

Jagdish Prasad Vs. Ist Additional District Judge, Mathura and Others

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Court : Allahabad

Decided On : Dec-06-1999

Reported in : 2000(1)AWC706

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1) - Rule 18

Appeal No. : C.M.W.P. No. 17608 of 1987

Appellant : Jagdish Prasad

Respondent : ist Additional District Judge, Mathura and Others

Advocate for Def. : S.C. and ;Janardan Sahai, Adv.

Advocate for Pet/Ap. : Ram Jee Saxena, Adv.

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the order of Prescribed Authority dated 3.5.1985 allowing the application filed by the landlord respondent under Section 21 (1) (a) and (b) of U. P. Act No. 13 of 1972 on the allegation that he bona fide requires it for his personal use. The application was contested by the petitioner.

The Prescribed Authority has allowed it by his order dated 3.5.1985 and this order has been affirmed by the Appellate Authority on 28.8.1987.

2. I have heard Sri Ramji Saxena, learned counsel for the petitioner and Sri Janardan Sahai, learned counsel for the respondents.

3. Briefly stated the facts are that respondent No. 3 purchased the shop in question from its erstwhile owner on 26.6.1972. He filed application under Section 21 (1) (a) and (b) of the Act against the petitioner on 31.5.1977 on the allegation that the shop in question is in dilapidated condition and requires demolition and reconstruction. It was further stated that after demolition of the shop, he will reconstruct it and utilise it for residential purpose as the accommodation with him for his family members is insufficient. The Prescribed Authority rejected the application on 28.3.1978. Respondent No. 3 preferred appeal and the appeal was dismissed on 27.7.1978. After about three years, respondent No. 3, again filed application for release under Section 21 (1) (a) and (b) of the Act on the allegation that the condition of the building has further deteriorated and the members of family have increased and, therefore, the disputed accommodation be released for demolition and reconstruction and for his bona fide need for residential purpose. The Prescribed Authority on consideration of material evidence on the record allowed the application on 3.5.1985 and released the disputed accommodation. The petitioner preferred an appeal against this order. The Appellate Authority has dismissed it on 28.8.1987.

4. Learned counsel for the petitioner has submitted that earlier the application having been filed on the same grounds and having been rejected, the findings recorded in the earlier proceedings will operate as res Judicata. He has placed reliance upon the decision in Dr. Sita Ram Gandhi v. IVth Additional District Judge, Meerut and another, 1984 ALJ 48, wherein it was observed that Rule 18 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972 (In short the Rules) though restricts a landlord from moving a second application within a year of the dismissal of the first application but it does not rule out the applicability of the principle of res Judicata. The principle behind the res judicata is different than one which led the Legislature to frame Rule 18. The two things should not be

mixed up and confused.

5. This case was explained and distinguished in *Ram Lila Society, Kanpur v. Ind Additional District Judge, Kanpur and others*, 1986 (2) ARC 49, wherein it was held that if there are additional reasons to file another application, after one year, the second application cannot be rejected merely on the ground that earlier application was dismissed.

6. In *Sita Ram Gandhi's case*, (supra), the Supreme Court itself made clear that the changed circumstances may be taken into account in deciding the second application for release made by the landlord.

7. In the matter of need as well as hardship, the time is very important factor. The changes occur each day and each month. It is on this principle Rule 18 was framed which provides that where an application of the landlord against the tenant for eviction filed under Section 21 (1) (a) of the Act has been finally allowed or rejected on merits, if second application is filed within a period of six months, the Prescribed Authority shall accept the findings in those proceedings as conclusive. This Rule engrafted the principle of *res judicata* for a fixed period because after some period, the changes may itself occur.

8. On the facts of the present case, it was found that the condition of the building further deteriorated and the need of the landlord further increased. Both the authorities have recorded concurrent finding that the disputed accommodation is in dilapidated condition and is required by the landlord for his personal need. There is no legal infirmity in the findings recorded by them.

9. I do not find any merit in the writ petition. It is accordingly dismissed.