

(2016) 02 AHC CK 0068
In the Allahabad High Court
Case No : Writ A No. 7942 of 2016

Om Prakash Srivastava

APPELLANT

Vs

Additional District Judge, Court No.10, Allahabad and 2
Others

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

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

Citation : (2016) 1 ARC 815

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Arvind Srivastava, Advocate, for the Appellant; Ajay Kumar Gupta,
Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J. - Heard Sri Arvind Srivastava, learned counsel for the petitioner and Sri Deepak Jaiswal holding brief of Sri Ajay Kumar Gupta, learned counsel for the respondent no.3.

2. Learned counsel for the petitioner submits that mandatory notice as required under Section 21(1)(a) of the U.P. Act No.13 of 1972 was not given by the plaintiff-respondent no.3 to the defendant-petitioner prior to institution of P.A. Case No.39 of 1992 and as such the P.A. case itself was not entertain able. The plaintiff-respondent no.3 and one Sri Radha Krishna Gupta, are the joint owners of the disputed property in question and as such P.A. case instituted by the plaintiff respondent no.3 alone was not maintainable. The aforesaid P.A. case was instituted by concealment of fact that the joint owners have already filed a release application against one of the tenants, namely, Sri Munnu Khan and the premises was released and the said accommodation is in occupation of the plaintiff respondent no.3. The finding recorded by the court below that the defendant petitioner has not searched for alternative occupation is baseless.

3. Learned counsel for the plaintiff-respondent no.3 submits that the notice as required under proviso to Section 21(1)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act") was given by the plaintiff respondent no.3 to the defendant-petitioner and this fact was well established by various evidences filed before the courts below and the findings recorded by both the courts below on this point is a finding of fact based on consideration of relevant evidences on record. He submits that the share and accommodation purchased by the plaintiff respondent no.3 in the disputed property are well defined and the courts below have recorded a finding of fact in this regard based on consideration of relevant evidences and material on record. Sri Radha Krishan Gupta owned 2nd portion in the disputed property and his share was on the ground floor while 3rd share of the plaintiff respondent no.3 was upper floor and rest of the portion of the ground floor. In the ground floor portion of Sri Radha Krishan Gupta one Sri Munnu Khan was the tenant against whom a release application was filed and subsequently Sri Munu Khan died and thereafter his wife entered into a compromise with Sri Radha Krishan Gupta and vacated the premises which has been given as licensee to the plaintiff respondent no.3. He submits that the courts below have considered each and every aspect of the matter and the evidences on record and correctly passed the order. The findings recorded are findings of fact based on relevant evidences on record and as such the same can not be interpreted for writ court jurisdiction under Article 226 of the Constitution of India.

4. I have carefully considered the submissions of learned counsel for the parties.

5. Briefly stated the facts of the present case are that one Sri Radha Krishan Gupta and the plaintiff-respondent no.3, purchased for their self use the house bearing Municipal No.82, Chak, Allahabad, vide registered sale deed dated 24.6.1974. In this house one Sri Shyam Krishan Lal was an old tenant on monthly rent of Rs. 70/- and after his death the defendant-petitioner being his real son continued to occupy the said premises.

6. Sri Radha Krishan Gupta was the owner of 2nd portion in the said house and his share was well defined and he got vacated his portion from the tenant. He gave it to the plaintiff-respondent no.3 with the condition that as and when he shall require the plaintiff-respondent no.3 would vacate. The family of the plaintiff respondent no.3 consists of his wife, three sons and two daughters. Since there was acute shortage of residential accommodation and extreme need for the accommodation and as such plaintiff-respondent no.3 send a notice to the defendant-petitioner through his counsel Sri Kashi Nath Tripathi, Advocate, by registered post. The notice and acknowledgement and various other documents were filed in evidence in P.A. Case No.39 of 1992 instituted by plaintiff respondent no.3 against the defendant petitioner for release of the accommodation in his occupation. The prescribed authority after due consideration of the relevant evidence and the pleadings made by the parties,

passed an order dated 23.5.2009 allowing the application of the plaintiff-respondent no.3 under Section 21(1)(a) of the Act.

7. Aggrieved with the said order of the Prescribed Authority, the petitioner defendant filed a rent control appeal No.75 of 2009 which was dismissed by the Court of Additional District Judge, Court No.10, Allahabad by the impugned judgment and order dated 28.9.2015. Aggrieved with the aforesaid orders the petitioner defendant has filed the present writ petition.

8. So far as the first submission of the learned counsel for the petitioner is concerned, I find that while considering issue No.1 in its judgment dated 28.9.2015, the court below has considered the evidences on record with regard to the giving of notice under the proviso to Section 21(1)(a) of the Act and recorded a finding of fact that the proviso to Section 21(1)(a) of the Act was complied with and a notice was given by plaintiff-respondent no.3 to the defendant. The finding so recorded is the finding of fact based on consideration of relevant evidences on record and as such it can not be interfered with the Writ jurisdiction under Article 226 of the Constitution of India.

9. So far as the second submission of learned counsel for the petitioner is concerned, I find that the courts below while considering issue Nos. 2 and 3 have recorded a finding of fact that the accommodation in the house in question in occupation of defendant -plaintiff fall within 7rd share of the plaintiff-respondent no.3, which is clearly established.

10. In this regard the court below has considered copy of the site plan and the share of the plaintiff-respondent no.3 and Sri Radha Krishan Gupta as shown in the site plan annexed to the sale deed. The findings recorded in this regard by the courts below is the finding of fact based on consideration of the relevant evidences on record and as such it can not be interfered under Article 226 of the Constitution of India.

11. So far as 3rd and 4th point argued by the learned counsel for the petitioner are concerned, I find that while deciding issue Nos.4 and 5, the court below considered the bona fide need of the plaintiff respondent No.3 as well as 7rd portion given by Sri Radha Krishan Gupta to the plaintiff respondent no.3 for temporary use as well as non effort of the defendant-petitioner for search of an alternative accommodation, and thereafter recorded a finding of fact that the plaintiff respondent no.3 is in bona fide need of the accommodation in question and 7rd portion was given by Sri Radha Krishan Gupta to the plaintiff-respondent No.3 for temporary use and no effort was made by the petitioner-defendant to search for an alternative accommodation even after institution of P.A. Case No.39 of 1992 by the plaintiff respondent No.3.

12. Learned counsel for the petitioner lastly submits that copies of the affidavit was not given by the plaintiff respondent no.3 to the petitioner which was filed before the appellate authority. I find no substance in his submission inasmuch as the courts below have considered the evidences on record. The petitioner has not

even taken this objection before the appellate court. Under the circumstances, the argument so raised has no force. That apart the courts below have considered the documentary evidences and recorded findings of fact as aforementioned. Under the circumstances, the last argument raised by the learned counsel for the petitioner is rejected.

13. In view of the above discussion, writ petition fails and is hereby dismissed.