
(1983) 03 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7513 of 1980

Narendra Swarup Bhatnagar & Others

APPELLANT

Vs

Distt.Judge, Saharanpur & Others

RESPONDENT

Date of Decision : 14-03-1983

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(b), 21(3)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 27

Citation : (1983) 03 AHC CK 0018

Hon'ble Judges : O.P.Saxena, J

Final Decision : Partly Allowed

Judgement

1. This is a petition under Article 226 of the constitution for the issue of a writ, order or direction in the nature of Certiorari quashing the orders of the Prescribed Authority and the learned District Judge, Saharanpur, passed on 8.12.1979 and 22.5.80 respectively.

2. The facts giving rise to this petition are that the petitioners are the landlords of House No. 25 situated in Mohalla Manak Chowk in the town of Mangiaur, Tehsil Roorkee, district Saharanpur. The respondent No. 3 was a tenant in the said house, on a rental of Rs. 19/ per mensem. On 29.5.78 the petitioners gave an application under Section 21 (I)(b) of U.P. Act No. 13 of 1972. The respondent No. 3 opposed the application. Both the parties filed the reports of the experts. The respondent No. 2 dismissed the petition on 8.12. 1979. The petitioners filed an appeal which came up for hearing before Respondent No. 1 and he dismissed the appeal on 22.5.1980, Hence this petition.

3. The learned counsel for the petitioners submitted that in this case there were two conflicting reports of the experts. Sri R.K. Singhal reported that the walls and the roofs of the building are in a decaying condition and should be pulled down as those constitute danger to the life of the inmates. He also submitted an

estimate for reconstruction involving an expenditure of Rs. 31,430. The petitioners also filed the report of Sri S.R. Singh, Registered Valuer and Chartered Engineer. He recommended that the building should be demolished and the reconstruction of the whole building should be carried out. Respondent No. 3 filed the report of Sri H.C. Gupta, Retired Executive Engineer, M.E.S. He reported that there was no crack in any wall and no portion had bulged out. He certified that the building is in a very sound condition and it is not at all in a dilapidated condition and does not require pulling down. He further reported that there was no danger to the life of the occupants of the building. In paragraph 4 of the supplementary affidavit sworn on 10.9.80 it was said that the petitioners moved an application for a local inspection but the same was rejected by the Prescribed Authority without giving any reason. In paragraph 5 it was said that on 5th May, 1980, the petitioners moved an application for local inspection before the Respondent No. 1. In paragraph 7 it was said that the Respondent No. 1 observed that the application would be considered at the time of the hearing of the appeal but this was not done and no order was passed on the application for local inspection. My attention was drawn to paragraph 10 of the affidavit of Sri H.C. Gupta, sworn on 30.4.79 and filed before the Prescribed Authority. In the opening portion of that paragraph it was admitted that one room and verandah were not found in existence at the time of the local inspection. It was submitted that the petitioners have been prejudiced by the failure of the respondent No. 1 to pass any order on the application for local inspection and the respondent No. 2 also gave no reasons for rejecting the application. It was urged that in view of the conflicting reports of the two experts, a local inspection by the Prescribed Authority or by the appellate court or by some Advocate commissioner was absolutely necessary to bring out the truth on the record.

4. The learned counsel for the respondent No. 3 submitted that the courts below have recorded a concurrent finding that the building is not in a dilapidated condition. In view of this concurrent finding, it is not open for this Court to go into the matter again or to direct the respondent No. 1 to get a local inspection made. He also referred to paragraph 4 of Annexure 3 to the counteraffidavit filed by respondent No. 3. Annexure 3 is the copy of the affidavit filed by Iqbal Chand, on behalf of respondent No. 3, on 30.4.79. It was said that there was no room or verandah in the northeastern portion of the building even at the time of the commencement of tenancy of respondent No. 3. It was argued that the courts below were within their rights in deciding the case on the evidence on the record and there is no sufficient ground for this Court to interfere.

5. I have carefully considered the submission made before me. The respondent No. 3 was given time twice to file a counteraffidavit to the supplementary affidavit dated 18.9.80 filed on behalf of the petitioners. Learned counsel informed that he sent various letters to respondent No. 3 but on reply has been received. Thus it is unrefuted that the petitioners moved an application before the respondent No. 1 for making a local inspection and no order was passed on the application. If the respondent No. 1 had considered the application and

passed some order, the position would have been different. The failure of respondent No. 1 to consider the application moved by the petitioners amounts to depriving the petitioners of an opportunity of adducing relevant evidence and to this extent they have been prejudiced. As a matter of fact, where conflicting reports of experts are filed, the Prescribed Authority or the appellate court should, preferably, direct the issue of a commission so that the truth may be ascertained. The ends of justice have suffered in this case and it is but proper that the order dated 25.5.80 passed by respondent No. 1 be set aside and the case be sent back for a fresh disposal after considering the request of the petitioners for local inspection. The respondent No. 1 may appoint an Advocate Commissioner for this purpose.

6. The petition is allowed partly and the order dated 23.5.80 passed by respondent No. 1 is quashed. The respondent No. 1 is directed to decide the appeal in accordance with law and the directions given above. The costs of the petition shall be easy.

(Petition partly allowed)