and 9. I find that this is a patent error in the judgment of the appellate authority. When the appellate authority was allowing the appeal, he was required to critically examine the affidavits of the witnesses filed by these persons, which has not been done in this case.

12. In *Surya Deo Rai y. Ram Chandra Raj and others*, JT 2003 (6) SC 465: (2003 (21) LCD 1046), the Supreme Court has held that under Article 226 of the Constitution certiorari is issued for correcting the gross errors of jurisdiction, i.e. when a subordinate court is found to have acted (1) without jurisdiction by assuming jurisdiction where there exist, none or (2) in excess of its jurisdiction given by (sic) or Crossing the limits of the jurisdiction or (3) acting in flagrant disregard of law or the rules of the procedures or acting in violation of the principles of natural justice where there is no procedure specified, and thereby occasioning the failure of justice. For exercising the Supervisory jurisdiction it is required that the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby. A patent error is an error, which is selfevident.

13. I find that in this case there is a patent error in the impugned judgment of that appellate authority who has not made any attempt to see the object of the trust, the resolution of the Waqf Committee and the evidence on record of the prescribed authority. I also find that the learned appellate judge has not read the judgment of the prescribed authority correctly. The learned counsel for the opposite party No.1 has referred the judgment of this Court in *Narayan Das Patwa v. Om Prakash and another*. 1996 (2) ARC 375, in which it has been held that if the tenant failed to show that he made any effort to find out any alternative accommodation, this fact gives support to the order of the release. The learned counsel for the opposite party No.1 has also placed reliance on the judgment in *Amba Lal Sara Bhai Enterprises Ltd, v. Amrit Lal and Company*. (2001) 8 SCC 397 to show the effect of the amendment in the Act by which the waqf property has been exempted from the operation of the Act. In my opinion the law as laid down in this case is of no help to the opposite party/landlord. Further the learned counsel for the parties has relied on *R.C. Tamrakar V. Nidi Lekha*. (2001) 8 SCC 431. It was held in this case that the landlord himself is the best judge of what his requirements are and neither tenant nor court may endeavor to show the landlord how he should adjust himself. This judgment is also of no help to the landlord in the facts of the instant case.

14. There is no force in the argument of the learned counsel for the opposite parties that if the tenant has not searched any other accommodation, the release application of the land lord shall be allowed without seeing the bonafide requirement and without determining that the accommodation is required for the object of the trust.

15. In view of the above, the writ petition is allowed and the impugned judgment

dated 21.8.1982 passed by the First Additional District Judge, Faizabad in Misc. Civil Appeal No. 17 of 1980 Waqf Madarasa Ahmadia Hanfia Mughalpura v. Mohd. Shareef is set aside.