
(1984) 12 AHC CK 0035
In the Allahabad High Court
Case No : Writ Petition No. 3122 of 1983

Vidya Ram Pandey

APPELLANT

Vs

Addl.Distt.Judge, Lucknow and others

RESPONDENT

Date of Decision : 11-12-1984

Acts Referred:

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

Citation : (1984) 12 AHC CK 0035

Hon'ble Judges : S.Saghir Ahmad, J

Final Decision : Allowed

Judgement

S. Saghir Ahmad, J.—This is a petition under Article 226 of the Constitution.

2. The petitioner is a tenant of opposite party no. 3 in respect of house no. 80, New Ganeshganj, Lucknow. Opposite party no. 3 who himself lives in a tenanted accommodation, filed an application under Section 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act)" against the petitioner for release of the accommodation in question in his favour on the ground, inter alia, that the accommodation at his disposal was insufficient for his family which consisted of self, his wife, three daughters and a son. It was also stated that the accommodation in dispute which consisted of 5 rooms, 2 kothris, kitchen, courtyard, open roof and 2 verandahs was in occupation of the petitioner, who had also allowed his brother and his family to occupy the said accommodation which was indicative of the fact that the extent of accommodation at the disposal of the petitioner was more than what was required by him. It may be stated that there was previous litigation between the parties which had arisen out of a suit filed by opposite party no. 3 against the petitioner for his eviction on the ground that the petitioner had denied his title. This suit which was for the eviction of the petitioner from the accommodation in question was dismissed and the decree passed by the trial court was upheld by the appellate court as also by this court in Second Appeal no. 352 of 1970

decided on 27101972. It was stated by opposite party no. 3 in para 12 of his release application as under:

?12. That in the previous proceedings, the opposite party no. 1 raised an objection to the effect that a passage and pipe of the disputed house are common with the ownership of opposite party no. 2, who should have been made a party. Hence the applicant has made opposite party no. 2 also as a party in this case to avoid any multiplicity of case.?

3. It was on account of the objection raised by the petitioner that Smt. Dayamayi was impleaded as opposite party no. 2 in the release application.

The application was contested by the petitioner on a number of grounds including the ground that Smt. Dayamayi was coowner and since she had not signed the application, it was not maintainable. This objection was overruled by the Prescribed Authority as also by the Addl. District Judge and, in my opinion, the findings in that regard are not assailable.

5. The petitioner has raised a plea in his affidavit dated 821974 filed before the Prescribed Authority that opposite party no. 3 owned several houses including two houses situate at Arya Nagar and Paandariba, Lucknow. He also pleaded that only first floor of the accommodation in question was habitable and the accommodation on the ground floor had become damp and was not in a habitable state.

6. The Prescribed Authority on a consideration of the evidence on record came to the conclusion that the need of opposite party no. 3 for the accommodation in question was genuine and bonafide but he felt that the need of opposite party no. 3 would be satisfied by releasing in his favour only a part of the accommodation, namely, accommodation on the ground floor and leaving the accommodation on the first floor with the petitioner. The Prescribed Authority, consequently, by his judgment and order dated 5101978 allowed the release application only in respect of the ground floor accommodation of the house in question. Against this judgment two appeals were filed before the District Judge, Lucknow. The petitioner challenged the order of the Prescribed Authority on the ground that even a part of the accommodation in question could not be released in favour of opposite party no. 2 whose need for additional accommodation Was not genuine, particularly when he owned several other houses in the city of Lucknow. The other appeal was filed by opposite party no. 3 who claimed that first floor accommodation of the house in question should also have been released in his favour. Both the appeals were disposed of by the Addl. District Judge by the impugned judgment dated 29111982. He dismissed the appeal filed by the petitioner and allowed the appeal of opposite party no. 3. He released the whole of the accommodation in question in favour of opposite party no. 3 allowing a year's time to the petitioner to vacate the house in question. It is in these circumstances that the present petition has been filed.

7. Learned counsel for the opposite party no. 3 has raised a preliminary objection

that the petition having been filed beyond the period of 90 days should be dismissed on the ground of laches. I am not impressed by the arguments. The judgment was delivered by the Additional District Judge, Lucknow on 29/11/1982. The writ petition was filed in the court on 27/5/1983 i.e. after about two months of the expiry of the period of 90 days from the date of judgment of the Addl. District Judge, Lucknow. By an order dated 26/11/1983 notices were directed to be issued to opposite party no. 3 to show cause why the petition be not admitted. Opposite party no. 3 has since filed his counter affidavit wherein he has stated that the petitioner was not entitled to the discretion of this court under Article 226 of the Constitution for the extension of time in filing the writ petition. It may be stated that the petitioner in para 53 of the writ petition has stated as under:

¶53. That the writ petition could not be filed earlier in view of the fact that the record which was with the counsel who had conducted the case before the learned Prescribed Authority as well as the Appellate Authority could not be traced out in his office despite best efforts. The record was only traced on 18/5/1983 and thereafter this writ petition was prepared by the counsel for the petitioner and is now filed without any loss of time.?

8. This has been controverted by opposite party no. 3 in his counter affidavit in which he has stated as under :

¶That in reply to para 53 of the writ petition it is stated that it has not been explained that when the copy was received on 28/1/1983 then on what date the petitioner gave it to h. s counsel and if was received by the petitioner's counsel then on what date the petitioner was informed of the receiving of the copy of judgment and on what date the petitioner instructed his counsel for filing the petition and on what date the copy was lost and what efforts were made to trace the same within limitation has not been stated nor every day's delay has been explained by showing a sufficient reason and cause for not approaching the court within time. The remedy under Article 226 of the Constitution of India is discretionary and is to be exercised only when there is nonexercise of jurisdiction in accordance to the provisions of the Act.?

9. The parties have also filed rejoinder affidavit and supplementary affidavits. The petition has been pending in this court since 27/5/1983 and has been directed to be heard and disposed of finally. It would not, therefore, be in the interest of justice to dismiss the petition on the ground of laches, as in my opinion, the petitioner has not been guilty of any deliberate delay on his part.

10. Coming to the merits of the case, it will be noticed that the learned Addl. District Judge has not considered the impact of the finding recorded by the Prescribed Authority that the need of the landlord, opposite party no. 3, would be satisfied by releasing in his favour only a part of the accommodation in question. This finding was recorded by the Prescribed Authority on the basis of the provisions contained in Rule 16(d) on the rules framed under the Act. The partial release of the accommodation in occupation of a tenant is permissible under

Section 21 of the Act. It is not necessary in every case to evict the tenant from the whole of the accommodation. Since in the instant case the Prescribed Authority adverted his mind to this aspect of the matter and was of the opinion that need of the landlord would be satisfied if a part of the accommodation was released in his favour, it was necessary on the part of the Addl. District Judge to have considered that matter in the light of rule 16(d) of the rules framed under the Act. It has been pointed out to me that the Addl. District Judge had considered that matter and observed in his judgment as under :

?It was not disputed before me that partial release of the premises will not be good and will not serve the purpose either of the landlord or the tenant. Hence the entire releases is either to be released or the release application is to be rejected in toto.?

11. The portion extracted above does not make any sense and an incomprehensible observation has been made by the Addl. District Judge that partial release of the accommodation will not be good and will not serve the purpose either of the landlord or the tenant. The question whether partial release of the accommodation in question will serve the need of the landlord had to be considered in the light of the evidence on record. It had not to be considered whether partial release ?will be good or will not be good?. The need had to be established with respect to the additional accommodation and not with regard to the release being good or bad. I at least cannot subscribe to the view expressed by the Addl. District Judge.

12. There is another glaring infirmity in the judgment passed by the Addl. District Judge. It will be noticed that during the pendency of the appeal, the Addl. District Judge had issued a commission for the inspection of the three houses i.e. the house in question and the houses at Aryaj Nagar and Paandariba. The commissioner's report are annexures 7,8 and 9 to the writ petition. These reports have not been considered by the Addl. District Judge and he also does not appear to have considered any other affidavit apart from the affidavit dated 3181982 filed by opposite party no. 3 at the appellate stage. That being so, the findings recorded by the Addl. District Judge cannot be sustained.

13. The writ petition is, accordingly, allowed. The judgment and order dated 29.12.82 passed by the Addl. District Judge, Lucknow is hereby quashed and the case is remanded to the District Judge, Lucknow who may either himself dispose of the appeals afresh or transfer it to any other Addl. District Judge for fresh hearing and disposal in the light of the observations made above and in accordance with law. The parties shall appear before the District Judge on 211985. There is on order as to costs.

(Petition allowed).