
(2006) 08 AHC CK 0050
In the Allahabad High Court

Nafees alias Laddan and Others

APPELLANT

Vs

Smt. Sardari Begum and Others

RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

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

Citation : (2007) 1 AWC 146

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—This writ petition is directed against the order dated 15th July, 2006, appended as Annexure-6 to the writ petition rejecting amendment application of the petitioners as not maintainable.

2. Heard counsel for the petitioners and perused the record.

3. The case of the petitioners is that by means of amendment application, they wanted to bring on record the subsequent developments and its rejection has deprived them to raise their pleas and lead evidence in regard to subsequent developments.

4. It has been urged by counsel for the petitioners that Hon"ble the Supreme Court, in catena of cases, has held that ordinarily amendment applications must be allowed but the court below has committed manifest illegality apparent on the face of record in not allowing the amendment application.

5. From a perusal of the impugned order, it appears that an application u/s 21 (1) (a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction Act), 1972, had been moved by the father of the respondents in 1997 which was registered as S.C.C. Suit No. 10 of 1997 against the petitioner. After the written statement was filed by the petitioners and exchange of pleadings, the application of the father of the respondents was rejected vide order dated 15.5.1999.

Aggrieved, the plaintiff late Yunus Khan (father of the respondents) filed Rent Appeal No. 5 of 1999.

6. It appears that the petitioners moved an amendment application No. 65Kha before the appellate court to the effect that the plaintiffs, for whom the shop was sought to be evicted, were gainfully employed at other places. Objections were filed to the aforesaid amendment application. The appellate court, vide impugned order and judgment dated 15.7.2006, rejected the amendment application with the observation that it is not maintainable and that earlier also, written statement was amended and that the facts sought to be amended now vide Paragraph 21A can be raised at the time of arguments and further that the second time this amendment has been moved with mala fide intention.

7. From the perusal of the impugned order and the amendment application, it is apparent that the petitioners wanted to bring on record the fact by means of the amendment application that the respondents had constructed a shop/show room during the pendency of the appeal and that they can construct their market on the vacant land appurtenant and in front of it.

8. The court below has held that the petitioner can give evidence in respect of subsequent development in view of Order XLI, Rule 27 read with Order VI, Rule 17 of the Code of Civil Procedure. The Court has also observed that since the petitioners have not vacated the shop and proceedings in appeal are pending for more than seven years, the respondents cannot be denied their livelihood and even if they have constructed some small shop for survival, it does not mean that their bona fide need for the shop in dispute has been extinguished. To construct a market depends on various factors and does not depend on the sweet will of the tenant to take the plea that the landlord can construct market anywhere. There may be other constraints too in this regard. Merely because a small shop has been constructed by the landlord during the pendente lite from which he is meeting the needs for livelihood of his family, by sale of batteries for scooters it will not debar the Court from deciding the bona fide need and comparative hardship between the landlord and tenant. The court below has also observed that after the application for release was moved, the tenant should have made sincere efforts to have an alternative accommodation, particularly in view of the fact that many shops were constructed by the Nagar Palika and even recently which were available to the petitioners on reasonable rent.

9. In view of the amended provisions of the Code of Civil Procedure, as stated above, no amendment can be made till the Court is satisfied regarding fulfilment of the conditions in the amended provisions. Moreover, the lower court has held that appeal is pending since last seven years and that the petitioners have mala fide filed second application for amendment to prolong the disposal of the case, the plea taken in the amendment application can be effectively raised on the basis of the averments on record. In this view of the matter, the contentions of counsel for the petitioners have no force.

10. The writ petition is dismissed. No order as to costs.