
(2001) 04 AHC CK 0044

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37662 of 2000

Raj Kapoor

APPELLANT

Vs

VIIth ADJ, Fatehpur and Others

RESPONDENT

Date of Decision : 20-04-2001

Acts Referred:

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

Citation : (2001) 04 AHC CK 0044

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

Final Decision : Dismissed

Judgement

O.P. Garg, J.—The dispute relates with regard to nonresidential accommodation situated in mohalla Lathi Mohal 89A old No. 100 in City and District Fatehpur. The landlord respondent Nos. 3 to 6 moved an application under Section 21 (1) (a) of U.P. Act No. 13 of 1972 for release of the said accommodation. It was registered as P.A. Case No. 59/70 of 1998. The release petition was allowed by the Prescribed Authority on 25/11/1999. Against this order the petitioner preferred an appeal under Section 22 of the Act (Rent Appeal No. 2 of 1993). It was dismissed on 25/5/2000. Sri W.H. Khan, learned Counsel for the petitioner pointed out that during the pendency of the appeal under Section 22 of the Act, the respondent landlords Nos. 3 to 6 have been able to obtain possession of another shop to satisfy the need of another son but since the other son has settled elsewhere, the need of the landlord may be satisfied by the other shop which has been released.

2. Sri Rajesh Tandon who appears on behalf of the landlords, has repelled this submission and on the other hand he pointed out that the petitioner has also purchased a shop during the pendency of the proceedings to which he may shift his business. It was also pointed out that the question of bonafide need as well as that of hardship is a finding of fact which cannot be disturbed by this Court by invoking its extraordinary jurisdiction under Article 226 of Constitution of India.

3. Sri Rajesh Tandon further pointed out that in writ jurisdiction subsequent events cannot be gone into and decided by this Court in view of the decision of the Apex Court in the case of Kamleshwar Prasad v. Praduman Ju Agarwal, 1997(2) JCLR 94 (SC) ; 1997 (1) ARC 627. It was also pointed out that now it is a firm legal position that concurrent findings of fact recorded by the two Courts below cannot be disturbed by this Court in writ jurisdiction. In support of his contention he placed reliance on the following decisions of this Court as well as Apex Court in the cases of Kamla Sarin v. Shyam Lal and others, 1984 (2) All. R.C. 344; MunniLal and another v. Prescribed Authority and another, A.I.R. 1978 S.C. 29; Nathu Lai v. Radhey, A.I.R. 1974 S.C. 1996; Babhutmal Raichand v. Laxmibai, A.I.R. 1975 S.C. 1296; Smt. Labhkumar Bhawani Shaha v. Janardan Mahadeo Kalan, A.I.R. 1983 S.C. 535; RamRakesh Palandanother v. Ist Additional District Judge and others, 1976 U.P.R.C.C. 376; Jagan Prasad v. District Judge and another, 1976 U.P.R.C.C. 342; Laxmi Narain v. IInd Additional District Judge and another 1977 U.P.R.C.C. 230; Smt. Nirmala Tandon v. Xth Additional District Judge, Kanpur Nagar, 1996 (2) A.R.C. 409. In view of the above legal position and taking into consideration the concurrent findings of fact recorded by the two Courts below, I am not inclined to interfere in the matter by invoking my extraordinary jurisdiction under Article 226 of Constitution of India. The petition is accordingly dismissed.

4. After the petition was dismissed, Sri W.H. Khan prayed that some breathing time may be allowed to the petitioner to shift to another accommodation and to make alternative arrangements. Sri Rajesh Tandon has no objection if some reasonable time is allowed to the petitioner.

5. After having heard learned Counsel for the parties on the point and with d view to balance their rights I feel that it would be proper if the implementation of the order of release dated 25/11/1999 and as affirmed in appeal on 25/5/2000 is deferred till 31/12/2001; Provided;

(i) the petitioner deposits in advance the amount of damages calculated twice the rate of rent by 15th of May, 2001 with the Prescribed Authority for the period 1st of April, 2001 to 31/12/2001;

(ii) and also files an affidavit by 15/5/2001 incorporating an undertaking that he shall deliver vacant peaceful possession to the landlord respondent Nos. 3 to 6 on or before 31/12/2001.

6. In the event of the failure of the petitioner to abide by any one of the aforesaid conditions, the concession to continue in possession upto 31/12/2001 shall stand withdrawn and the order of release as affirmed in appeal shall become executable all at once after 15/5/2001.