
(2009) 01 AHC CK 0117
In the Allahabad High Court
Case No : Writ Petition No. 9 of 2009 (R/C)

Sardar Amarjit Singh and another

APPELLANT

Vs

Civil Judge (J.D.), Sultanpur and others

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

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

Citation : (2009) 01 AHC CK 0117

Hon'ble Judges : Shishir Kumar, J

Final Decision : Dismissed

Judgement

Shishir Kumar, J.—This writ petition has been filed against an order rejecting the application filed by petitioners, who are tenants for issuance of commission.

2. The facts arising out of present writ petition are that respondents being landlord filed an application under section 21 (1) (a) of Act No. 13 of 1972 on the ground of his personal need in 2003. A written statement was filed by petitioners and case was being contested. It is in the year 2008, an application has been filed for issuance of commission on the ground that another adjacent shop is still vacant and is in possession of respondentslandlord. The fact has to be verified for the purposes of just disposal of application filed by respondents. The application filed by petitioners was considered and by order dated 1.12.2008, same was rejected holding therein that this fact has been denied by respondentslandlord that there is any vacant shop in possession of respondents. Further finding has been recorded that if on the basis of evidence, the Court comes to conclusion that there is a necessity of spot inspection or for issuance of commission, same will be done. Subsequently, another application was filed by petitioners, which was also dismissed holding the same finding by order dated 9.1.2009.

3. Aggrieved by aforesaid order, petitioners have approached this Court.

4. It has been submitted by learned Counsel for petitioners that for the purposes

of verification regarding vacant shop adjacent to the shop in dispute, issuance of commission is necessary in the interest of justice. It cannot be verified on the basis of evidence and affidavits, as such, prescribed authority has erred in law in rejecting the application. Reliance has been placed upon a judgment of this Court in *Durga Prasad Bansal v. Smt. Vimla Devi*, 2008 (71) ALR 757. Placing reliance upon aforesaid judgment, learned Counsel for petitioners submits that this Court has held that if an application for issuance of commission has been filed and if the same has been rejected on the ground that it has been made only to delay the proceeding, in such circumstances, Court has passed an order directing prescribed authority to ensure that report of commission is submitted. In such situation, learned Counsel for petitioners submits that order passed by prescribed authority is liable to be quashed.

5. On the other hand, learned Counsel for respondents submits that application for release of said accommodation was filed in the year 2003 and that was being kept pending on the basis of adjournments sought by petitioners. In 2008, only to delay the proceeding an application has been filed for issuance of commission. This fact regarding vacancy of any adjacent shop has been denied and finding recorded by Court below is to this effect that if necessary during course of argument, the Court itself will inspect the spot or will issue a commission for the purposes of verification, of the contention raised by petitionerstenants.

6. After hearing learned Counsel for parties and after perusal of record, as regards the decision cited by learned Counsel for petitioners, the fact of this case is different to that case as in that case it was admitted that shop in which a tenant was there was vacated and there was a pleading by landlord that shop is in a dilapidated condition and is not feasible to do business, therefore, it cannot be presumed that any vacant shop is in possession of landlord. In such situation, the Court has given an opinion that in such circumstances, as it was an admitted fact that a vacant shop was in possession of landlord, therefore, it was necessary to issue a commission for verification whether it was in delipicated condition or not.

7. But in the present case, this fact has been denied by respondentslandlord and while considering the application filed by petitioners for issuance of commission, a finding has been recorded that if during course of argument, if Court feels he will make spot inspection or will issue commission for the purposes of verification of the pleading regarding vacant shop. The first application was rejected. The petitioners have not challenged that order before any Court of law, therefore, in such circumstances, subsequent application filed by petitioners for the same cause of action has been rejected holding the same finding.

8. Admittedly, application for release of the accommodation filed by respondents is pending since 2003 and no application has been filed during the period from 2003 to 2008. It was only in the latter period of 2008, an application has been filed. This clearly shows the intention of petitioners being tenants to delay the proceeding.

9. In view of aforesaid fact, I find no merit in the writ petition.

10. The writ petition is devoid of merits and is hereby dismissed.

11. It is further directed that as the application filed by respondents is pending from 2003, therefore, prescribed authority is directed to decide the said application within a period of three weeks from the date of production of certified copy of this order.

12. No order as to costs.

Writ Petition Dismissed.