

(1998) 08 AHC CK 0132
In the Allahabad High Court
Case No : C.M.W.P. No. 25710 of 1998

Satya Prakash Tyagi

APPELLANT

Vs

Prescribed Authority/Civil Judge (Senior Division), Haridwar
and others

RESPONDENT

Date of Decision : 13-08-1998

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1), 34, 34(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 22

Citation : (1998) 3 AWC 2144

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Rajesh Tandon, for the Appellant;

Final Decision : Disposed Of

Judgement

1. J. C. Gupta, J.—Heard petitioner's counsel.

2. This is tenant petition against the order of the Prescribed Authority rejecting petitioner's application for deciding the question whether there exists any relationship of landlord and tenant between the petitioner and respondent No. 2, as a preliminary issue before proceeding further in the matter. The application has been rejected by the learned Prescribed Authority on the ground that there is a prima facie material to indicate such a relationship and further on the ground that no trust deed has been produced from the side of the tenant. The Prescribed Authority was also of the opinion that the petitioner's application was moved only with a view to delay the proceedings.

3. Learned counsel for the petitioner argued before this Court that an application u/s 21 is maintainable only at the instance of the landlord and no other person and where the tenant raises a question before the Prescribed Authority that the person who has moved release application is not his landlord, he is duty bound to

decide the said question and in support of his submission, learned counsel has placed reliance on a Division Bench decision of this Court in Ram Nath Mishra V. Prescribed Authority 1984 (2) ARC 227. There can be no dispute with regard to this position of law. However, the question that requires consideration is as to whether the Prescribed Authority is also duty bound to decide the said question as a preliminary issue?

4. From the scheme of the Act, it is clear that the proceedings u/s 21 (1) (a) of the Act before the Prescribed Authority are of a summary nature and are to be decided on the basis of affidavits filed by the parties. Section 34 lays down a special procedure to be followed by the Prescribed Authority while holding an enquiry under the Act. This section is a complete Code so far as the powers of, and procedure to be followed by, the authorities under the Act are concerned. Whole of the provisions of the CPC have not been made applicable to the proceedings under the Act. The authorities have been conferred with the same powers as are vested in civil court under the CPC in respect of only those matters as are specified u/s 34 (1) of the Act and in Rule 22. There is nothing in Section 34 or Rule 22 which may indicate that when the right of the person applying u/s 21 (1) (a) is challenged by the tenant, the Prescribed Authority is duty bound to decide the said question as a preliminary issue before proceeding further in the matter. The said question has also to be decided like other issues involved in the case on the basis of the evidence and other material brought on record by respective parties. It is also well-established that where the maintainability of a suit or a petition or an application is challenged on the ground that the authority concerned lacks jurisdiction inherently to proceed in the matter, it is only the facts pleaded in the plaint or in the petition or in the application which are to be looked into for determining the question of lack of jurisdiction. From the allegations made in the release application in this writ petition, it cannot be said that those allegations even if taken at their face value do not confer jurisdiction on the Prescribed Authority to proceed in the matter. Where the objection about the maintainability of the application is to be decided on the basis of the allegations made in the written statement or in the reply given by the defendant/opposite party, the said question should be decided only on the basis of evidence and material brought on record.

5. For the reasons stated above, this writ petition is disposed of and the Prescribed Authority is directed to finalize the proceedings expeditiously, preferably within a period of two months according to law.