
(1982) 09 AHC CK 0029

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1073 of 1982

Nishat Ahmad and Others

APPELLANT

Vs

2nd Addl. District Judge and Others

RESPONDENT

Date of Decision : 06-09-1982

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 181(1), 181(2)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(1), 21, 21(1), 24(2)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 17

Citation : (1982) AWC 780

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : H.S. Joshi, for the Appellant; J.C. Bharadwaj and S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—This writ petition is directed against an order passed by the learned 2nd Additional District Judge, Moradabad, dated 16th December, 1981, allowing an appeal filed by the Respondent on 8:25 AM 2/1/2011 and setting aside an order passed by the Prescribed Authority, whereby the landlord's application for an order of eviction claimed u/s 21(1)(b) of the U.P. Act No. XIII of 1972 had been rejected.

2. The aforesaid application was filed by the landlord on the assertion that the building under tenancy was in a dilapidated condition and was required for being demolished and re-constructed. A building plan had been duly prepared and sanctioned by the local authority. The landlord had the requisite financial capacity for the demolition and new constructions.

3. The application was contested by the Petitioner. Who is a tenant of the accommodation in dispute, disputed the allegation about the building under

tenancy being in a dilapidated condition. The landlord's capacity to demolish and re-construct was also questioned by the tenant. An objection also appears to have been raised as regards compliance of Clauses (ii) and (iii) of Rule 17 of the Rules framed under the Act.

4. The Prescribed Authority rejected the landlord's application. It found that whereas the building was in a dilapidated condition and it required demolition and the landlord had got a building plan duly prepared and sanctioned by the local authority, the landlord does not appear to have requisite financial capacity to undertake the task of demolition and re-construction.

5. Aggrieved by the aforesaid order the landlord filed an appeal which has been allowed. The appellate court concurred with the Prescribed Authority on the question whether or not the building was in a dilapidated condition and was required for being demolished and re-constructed and held that the building in fact was dilapidated and was required for being demolished. It also agreed with the Prescribed Authority that the landlord had complied with Clause (iii) of Rule 17 also. It, however, differed with the Prescribed Authority in regard to the question of financial capacity of the landlord. It held that from the material brought on the record it was clear that the landlord had the requisite capacity for the proposed demolition and re-construction. The appellate court accordingly allowed the appeal as well as the application u/s 21(1)(b) and directed eviction of the Petitioners.

6. The first submission of the learned Counsel for the Petitioner was that the sanction of the plan upon which the landlord relied was granted on 5-7-1972 and under the relevant provisions of the U.P. Municipalities Act the said sanction had ceased to be in operation after one year. Consequently the application filed by the landlord in the year 1976 could not be said to be in order, inasmuch as there was no valid sanction in operation within the requirements of Rule 17 (iii). Learned Counsel placed reliance on a decision of this Court of a learned Single Judge reported in 1982 All. W C 549.

7. Having heard learned Counsel for the parties, I find no merit in the above contention. I do not agree that the mere fact that the sanction obtained by the landlord had technically lapsed on the date of the moving of the application would necessarily lead to the inference that Clause (iii) of Rule 17 has not been complied with. Clause (iii) of Rule 17 runs thus:

17 (iii). that a plan has been duly prepared and conforms to the bye-laws or regulations of the local authority or other statutory authority under any law in that behalf for the time being in force.

8. It will thus be seen that all that the Clause (iii) of Rule 17 requires is that there should be in existence a plan which has been duly prepared and which conforms to the bye-laws or regulations of the local authority or other authority. The sanction upon which the landlord relied was only proof of the fact that the plan submitted by the landlord was in conformity with the bye-laws and

regulations of the local authority, the same having been sanctioned by the local authority. Clause (iii) of Rule 17 does not speak of the sanction of the plan. The authority has only to be satisfied and that there is a plan which has been duly prepared and approved by the local authority.

9. The question can be viewed from another angle. Normally an application u/s 21(1)(b) takes several years for its final disposal. During this period it is obvious that the plan on the basis of which the landlord applies for an order u/s 21 (b) would lapse. The intention of the framers of the rules could not have been that an application which was validly filed would become defective by mere passage of time. If the application is ultimately allowed the landlord may obtain the renewal of the sanction already granted to him by the local authority before the commencement of the construction. Sub-section (2) of Section 181 of the U.P. Municipalities Act lays down the consequence of the expiry of the period of the sanction granted to the person who proposes to make a construction. It says that after the expiry of the period fixed under Sub-section (1) of Section 181 of the U.P. Municipalities Act during which the sanction has to remain in operation the person to whom the sanction was granted cannot commence work except in pursuance of a fresh sanction applied for and granted by the authority. If, therefore, the building plan has remained the same throughout and the bye-laws have also not undergone any change, in my opinion, the mere lapse of sanction under Sub-section (1) of Section 181 cannot lead to the conclusion that the landlord has failed to comply with Clause (iii) of Rule 17. The only effect of the sanction lapsing would be that the landlord would have to obtain fresh sanction before commencing the construction. That is all.

10. Coming to the decision cited by the learned Counsel a perusal of the same does not support his contention. In my opinion this Court has not held in the decision that if the sanction plan has lapsed before the making of the application, an application u/s 21(1)(b) cannot lie as a matter of law. In that case what had happened was that the sanction on which the landlord was relying was illegible and more than one year had lapsed since the date of the sanction. The trial court on that ground refused to rely on the sanction. The appellate court had, however, proceeded on the assumption that only six months had lapsed since the date of the sanction and it ignored the other findings given by the trial court to the aforesaid effect. In these circumstances this Court had disapproved of the finding of the appellate court and it observed that the appellate court's finding was not supported by any material on the record. This Court had not directly or indirectly laid down as a matter of law that the sanction granted to the landlord must be in operation on the date of the making of the application u/s 21(1)(b). If this Court had taken the view attributed to it by the learned Counsel for the Petitioner, there would have been no need to remand the case to the appellate court.

11. As mentioned above, what the court has to be satisfied about is that the building plan submitted by the landlord was duly prepared and it, conforms to

the bye-laws and regulations of the local authority.

12. The appellate court was, therefore, right in its view that Clause (iii) of Rule 17 has been duly complied with by the landlord.

13. The second submission of the learned Counsel for the Petitioner was that the appellate court was in error while considering the financial capacity of the landlord in taking into account the finances of the married daughter of the landlord. He submitted that it is the means and the financial capacity of the landlord which are required to be considered under Clause (iv) of Rule 17.

14. I am unable to accept the above contention. In 1979 A R C 60, this Court had occasion to consider a somewhat similar controversy. The import of the word "financial capacity" occurring in Clause (iv) of Rule 17 was considered by this Court and it was observed that under Clause (iv) of Rule 17, while considering the financial capacity of the landlord it will be open to the court to take into consideration moneys which may be available to the landlord from other sources as well and that it is not necessary that the funds on which the landlord relies in support of his assertion that he has the requisite financial capacity must necessarily belong to the landlord personally. In judging the financial capacity, it was held the court could take into account the moneys coming from other sources also. I am in agreement with this view.

15. The finding of the appellate court is fully supported by the aforesaid decision of this Court. The appellate court was hence entitled to consider the availability of the money standing in the name of the daughter of the landlord also while considering his financial capacity. If the landlord in support of his assertion that he has the requisite financial capacity could rely on his resources by raising funds from other sources, he could just as well rely on the availability of the funds with his daughter.

16. The third submission of the learned Counsel was that the landlord did not comply with Clause (ii) of Rule 17, inasmuch as a proper estimate of expenditure over the proposed demolition was not separately prepared and filed. He placed reliance on a decision of this Court in 1982 ARC 49.

17. I find no merit in the above contention either. The appellate court has relied on the estimate of demolition filed by the landlord in the appellate court. In this estimate the landlord mentioned that Rs. 360/- was likely to be spent for the purposes of demolition. The appellate court has also examined objectively the nature of the building under tenancy and has said that it is covered with "khaprail" and that its demolition would hardly involve an expenditure of Rs. 360/-. In these circumstances it cannot be said that the landlord has not complied with the first part of Clause (ii) of Rule 17.

18. In the end, learned Counsel submitted that in the present was not an application u/s 21(1)(a) and the appellate court was therefore wrong in observing in the operative portion of the order that the need of the landlord for

reconstruction of the disputed house was genuine. He expressed an apprehension that this might prevent the tenant from applying u/s 24 (2) for re-entry after re-construction.

19. The apprehension dose not appear to be well founded. When the appellate court observed that the need of the landlord for re-construction was genuine, it did not mean to lay down expressly or by necessary implication that it would not be open to the Petitioner to occupy the newly constructed house himself. The right of the tenant u/s 24 (2) is not in any way jeopardised by the observations made by the learned District Judge in the operative portion of his order. These observations have to be read in the context.

20. In the result, the petition fails and is dismissed with costs. The enforcement of the order of eviction is, however, stayed until 31st December, 1982. The Petitioner shall hand over vacant possession peacefully (and without causing any obstruction) to the Respondent-landlord on or before 31st December, 1982. The Petitioner shall also not directly or indirectly induct any other person into the accommodation.