
(2012) 08 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37491 of 2012

Smt. Usha Rani and Others

APPELLANT

Vs

Smt. Urmila Gupta and Others

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(b), 24

Citation : (2012) 9 ADJ 270 : (2013) 1 ALJ 479 : (2013) 1 RCR(Rent) 117

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : A.B. Singhal, for the Appellant; Madan Mohan, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Sudhir Agarwal, J.—Heard Sri R.B. Singhal, learned Senior Advocate assisted by Sri A.B. Singhal, Advocate for petitioners and Sri Madan Mohan, Advocate for respondents. This writ petition is directed against the judgment dated 13.11.2003 passed by Prescribed Authority decreeing the suit of landlord respondents u/s 21(1)(b) of U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act, 1972") holding building in question in dilapidated condition and, therefore, directing for eviction of petitioners from premises in dispute so that the landlord say get it reconstructed and the appellate order dated 24.04.2012 where by the District Judge, Meerut has dismissed the appeal and confirmed judgment of trial court.

2. The respondents landlord filed P.A. Case No. 152 of 1999 before Prescribed Authority u/s 21(1)(b) of Act, 1972 for eviction of petitioners tenants and to handover vacant possession of building in dispute, namely, house No. 183 Old, New No. 12, Chhipi Tank Meerut to them on the ground that it is in dilapidated condition and the landlords want to make new construction after demolishing the same. The landlord also stated that he shall comply with the requirement of

Section 24 of Act, 1972 by giving option of reentry to the tenants.

3. The defendants tenants contested the suit by filing written statement where in it is stated that tenants were occupying the premises in question for the last 40 years. They disputed the condition of building as being dilapidated and said that it is in a sound and good condition.

4. Both the parties submitted photographs of buildings, inside and outside, and also reports of architects which were obviously contradictory to each other. The trial court after considering the pleadings, evidence and arguments passed judgment dated 13.11.2003 decreeing the suit and directed for eviction of defendants tenants where against an appeal being P.A. Appeal No. 214 of 2003 was filed in the court of District and Sessions Judge, Meerut by tenants defendants. The said appeal was allowed by District Judge vide judgment dated 08.12.2004, where against the landlord came to this Court in Writ Petition No. 4334 of 2005. The writ petition was allowed vide judgment dated 04.12.2009 and matter was remanded to appellate court to pass a fresh order on the basis observations made by this Court. The relevant observations are as under:

After hearing learned counsel for petitioner and after perusal of record, I am of view that placing reliance by Appellate Authority upon the report of amin is not correct and is not permissible because amin of the Court is not an expert, therefore, placing reliance on the amin report, the Appellate Court has committed an illegality on the face of record. The report of expert was there and prescribed authority after due consideration has recorded a finding that roof, wall and floor are in delipicated condition and it can fall at any time as the age of the building is above 60 years. A finding has also been recorded that there is a crack in the walls but the Appellate Authority only on the basis of the report of amin which supports the report of respondent tenant has recorded a finding that in view of this fact it will be treated that building in question is not in delipicated condition. As regards, compliance of Rule 17 of Act No. 13 of 1972, the Appellate Authority has recorded a finding that findings recorded by prescribed authority is correct and needs no interference, meaning thereby only on the question that whether the building is in delipicated condition, the appellate authority only on the basis of technicality has allowed the appeal filed by respondents. Further Court below should have consider that tenant respondent will not suffer more hardship because after construction of new building he has a right of reentry u/s 24 of the Act. In my opinion, the Appellate Authority has committed an error apparent on the face of record to hold otherwise and to reverse the finding recorded by the Prescribed authority. The writ petition is allowed. The order dated 8.12.2004 is hereby quashed and matter is remanded back to Appellate Authority to decide as fresh in view of observations made above as well as on the basis of relevant record. It is, however, open to parties to lead fresh evidence regarding condition of the building in question. As the matter is pending quite for a considerable period, court is directed to decide within three months from the date of presentation of certified copy of the order.

5. Thereafter the appeal was heard again and vide judgment dated 30.04.2010 the District Judge, Meerut dismissed the appeal and confirmed order of trial court.

6. Again the matter was taken up to this Court but this time the petitioners were tenants in Writ Petition No. 33198 of 2010. It was contended that the photographs and report of Sri Anil Sabbarwal, Architect submitted on behalf of tenants was not considered by appellate court properly. This writ petition was also allowed vide judgment dated 14.11.2011 and the matter was remanded again to appellate court to decide afresh. The relevant observations of this Court are as under:

From perusal of the order of this court dated 4.12.2009, it is apparent that the matter was to be decided afresh after considering the evidence to be produced by the parties and from perusal of para 7 of the judgment of the appellate court, it transpires that several affidavits and reports of the Architects were filed by the respective parties but the same have not been considered and discussed while passing the impugned order by the appellate court though it was obligatory on the part of the appellate authority to have considered and discussed the said evidence while deciding the matter afresh in light of the observations made by the writ court and as such the appellate court has committed error apparent on the face of record while passing the impugned order and the impugned order passed by the appellate authority to this effect regarding nonconsideration of the evidence adduced by the respective parties, whose reference has been made in para 7 thereof cannot be sustained and the same is liable to be quashed. In view of what has been discussed herein above, the writ petition succeeds and is allowed and the impugned judgment and order dated 30.4.2010 passed by the respondent No. 1, District Judge, Meerut is hereby quashed and the matter is remanded back to the appellate authority to decide the appeal afresh in view of the observations made herein above considering the relevant record, particularly the reports of the Architects filed by the respective parties, whose reference has been made in para 7 of the impugned order dated 30.4.2010 passed by the appellate court. Since the matter is pending since last nearly 12 years, the appellate court is directed to decide the appeal within a period of three months from the date of production of a certified copy of this order.

7. Pursuant to this judgment, the appellate court has now passed the order impugned in this writ petition where by it has again dismissed the appeal of tenants vide judgment dated 24.04.2012.

8. Sri R.B. Singhal, learned Senior Advocate appearing for petitioners submitted that the photographs submitted by tenants and reports of architect valuer of tenants has not been considered properly. He submitted that when contradictory reports of experts are submitted, it was incumbent upon the courts below to have a personal spot inspection or to have evidence otherwise to come to the conclusion that building in question, whether in a dilapidated condition or not, but having failed to do so, the courts below have committed patent error in law. He further submitted that the findings recorded by courts below that building in

question is beyond repairable condition cannot be sustained and it cannot be said that building in question is in a dilapidated condition. He also raised a grievance that this Court's judgment dated 14.11.2011 has not been observed in its correct perspective by appellate court inasmuch as the issues have not been discussed elaborately and thus also the impugned judgment warrants interference.

9. The question, whether a building is in dilapidated condition or not is a question of fact which has to be decided on appreciation of evidence.

10. The term "dilapidated" does not mean that it is likely to collapse immediately or imminently or in other words it is on the verge of collapse. If such an argument is accepted besides wholly unwarranted, it would be a negation of the basis principle of safety and security of a person and his property. To my mind what is required to attract Section 21(1)(b) of Act, 1972 is that the building has outlived its life and utility and not that it has started falling. The mere fact that after complaint raised by landlord that building is in dilapidated condition, it has continued to survive for sufficiently long time thereafter is wholly irrelevant to decide the question, whether building is in a dilapidated condition or not.

11. It is no doubt true that onus to prove that a building is in dilapidated condition lie upon the landlord since it is he who is seeking a relief based on the aforesaid fact but it would not mean that the degree of onus can be extended to the extent of impossibility by asking him to prove something which is not necessary for the purpose.

12. The view I have expressed above is consistent with this Court's precedent in Shyam Lal Goel Vs. VIth Additional District Judge, Meerut and others, 1979 ALJ 1258; Ram Avtar Vs. VIIth Additional District Judge, Moradabad, 1982 ARC 124; Smt. Shanti Devi Vs. Ist Additional District Judge, Kanpur and others, 1983(1) ARC 21; Mahmood Yar Khan Vs. Irshad Ali Khan and others, 1985 (1) ARC 298; Kishan Lal Gupta Vs. IXth Additional District Judge, Ghaziabad and others, 1998 (34) ALR 612; Harish Chandra Gupta Vs. Swatantra Kumar Jain and others, 1999 (2) ARC 22; and, Prince Agrawal (Dr.) Vs. Prasanna Madhav Vyas, 2009 (2) ARC 412.

13. When both the parties have filed reports of architects expressing different views, the appreciation and reliance thereof as to which one is more believable than the another one is within the domain of Trial Court and within the domain of assessment of evidence to record a finding of fact. Unless such findings of fact recorded by courts below is shown perverse or violate any statutory provision, it is not to be interfered under Article 226/ 227 of the Constitution sitting in like an appellate court.

14. Rule 17(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter referred to as the "Rules, 1972") contemplates that Prescribed Authority while considering an application on the ground of Section 21(1)(b) shall satisfy itself that the building requires demolition.

Therefore, it is the satisfaction of Prescribed Authority regarding condition of building that it is dilapidated if he comes to the conclusion that it requires demolition. The satisfaction of Prescribed Authority, in my view, has been required under the Rules only to reassert the factum about condition of building, whether dilapidated or not and to avoid any mischief on the part of landlord to oust a tenant from a building which is though otherwise safe and in a good condition but to seek his ouster taking the plea of condition of building being dilapidated. The satisfaction of Prescribed Authority in these cases only protect from a mere pretext on the part of landlord and brings into picture an impartial third person who can look into matter independently and objectively to form opinion about condition of building as to whether it can be said to be in dilapidated condition or not. Such satisfaction recorded by two courts below, the concurrent findings ought not be disturbed lightly unless there are strong reasons to justify such interference.

15. In the present case, both the courts below have recorded a concurrent finding and their satisfaction that building in question is dilapidated, needs demolition, after considering not only the reports of architects submitted by both sides but also the photographs thereof and other material. The courts below found that report submitted by Engineer and Architect, Sri Rakesh Kumar Gupta is more detailed and reliable than that of Sri Anil Sabbarwal Architect submitted by petitioners tenants. In fact the Courts have also found that besides Sri Rakesh Kumar Gupta another Architect, Sri Bharat Bhushan who has submitted his report on 24.12.2009, has also opined that the building is in dilapidated condition and may endanger the life and property, if it is not demolished at the earliest.

16. In order to disbelieve the report of Sri Anil Sabbarwal one of the factor mentioned in appellate order is that he is not endeavoured to find out the age of building at all in his earlier two reports dated 01.11.2000 and 16.01.2001 and it has been mentioned only in his third report dated 03.03.2010 being 60 years which too, to a larger extent, supports the age of building stated by plaintiff landlord also.

17. Sri Singhal, learned counsel for the petitioners submitted that when there are to contradictory reports it was incumbent upon the Trial Courts to make a personal inspection of premises but I do not find that such an inspection is mandatory if the courts below can safely form their opinion/satisfaction after perusing different reports and photographs, and are in a position to reach to a particular conclusion. Here both the courts below have reached to the same conclusion after discussing the reports of architects submitted by both the sides and I find no patent error apparent on the face of record showing aforesaid findings contrary or any manifest error therein warranting interference.

18. The scope of judicial review in such matters where the orders of courts below are assailed before this Court in a writ petition under Article 226/ 227 of the Constitution is very limited. 20. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to

see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes.

19. In *D.N. Banerji Vs. P.R. Mukherjee* 1953 SC 58 the Court said:

Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226 and 227 of the Constitution to interfere.

20. A Constitution Bench of Apex Court examined the scope of Article 227 of the Constitution in *Waryam Singh and Another Vs. Amarnath and Another*, and made following observations at p. 571 :

This power of superintendence conferred by article 227 is, as pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee*, , to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

21. In *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, the Apex Court held that this Court has very limited scope under Article 227 of the Constitution and even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

22. For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. (See: *Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu*, ; *Rukumanand Bairoliya Vs. The State of Bihar*, ; *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, ; *Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives*, ; *Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others*, ; *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, ; and *Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others*,).

23. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to upset conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so

unreasonable that no Court could ever have reached them. (See: Mrs. Rena Drego Vs. Lalchand Soni, Etc., ; Chandra Bhushan (Deceased) by Lrs. Vs. Beni Prasad and Others, ; Smt. Savitrabai Bhausahab Kevate and Others Vs. Raichand Dhanraj Lunja, ; and M/s. Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another,).

24. Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling reappraisal of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (See: Union of India and Others Vs. Himmat Singh Chahar,).

25. In Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, , the Hon''ble Apex Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/Courts below as the same is not permissible in proceedings under Articles 226/ 227 of the Constitution.

26. In Mohan Amba Prasad Agnihotri and Others Vs. Bhaskar Balwant Aher (D) Through I.Rs., , the Hon''ble Supreme Court held that jurisdiction of High Court under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by Courts below unless there is no evidence to support findings or the findings are totally perverse.

27. In Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers'' Union and Another, , the Court; observed that it is impermissible for the Writ Court to reappraise evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.

28. In Union of India and Others Vs. Rajendra Prabha and Another, , the Hon''ble Apex Court held that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot reappraise the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

29. Similar view has been reiterated in M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., ; and Ouseph Mathai and Others Vs. M. Abdul Khadir, .

30. In Surya Dev Rai Vs. Ram Chander Rai and Others, , it was held that in exercise of supervisory power under Article 227, High Court can correct errors of

jurisdiction committed by subordinate Courts. It also held that when subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has occasioned, the Court may step in to exercise its supervisory jurisdiction. However, it also said that be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere errors of fact or law unless error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law; or, a grave injustice or gross failure of justice has occasioned thereby.

31. In *Jasbir Singh Vs. State of Punjab*, , the Court said:

...while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. The power of superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions.

32. In *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, , the Court said that power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court. The above authority has been cited and followed in *Kokkanda B. Poondacha and Others Vs. K.D. Ganapathi and Another*, and *Bandaru Satyanarayana Vs. Imandi Anasuya and Others*, .

33. In *Abdul Razak (D) through L.Rs. and Others Vs. Mangesh Rajaram Wagle and Others*, , Apex Court reminded that while exercising jurisdiction under Article 226 or 227, High Courts should not act as if they are exercising an appellate jurisdiction.

34. In *T.G N. Kumar Vs. State of Kerala and Others*, , the Court said that power of superintendence conferred on the High Court under Article 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority 37. In *Commandant, 22nd Battalion, CRPF and others Vs. Surinder Kumar* (2011) 10 SCC 244, Apex Court referring to its earlier decision in *Union of India and Others Vs. R.K. Sharma*, observed that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227.

35. In view thereof, I find no justification warranting interference with the orders

impugned in this writ petition. Dismissed.