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Court : Allahabad

Decided On : May-11-2001

Reported in : 2001(2)AWC1618

Judge : B.K. Rathi, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1) and 22; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 7409 of 2000

Appellant : Santosh Kumar Agarwal

Respondent : Special Judge/Addl. District Judge, Allahabad and Others

Advocate for Def. : Ravi Kant Jain, Adv. and ;S.C.

Advocate for Pet/Ap. : R.G. Padia and ;P. Padia, Adv.

Judgement :

B.K. Rathi, J.

1. The dispute is regarding the small shop. That Sri Dwarika Prasad was the tenant of the said shop. After his death, the petitioner and respondent Nos. 7 to 15

being the heirs of Dwarika Prasad became the tenant of the same.

2. The landlord moved an application for release under Section 21 (1) (b) of U. P. Act No. XIII of 1972 alleging that the shop is in dilapidated condition and is required for demolition and new construction. The application for release was rejected by order dated 28.4.1988 by the prescribed authority. Annexure-4 to the writ petition. Against that order, the landlord preferred appeal under Section 22 of the Act being appeal No. 104 of 1998 which have been allowed on 27.1.2000 by Additional District Judge, Allahabad by judgment. Annexure-5 to the writ petition. The petitioner, therefore, has approached this Court Invoking the extraordinary jurisdiction of this Court under Article 226 of the [Constitution of India](#).

3. I have heard Dr. R. G. Padia. Senior Advocate for the petitioners, learned standing counsel and Sri Ravi Kiran Jain, Senior Advocate for the respondent-landlord.

4. It has been argued that the judgment of the appellate court is not a judgment in the eye of law as he has not considered the conclusion arrived and reasons given by the trial court. That he has himself scrutinized the evidence and arrived at his own conclusions without considering the reasons and conclusions arrived by the trial court. That it is not permissible for the appellate court. It is contended that there is no evidence that the shop is in dilapidated condition.

5. Next it is contended by the learned counsel for the petitioner that the shop in dispute is on the outer platform of the house. There is no wall on the north side and there is only a shutter. On the western side, there is no wall of the house of the landlord but the wall is of the house of Nand Lal which is not to be alleged to be dilapidated condition. On the eastern side, there is a small wall. There is only one wall in the southern side, which is of the landlord. That there is no evidence that even this wall is dilapidated. That the shop is tin-shaded.

6. It has been argued by Dr. R. G. Padia that the landlord filed the report and affidavit of Sri G. S. Birdi, Chartered Engineer and Consulting Civil Engineer, in support of the allegation that the shop in dispute is dilapidated. The copy of affidavit of Sri G. S. Birdi, is Annexure-8 to the writ petition. Learned counsel for

the petitioner has taken me through the affidavit and argued that in this affidavit. It has not been mentioned that it is in a dilapidated condition. It is, therefore, contended that there is no evidence that the shop in dispute is in dilapidated condition. That the petitioner has filed the report and affidavit of Sri B. C. Mittal, Approved Valuer and Consulting Engineer which show that the shop is in fit condition,

7. I have considered the arguments and the affidavit and report of Sri G. S. Birdi. No doubt the argument is correct. The affidavit does not show that the shop in dispute is in dilapidated condition. However, these facts are not material. In this case, it is admitted that the shop in dispute is on the outer platform. The back portion of the house is already fallen. The front portion is also in dilapidated condition and on that ground, the order for release from the possession of the tenant has already been passed. The disputed shop is in a small outer portion of the house. Therefore, it is not necessary that it should also be in dilapidated condition for release under Section 21 (1) (b) of the Act. It appears that the entire house cannot be re-constructed unless this shop is vacated.

8. Learned counsel for the landlord has referred to Phool Chand Prasad and another v. IInd Additional District and Sessions Judge. Azamgarh and another, 1982 ARC 766. In this case, single Judge of this Court has held that if the entire building except a part of it, is found to be in dilapidated condition, Section 21 (1) (b) is attracted and the entire building should be released. The other authority referred to is Ram Autar v. District Judge. Pratapgrah and another. 1986 (2) ARC 402. It was observed in this case that where only a small part of entire building is not in dilapidated condition but the other part of the building is in dilapidated condition, the entire building should be released.

9. In this case, there is finding by the Courts below that part of the building is in dilapidated condition. Therefore, the part in the possession of the tenant is liable to be released under Section 21 (1) (b) of the Act.

10. Considering the argument, I, therefore, do not find any ground to interfere in the order of release passed by the Court below.

11. The writ petition is therefore, dismissed. The stay order, if any, is hereby vacated.

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