

(2006) 05 AHC CK 0146

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22480 of 2006

Rangji Sahkari Avas Samiti Ltd.

APPELLANT

Vs

Rent Control and Eviction Officer/Addl. District Magistrate
(City),Agra & Ors.

RESPONDENT

Date of Decision : 25-05-2006

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(1)

Citation : (2006) 05 AHC CK 0146

Hon'ble Judges : Krishna Murari, J

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard Sri V.K. Singh learned Senior Counsel assisted by Sri S. Shekhar for the petitioner and learned Standing Counsel for the respondents.

2. Pleadings have been exchanged and with the consent of learned Counsel for the parties, the writ petition is being finally disposed of at the admission stage itself.

3. Challenge in this writ petition has been made to the order dated 342006 passed by the Revisional Court rejecting the application filed by the petitioner to accept additional evidence on record.

4. The facts giving rise to the dispute are as follows:

(a) The dispute relates to property No. 3/50 which is a five storied building commonly known Bharatpur House situate in Kandhari District Agra and belongs to Bharatpur Royal Family Religious and Ceremonial Trust which is stated to be a religious trust. The petitioner by means of a registered lease deed dated 1021989 took the premises in dispute on lease for occupation of its members. The petitioner was given rights by lessor to demolish whole or part of the above property and reconstruct and use in the way it likes.

(b) The ground floor of the said building was in possession of the District

Planning Officer, Agra as a tenant. The tenant District Planning Officer, Agra (subsequently redesignated as Chief Development Officer, Agra) vacated the premises in dispute on 17/11/1997. On an application moved by the District Supply Officer, Agra for allotment of the premises vacated by erstwhile tenant, proceedings for allotment were started and the premises in dispute was allotted in the name of District Supply Officer, Agra vide order dated 29/11/1998. The petitioner moved an application dated 19/7/1999 for review of the allotment order dated 29/11/1998. The said application of the petitioner was allowed by the Rent Control and Eviction Officer, Agra on 13/12/2000. The District Supply Officer, Agra challenged the said order in revision which was also dismissed on 5/8/2000. Writ Petition No. 43774 of 2000 filed by the District Supply Officer, Agra was also dismissed by this Court vide order dated 11/5/2001. The operative portion of the judgment of this Court dated 11/5/2001 reads as under:

“The petition, is, therefore, dismissed. However, it is made clear that the petition has been dismissed only for the reason that the vacancy was declared without notice to the landlord. Therefore, the Rent Control and Eviction Officer may again take steps for declaration of vacancy and allotment after giving an opportunity of hearing to the landlord.

With the above observations, the writ petition is disposed of. Stay order, if any, stands vacated.”

(c) Thereafter, the petitioner again approached the Rent Control and Eviction Officer by means of applications under Section 16 (1) (b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short the "Act") for release in his favour and under Section 16 (5) (b) of the Act for being put in possession of the building since the allotment order passed in favour of the District Supply Officer was cancelled. The said applications moved by the petitioner remained pending for long forcing the petitioner to approach this Court by means of Writ Petition No. 29377 of 2001 which was disposed of vide order dated 8/8/2001 with a direction to the Rent Control and Eviction Officer, Agra to dispose of the applications expeditiously. Even thereafter, the applications remained pending and the petitioner again approached this Court by means of Writ Petition No. 3748 of 2002 seeking a direction that he may be put in possession under Section 16 (5) (b) of the Act. Notices were issued and the respondents were asked to file counteraffidavit. Subsequently, the writ petition was dismissed as withdrawn on 24/4/2002 on an application moved by the petitioner. The matter still remained pending and a number of dates were fixed forcing the petitioner to again approach this Court by means of Writ Petition No. 18753 of 2003 seeking a direction to dispose of the applications expeditiously. The writ petition was disposed of by this Court vide order dated 15/2/2003 with a direction to decide the applications within four months. Thereafter, two applications filed by the petitioner under Section 16(1)(b) and under Section 16(5) (b) of the Act were dismissed by respondent No. 1 on 26/8/2003. The petitioner challenged the order in revision.

5. During the pendency of revision, the respondent No. 2 District Supply Officer, Agra moved another application dated 2772005 through the Collector, Agra before the Rent Control and Eviction Officer with a prayer that the finding/ observation in the order dated 2682003 that there is no dispute regarding the vacancy be deleted. Respondent No. 1 entertained the said application and issued notices to the parties. The petitioner again approached this Court by filing Writ Petition No. 66529 of 2005. In response to the notices issued an affidavit was filed on behalf of respondent that the application has been withdrawn. This Court while dismissing the writ petition on the ground that the grievance does not survive directed that no further application on the same facts and for the same relief shall be entertained and the Revisional Court was directed to decide both the revisions pending before it expeditiously. The petitioner thereafter moved an application dated 17122004 before the Revisional Court to bring on record some additional evidence. The Revisional Court vide impugned order dated 342006 has rejected the said application against which the present writ petition has been filed.

6. The respondent No. 1 has dismissed the applications filed by the petitioner under Section 16 (1) (b) of the Act on the ground that though the petitioner has stated in his release application that he wants to demolish the existing construction and raise new construction for its member but the provisions of Rule 17 have not been complied inasmuch as no evidence has been led by the petitioner to establish that the building requires demolition, nor it has filed any estimate of expenditure over the proposed demolition and new construction or that it has the financial capacity for the proposed demolition and new construction. Application filed by the petitioner under Section 16 (5) (b) of the Act was dismissed on the ground that since the release application has been rejected and the proceedings for allotment of the premises in dispute are to be undertaken as such there is no justification to put back the petitioner in possession. During the pendency of revision, the petitioner moved an application for accepting documents in the form of lease deed of the building, estimated expenditure over the proposed demolition and new construction etc. The Revisional Court dismissed the application filed by the petitioner mainly on the ground that evidence is being brought on record to fill up lacuna and to cure the defect.

7. It has been urged by the learned Counsel for the petitioner that compliance of Rule 17 in proceedings for release under Section 16 (1) (b) of the Act is suggestive in nature and not mandatory. It has also been urged by the learned Counsel for the petitioner that the petitioner was precluded from filing the evidence before the respondent No. 1 since it was given to understand that application for possession under Section 16 (5) (b) of the Act shall be disposed of and thereafter the application for release shall be taken for consideration, but both the applications were decide together by respondent No. 1. It has also been urged that no opportunity was provided to the petitioner to file evidence in support of the release application. Categorical statements in this regard have

been made in paragraphs 37, 38 and 39 of the writ petition. The same facts and grounds have also been taken in the application filed before the Revisional Court for taking evidence on record.

8. Under Section 16 (1) of the Act, District Magistrate is empowered to release whole or any part of the building in favour of the landlord which has fallen vacant or about to fall vacant. Subsection (2) of Section 16 lays down the conditions under which the District Magistrate can pass release order. The said subsection requires that no release order under clause (b) of subsection (1) shall be passed unless the District Magistrate is satisfied that the building or any part thereof is bona fide required by the landlord either in its existing form or if the building is in a dilapidated condition after demolition and new construction for occupation by himself or any member of his family etc. Thus what is to be seen by the District Magistrate is that the building under release should be bona fide required by the landlord for occupation by himself or any member of his family etc. and if it is in a dilapidated condition it is required by the landlord for occupation by himself or any member of his family etc. after demolition and new construction.

9. Rule 13 provides that every application for release under clause (b) of Section 16 (1) shall specify the ground on which the release is being sought. By virtue of subrule (3), the procedure prescribed by Rule 17 have been mutatis mutandis applied in case where the application under subrule (1) is made on the ground that building is required for demolition and new construction. Rule 17 prescribes that before allowing an application for release of building under Section 21 (1) (b) of the Act on the ground that it is required for the purposes of demolition and new construction, the Prescribed Authority shall satisfy itself:

- (i) that the building requires demolition;
- (ii) that a proper estimate of expenditure over the proposed demolition and new construction has been prepared;
- (iii) that a plan has been duly prepared and conforms to the byelaws or regulations of the local authority or other statutory authority under any law in that behalf for the time being in force; and
- (iv) that the landlord has the financial capacity for the proposed demolition and new construction.

10. A conjoint reading of Section 16, Rule 13 (3) and Rule 17 made it clear that the same conditions apply for release of a building under Section 16 (1) (b) in case release has been sought on the ground that the building is in a dilapidated condition and is required for demolition and new construction as they exist in case of release of a building sought under Section 21 (1) (b) of the Act. Learned Counsel has advanced the argument that compliance of Rule 17 in an application for release under Section 16 (1) (b) is only suggestive in nature and not mandatory is in total ignorance of Rule 13 of the Rules by virtue of which the entire procedures of Rule 17 have been mutatis mutandis applied. Thus, this

argument has no force and is liable to be rejected.

11. In so far as, second limb of the argument advanced by the learned Counsel is concerned, primarily, the burden was on the petitioner to have produced the necessary evidence before respondent No. 1 in order to satisfy the conditions enumerated in Rule 17 which admittedly it failed to discharge. It was only at the revisional stage the petitioner moved the Court to accept the additional evidence, which could have gone to satisfy the conditions laid down by the said rule. Now, the question which arises for consideration is whether the petitioner should be permitted to lead additional evidence at the revisional stage.

12. It is undisputed that normally additional evidence should not be permitted to be taken on record at appellate or revisional stage, which may tend to fill in the lacuna as to cure the defects. However, in the facts and circumstances of the present case when the release has been sought on the ground that the building which is 125 years old is in a dilapidated condition and is required by the petitioner for construction of a new building for use of its member after demolishing the existing construction and from the documents which are sought to be filed as additional evidence prima facie it does appear that the building is in a dilapidated condition. In case the documents sought to be filed as additional evidence are not accepted on record, the release application filed by the petitioner is bound to fail for want of compliance of Rule 17. As a matter of fact, the building may actually be in a dilapidated condition and dangerous not only for the prospective allottee but for the general public as well. On the contrary, once the additional evidence filed by the petitioner is accepted on record it shall be open for the respondent to rebut the same and demonstrate that the building is not in a dilapidated condition requiring demolition. The Court below accordingly, shall decide this issue on the basis of the evidence so led by the parties. Thus, in case, the additional evidence is allowed to be accepted no prejudice would be caused to the respondents.

13. In view of the aforesaid, the impugned order passed by the Revisional Court rejecting the application for additional evidence cannot be sustained and is hereby quashed.

14. The writ petition stands allowed.

15. The Revisional Court is directed to admit the additional evidence furnished by the petitioner on record and proceed with the disposal of the revision after affording an opportunity of rebuttal to the respondents.