
(1977) 05 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 553A of 1976

Ram Kishan

APPELLANT

Vs

Distt.Judge, Kanpur and others

RESPONDENT

Date of Decision : 07-05-1977

Acts Referred:

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

Citation : (1977) 05 AHC CK 0026

Hon'ble Judges : R.M.Sahai, J

Final Decision : Dismissed

Judgement

R. M. Sahai, J.—This writ petition is directed against the orders passed by opposite parties Nos. 1 and 2 allowing an application under section 21 (1) (b) for release of the accommodation in dispute on the ground that it was in a dilapidated condition and was required for purpose of demolition and new construction.

2. The application was contested on behalf of the petitioner mainly on the ground that the need of opposite party was not genuine and further the building was not in a dilapidated condition. Both the parties led evidence, tiled report of the Engineer and affidavits. A lawyer was also appointed as Commissioner and he submitted a detailed report regarding the condition of the building. The Prescribed Authority regarded a finding that the building was in a dilapidated condition and the requirements of section 21 (1) (b) read with rule 17 were satisfied. The petitioner challenged this order and before the appellate court urged that the order releasing the accommodation was passed behind his back. The appellate court recorded a finding in favour of the petitioner but proceeded to decide the appeal after hearing the parties on merits and held that the house was in a bad shape and needed reconstruction.

3. Counsel for the petitioner had urged that the order passed by the Prescribed

Authority was illegal as admittedly it was passed without giving an opportunity of hearing. The finding recorded by the appellate court on this aspect is in favour of the petitioner. But it was open to the appellate court to remand the case or to hear the appeal on merits. As the appellate court decided to hear the appeal on merits no objection can be taken by the petitioner on this score unless he is able to establish any prejudice. No case of prejudice has been made out either in the writ petition or during course of arguments. The argument, therefore, that the order of the District Judge was bad merely because he did not remand the case is not sound.

4. It was further urged that the requirements of section 21 (1) (b) were not satisfied and the courts below committed an error in allowing the application the evidence on record and recorded a finding that the house is in a dilapidated condition and was needed for construction. The mere fact that the appellate court has not used the word "demolition" in its judgment does not in any manner render the judgment incorrect or invalid. The finding recorded by the two courts are not vitiated by any error of law.

5. In the result the petition fails and is dismissed. But there shall be no order as to costs.

6. The petitioner shall vacate the premises within six months from today.