

(2006) 02 AHC CK 0253
In the Allahabad High Court
Case No : C.M.W.P. No. 8222 of 2002

Union of India (UOI) and Others

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 23-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 40
Constitution of India, 1950 — Article 226
Provincial Small Cause Courts Act, 1887 — Section 25
Specific Relief Act, 1963 — Section 38, 41
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)

Citation : (2006) 3 AWC 2180

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Ashok Singh, Addl. S.C, for the Appellant; M.K. Gupta and Tarun Verma, JJ., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—By means of present writ petition under Article 226 of the Constitution of India, the petitioners-tenant challenge the order dated 5th December, 2001, passed by the revisional court under the provisions of Provincial Small Cause Courts Act, 1887 (in short "the Act") and the order dated 24th August, 2001, passed by the trial court, whereby the trial court decreed the suit filed by respondent-landlord and directed ejectment of the petitioners-tenant from the accommodation in question, on revision, the revisional court dismissed the revision filed by the petitioners-tenant.

2. The brief facts of the present case are that the respondent-landlord filed a suit for recovery of arrears of rent and ejectment after terminating the tenancy of the petitioners-tenant, who is admittedly the tenant of the accommodation in question. The petitioners-tenant denied the assertion of the landlord that he is in

default of payment of rent and further that the suit is liable to be dismissed as the provisions of the U.P. Act No. XIII of 1972 (in short "Act No. XIII of 1972") are applicable to the accommodation in question. The trial court framed as much as eight issues, which are quoted below:

- (1) Whether the defendants are in arrears of rent since February, 1999?
- (2) Whether there is any cause of action in favour of the plaintiff to file the present suit?
- (3) Whether the plaintiff has served any notice u/s 40 of the CPC and Section 106 of the Transfer of Property Act on the defendants-tenant?
- (4) Whether the suit is undervalued?
- (5) Whether the suit is barred by the provisions of Sections 38 and 41 of the Specific Relief Act?
- (6) Whether the provisions of U.P. Act No. 13 of 1972 are not applicable to the accommodation in dispute?
- (7) Whether the plaintiff has sufficient ground to get the accommodation in dispute vacated?
- (8) Relief, if any, to which the plaintiff is entitled?

3. The trial court after exchange of the pleadings and evidence on record have heard and decided all the issues in favour of the plaintiff. Aggrieved thereby, the petitioners-tenant preferred a revision u/s 25 of "the Act" before the revisional court. Before the revisional court, the petitioners-tenant raised only one ground as to whether the provisions of Act No. XIII of 1972 are applicable to the accommodation in question. It has been argued on behalf of the petitioners-tenant before the revisional court as well as before this Court that since the building in question is old building constructed much before 15th July, 1972, therefore the provisions of Act No. XIII of 1972 are not applicable and the view taken to the contrary by the revisional court and the trial court deserves to be set aside. Learned Counsel for the respondent-landlord argued, as it has been argued before the revisional court that since the building in question is owned by a Trust which runs a Dharmshala, in view of the decision of this Court in the case of *S. Nihal Singh v. VIth Additional District Judge, Saharanpur* and Ors. 1985 ACJ 425, that dharamshala is a public charitable trust which is exempted from the operation of the U.P. Act No. XIII of 1972, thus in view of law laid down by this Court the provisions of U.P. Act No. XIII of 1972 are not applicable to the accommodation in dispute. Learned Counsel for the respondent-landlord further relied on the provisions of Section 21(1)(b) of the Act No. XIII of 1972, wherein it is stated clearly that "exempted from the operation of the Act any building owned or used are used as dharamshala by the landlord, which is a public charitable trust." Since it has been held by this Court, as stated above in the case of *S. Nihal Singh* (supra) that the building in question which is used as

dharamshala will be a building of public charitable trust, therefore in my opinion the view take by the revisional court does not suffer from any error, much less error apparent on the face of record, so as to warrant any interference by this Court In exercise of Jurisdiction under Article 226 of the Constitution of India.

4. In view of what has been stated above, this writ petition has no force and is accordingly dismissed.