

(2004) 10 AHC CK 0099
In the Allahabad High Court
Case No : C.M.W.P. No. 36335 of 2004

Sirajuddin

APPELLANT

Vs

Smt. Husan Ara Parveen

RESPONDENT

Date of Decision : 06-10-2004

Acts Referred:

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

Citation : (2005) 1 AWC 157

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Om Prakash, Nasiruzzaman and M.K. Khan, for the Appellant; P.N. Khare, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—Heard learned counsel for the petitioner and Sri P. N. Khare, learned counsel for the respondent.

2. The petitioner has filed this writ petition against the order dated 31.5.1999 passed by the prescribed authority and the order dated 26.7.2004 by which the appellate authority has affirmed the order of the prescribed authority.

3. The facts leading to filing of this writ petition are that the respondent-landlady filed an application u/s 21(1)(a) of U.P. Act No. 13 of 1972 on the ground that she requires the accommodation in dispute for establishing her two unemployed sons in business. The prescribed authority after considering the case of the landlady found that the need of the landlady is bona fide and more pressing than that of the tenant and tilt of the comparative hardship is also in favour of the landlady and allowed the application filed by the landlady. Aggrieved thereby the petitioner-tenant filed an appeal before the appellate authority. The appellate authority dismissed the appeal filed by the petitioner-tenant and affirmed the findings recorded by the prescribed authority.

4. Learned counsel for the petitioner-tenant has argued that the prescribed authority as well as the appellate authority has not correctly appreciated the evidence which were already there and committed manifest error of law. Learned counsel for the petitioner has failed to demonstrate that as to what manifest error of law has been committed by the prescribed authority as well as by the appellate authority.

5. It is well-settled that normally this Court do not sit in appeal over the findings recorded by the prescribed authority and affirmed by the appellate authority unless the same are demonstrated to be perverse. This proposition of law is reiterated by the Apex Court in its recent decision in Surya Dev Rai Vs. Ram Chander Rai and Others, , wherein this Apex Court ruled as under:

"38. Such like matters frequently arise before the High Courts. We sum up our conclusion in a nut-shell, even at the risk of repetition and state the same as hereunder : (1), (2), (3) and (4) :

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self evident, i.e., which can be perceived or demonstrated without involving into any lengthy or completed argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the Us.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal

or technical character.

(9) In practice, the parameters for exercising Jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of Jurisdiction exercised by the High Courts in India unlike English Courts has almost obliterated the distinction between the two Jurisdiction. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory Jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the Court should have made in the facts and circumstances of the case."

6. In view of the decision of the Apex Court in Surya Dev Rai's case (supra). I do not find any error in the order passed by the prescribed authority and affirmed by the appellate authority so as to warrant interference by this Court under Article 226 of the Constitution of India.

7. In the result, the writ petition is dismissed.

8. Lastly it is submitted by learned counsel for the petitioner that the petitioner-tenant is carrying on business from the disputed shop, therefore, he may be granted some reasonable time to vacate the same.

9. Considering the submission made by learned counsel for the petitioner and facts and circumstances of the present case. I direct that the petitioner shall not be evicted pursuant to the decree of eviction till 30th June, 2005, provided :

(1) petitioner furnishes an undertaking before the prescribed authority within three weeks from today that he will hand over peaceful vacant possession to the landlady on or before 30th June, 2005 ; and

(2) petitioner pays to the landlady or deposits the entire arrears of rent/damages, if not already paid/deposited before the prescribed authority, at the rate of rent till date within three weeks from today and continues to pay or deposits the same by first week of succeeding month so long he remains in possession or till 30th June, 2005, whichever is earlier. The landlady will be entitled to withdraw the amount so deposited.

10. In the event of default of any of the conditions referred to above, it will be open to the respondent landlady to get the decree executed.