
(2012) 11 AHC CK 0028
In the Allahabad High Court
Case No : Writ- A. No. 13835 of 1985

Vishambhar Dayal and Others

APPELLANT

Vs

VII Addl. District Judge and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(1)(b), 21(1)(b), 24

Citation : (2013) 4 ALJ 347

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : S.N. Agrawal, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Neeraj Agrawal, learned counsel for the petitioner and perused the record. The three petitioners namely Vishambhar Dayal, Om Prakash Singhal and Nathoo Singh are tenants of three different shops adjoining to each other situated at Mohalla Jogipada, Qasba Debai, District Bulandshahar. The respondent Nos. 2 to 17, owner of shops filed application dated 15.10.1981 u/s 21(1)(b) Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") alleging that shops are more than 100 years old and now in a dilapidated condition therefore, should be directed to be vacated by petitioner-tenants so that the same may be demolished and reconstructed. The application was registered as Rent Case No. 78 of 1981.

2. Besides the three petitioners, application in fact included one more tenant namely Sahkari Kraya Vikry Samiti Ltd. With regard to its dilapidated condition, landlord supported the application with the report of an Engineer (Architect) Sri Chandra Kant Saxena, who had made inspection of the premises on 2nd August, 1981 and submitted report on 31.8.1981. The copy of report of Sri Saxena has been filed as Annexure 3 to the writ petition, which says that building is in a very

bad condition. Sri Saxena also filed his affidavit dated 20.3.1982 in support of his report.

3. Contradicting the case set up by respondent-landlords, petitioners submitted a report of Sri C. Singh, Retired Civil Engineer, Khurja, who said that the building has not been properly maintained and is out of repair for a pretty long time resulting in damage to some part thereof but it is not in dilapidated condition or dangerous but only proper repair can make it safe so as to be utilized for many years to come. The exact words of the expert are:

The building seems to be out of repairs for a pretty long time which has resulted in crumbling down of plaster here and there and at these places there is corrosion in bricks. A few wooden beams of the shops have also bent or there edge eaten up they have been given support from below, but much beams can be very easily replaced and crumbled plaster can be replastered with cement and sand.

4. He also filed affidavit in support of his report. The Prescribed Authority rejected application observing that though some part of disputed building has fallen, the notice of landlord shows that two rooms in the building have already fallen, yet that by itself would not render the building dilapidated. Besides, there is no compliance of Rule 17 of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter referred to as "Rules, 1972") and therefore application u/s 20(1)(b) of Act, 1972, cannot be allowed. He consequently rejected the same vide judgment dated 4.10.1982.

5. The landlord filed Rent Control Appeal No. 39 of 1982 and also filed additional evidence showing sanction of map by municipal authorities for reconstruction of the building. The Appellate Court found, when a building is in a bad condition and needs major repair, or started decay due to its old construction etc., it would satisfy the term "dilapidated condition" and consequently after looking into the evidence and material on record, recorded finding that building is in dilapidated condition and needs demolition and reconstruction, as prayed by the landlord. The Appellate Court consequently allowed application vide impugned judgment dated 21.8.1985.

6. Some of the findings recorded by Appellate Court demonstrating upon condition of the building would be appropriate to be referred herein:

6....Mostly the external walls are out of plumb and out of plumb walls are very dangerous and may fall at any time. Few part of the building became flat in rainy days. The wooden beams have completed their live and have bend down to a dangerous state. Though all the witnesses of respondents have stated that the building is not in a dilapidated condition even then C. Singh who is the Engineer has stated in his report 31A/12 that the building seems to be out of repair for a pretty long time which has resulted in crumbling down of plaster here and there and there is corrosion in the bricks and few wooden beams have also bent and edges of beams have been eaten up and they have been given support from

below goes to show that the building is old one and is in a dilapidated condition. This fact gets the support by the admission made by the respondent No. 4 by his notice dated 16.8.1971 where he has admitted that the major portion of this house has fallen down and is damaged. No explanation has been given by the respondent No. 4 by his evidence as to why he has stated this fact in the said notice. Respondent No. 4 by his notice 24/A has also stated that the building is in a bad condition which can fall at any time. The building is double storied, and some rooms on the ground floor has fallen down then it is also in the public interest to release the disputed property for reconstruction.

7. There is nothing placed before this Court to demonstrate or show that these findings are perverse or there is any manifest error on the part of Appellate Court in recording the above findings. In para 3 of the writ petition, petitioner himself has stated that shops were in dilapidated condition. The first three lines I may reproduced as under:

That the petitioners filed objection to the application. It was stated that the shops were in dilapidated condition.

8. The above findings leaves no manner of doubt that building satisfy the requirement of statutory provision namely that it is in dilapidated condition. 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.

9. 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 basic 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.

10. 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.

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

12. Rule 17(1)(a) of U.P. Urban Buildings 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.

13. In the present case, besides the fact that disputed building is almost more than a century and quarter old, some part thereof has already damaged or collapsed. The Appellate Court has also considered the report of C.K. Saxena, Architect Engineer verifying dilapidated condition of disputed building. The damage to the building is also admitted by the tenant but he tried to explain that damage was not for natural reasons but attributable to the landlord, but this explanation could not be proved by him. Therefore, Appellate Court, after appreciating the evidence and all other relevant factors and considerations felt it satisfied that building in dispute is in dilapidated condition and required to be demolished for reconstruction.

14. It may also be mentioned at this stage that the defendant No. 4 i.e. the fourth tenant, who was also one of the party in the above proceedings, had filed separate writ petition No. 13834 of 1985 challenging the same order passed by the Appellate Court and the said writ petition has been dismissed by this Court vide judgment dated 08.10.2012.

15. In the present case the appellate Court has also satisfied itself that the landlord is in the position to make reconstruction of the building.

16. In the above facts and circumstances, I do not find any manifest error or illegality in the impugned judgment warranting interference in the impugned order. However, it goes without saying that right of tenants u/s 24 of Act, 1972 are intact and shall be duly observed by respondent-landlord and/or by the concerned authorities, as the case may be. Subject to above observations, the writ petition is dismissed.