
(2000) 09 AHC CK 0066

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42592 of 2000

Sheetal Prasad Kesharvani

APPELLANT

Vs

Prescribed Authority/IVth A.C.M.M., Kanpur Nagar and Others

RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

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

Citation : (2000) 09 AHC CK 0066

Hon'ble Judges : R.H.Zaidi, J

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—Heard learned Counsel for the petitioner.

By means of this petition filed under Article 226 of the Constitution of India, petitioner challenges the validity of the order dated 692000 whereby objection filed by the petitioner in the execution proceedings of the order dated 29111997 passed in release application filed under Section 21 (I)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. XIII of 1972), for short the Act has been dismissed by the Prescribed Authority.

2. It appears that the contesting Respondent Nos. 2 to 5 applied for release of the building in question under Section 21 (1) (a) of the Act. The said application was allowed by the Prescribed Authority after contest on 29111997. Challenging the validity of the said order an appeal was filed by the petitioner before the Appellate Authority. The appeal was also dismissed by judgment and order dated 1722000. Thereafter the petitioner approached this Court and filed Writ Petition No. 26081 of 2000. The said petition was also dismissed on 2552000. The operative portion of the said judgment is quoted below:

?From the copy of the ordersheet referred to above placed by the learned Counsel for the contesting respondents, it is clear that petitioner adopted delaying tactics before the Courts below. On this score also it is not a fit case for interference under Article 226 of the Constitution of India.

No other point raised or pressed. Writ petition lacks merit.

Writ petition fails and accordingly dismissed.

No costs.?

3. The judgment and order passed by this Court has become final as no appeal was filed against the said judgment. Landlords, thereafter put the aforesaid release order in execution. The petitioner in the said proceedings raised objection contending that the number of the house is 43/168 and not 43/168B, therefore, the order was not liable to be executed. The Prescribed Authority, after hearing the learned Counsel for the parties and perusing the material on the record, dismissed the objection raised by the petitioner by judgment and order dated 6: 92000. Hence, the present petition.

4. Learned Counsel for the petitioner vehemently urged that the number of house in dispute was 43/168 and not 43/168B, therefore, the order dated 29111997 was not executable. The Court below has acted illegally in dismissing the objection filed by the petitioner. The impugned order was, therefore, liable to be quashed.

5. On the other hand, learned Counsel appearing for the contesting respondent submitted that in the proceedings under Section 21 (l)(a) of the Act, controversy regarding the number of house was not raised. The petitioner is in occupation of the house in question and their existed relationship of landlord and tenant between the parties, which was not disputed, therefore, at this stage, it is not open to the petitioner to take up the controversy regarding the number of the house in dispute. The writ petition was, therefore, liable to be dismissed.

6. I have considered the submissions made by learned Counsel for the parties.

7. It is not disputed that the order of release dated 19111997 passed against the petitioner has become final, as appeal as well as the writ petition filed against the order was dismissed. It is not disputed that the petitioner is in occupation of the house in dispute with respect to which proceedings under Section 21 (l)(a) of the Act were initiated. In paragraph No. 1 of the release application it was stated as under:

That the petitioners are the landlord of the house No. 43/168B, Chowk, Kanpur Nagar vide a registered leased deed dated 30101987 and a part of the accommodation, comprising of two rooms and an open space about 8" x 12" at first floor of the aforesaid premises is under use and occupation of the opposite party, subject to payment of rent Rs. 15 per month besides taxes.

8. The petitioner in reply to the facts stated in the release application filed written statement. In the written statement petitioner did not dispute the number of premises in question, rather the contents of paragraph No. 1 were specifically admitted by him. There might be discrepancy with regard to the number of house but its identity was never in dispute. The same is therefore, of

no consequence. It is also not in dispute that the house in dispute with respect to which release order was passed is in occupation of the petitioner. It is also not disputed that the contesting respondents are the owners/landlords of the said house, therefore, in the execution proceedings it was not open to the petitioner to contend that he is not liable for ejectment from the house in dispute particularly when as stated above the order of ejectment/release passed against him has become final. The Prescribed Authority, therefore, did not commit any error of law or jurisdiction in rejecting the objection filed by the petitioner. I do not find any illegality or infirmity in the order passed by the Prescribed Authority. No case for interference under Article 226 of the Constitution of India is made out.

The writ petition fails and is dismissed in limine.