

Abdul Hai Vs. liird Addl. District Judge, Basti and Others

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Court : Allahabad

Decided On : May-18-2001

Reported in : 2001(3)AWC1783

Judge : Mr. U.S. Tripathi, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 3, 21, 21(1) and 30; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rule - Rule 17, 17(1) and 17(4); [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 13469 of 2001

Appellant : Abdul Hai

Respondent : iird Addl. District Judge, Basti and Others

Advocate for Def. : S.K. Lal, Adv.and ;S.C.

Advocate for Pet/Ap. : Salil Kumar Rai, Adv.

Disposition : Writ Petition accordingly allowed

Judgement :

U.S. Tripathi, J.

1. The above writ petition has been filed for issuance of a writ, order or direction in the nature of certiorari quashing the judgment and order dated 14.3.2001 passed by Illrd Additional District Judge, Basti in Civil Appeal (Rent Appeal) No. 35 of 2000.

2. The respondent Nos. 2 and 3, landlords, filed an application against the petitioner, tenant under Section 21 (1) (b) of U.P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972). hereinafter called the Act. for release of shop, which was part of premises No. 168 Ka. Ward No. 6 situate in Basti town on the ground that it was in dilapidated condition and required fresh construction mainly on the ground that initially premises in question was joint property of their father and other co-sharers. After death of their father, suit No. 115 of 1989 was filed for partition, which was decided in terms of compromise dated 21.10.1992. According to compromise, the shop in question came in the share of landlords. It was also agreed that the petitioner/tenant would be paying rent to the mother of respondent Nos. 2 and 3. The petitioner/tenant deposited rent under Section 30 of the Act. which was withdrawn by mother of respondent Nos. 2 and 3. After death of their father, the financial condition of respondent Nos. 2 and 3 became miserable and they had no source of Income. Southern part of the premises in which the shop in question was situate was in dilapidated condition and it caused danger to Its Inhabitants and it required reconstruction after demolition. The mother of respondent Nos. 2 and 3 had submitted plan before the prescribed authority for construction of new house, but the petitioner/tenant was not vacating, hence the application.

3. The above application was contested by the tenant/petitioner on the ground that no doubt the respondent Nos. 2 and 3 were owners of the premises in question, but they were not landlords. Smt. Pushpa Agarwal. the mother of respondent Nos. 2 and 3 was the landlady, who was realising rent. The petitioner/ tenant had deposited rent under Section 30 of the Act. which was withdrawn by mother of respondent Nos. 2 and 3. Since the application was not moved by the landlord, it was not maintainable. He further contended that the premises in question was not in dilapidated condition and the respondent Nos. 2 and 3 have no sufficient means to bear the expenses of construction.

4. The learned prescribed authority on considering the evidence of the parties held that it was admitted to the petitioner/tenant that respondents were owners of the premises in question and. therefore, they were entitled to move the application. It further held that the evidence on record did not prove that building was in dilapidated condition and, therefore, the application was liable to be rejected. With these findings, he rejected the application.

5. Aggrieved with above order of prescribed authority, the respondent Nos. 2 and 3 filed Rent Appeal before the appellate court. The appellate court also held that since the petitioner/tenant has admitted respondent Nos. 2 and 3 as owners of the premises in question, the application on their behalf was maintainable. It further held that according to report of Sri A.K. Srivastava. the house was in dilapidated condition. The mother of respondent Nos. 2 and 3 had submitted plan for sanction before the Nagar Palika Authorities and she has also means for meeting the expenses of reconstruction. With these finding it allowed, the appeal, set aside the finding of the prescribed authority and allowed the application of respondent Nos. 2 and 3.

6. The above order of appellate court had been challenged in this writ petition.

7. Heard the learned counsel for the parties and perused the record.

8. Both the parties counsel agreed that this petition be finally disposed of at an early date. Accordingly, they were given time to exchange affidavits and case was listed for final hearing.

9. The learned counsel for the petitioner raised following point in this writ petition :

(1) Though the respondent Nos. 2 and 3 were owners of the premises in question, yet they were not landlords and. therefore, the application on their behalf for release of the premises was not maintainable.

(2) There was no compliance of Rule 17 of the Rules as there was no finding on financial capacity of the landlords.

(3) There was no finding that premises in question required demolition.

The above points are taken up inseriatim.

10. It was contended by the learned counsel for the petitioner that though the premises in question had come into share of respondent Nos. 2 and 3 in partition suit by virtue of decree, they could only become owners, but not the landlords. That the mother of respondent Nos. 2 and 3 was realising rent of the premises in question and, therefore, she was landlady. That for purposes of Section 21 (1) (b) of the Act. the application had to be moved by the landlord and not the owner and since no application was moved by the landlord. the mother of the respondent Nos. 2 and 3, the application was not maintainable. On the other hand, learned counsel for respondent Nos. 2 and 3 contended that there is categorical finding of both the Courts that the petitioner/tenant had admitted that respondent Nos, 2 and 3 were owners of the premises in question and therefore, the application was maintainable.

11. Relevant provisions of Section 21 (1) (b) of the Act reads as under :

(1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely :

(a)

(b) that the building is in a dilapidated condition and is required for purposes of demolition and new construction.

12. 'Landlord' as defined in Section 3 (j) of the Act. In relation to a building, means a person to whom its rent is or if the building were let. would be payable and includes. except in clause (g), the agent or attorney, or such person.

13. This Court held in case of Ram Chandra Gupta v. VIIIth Additional District Judge, Kanpur and others, 1982 ARC 236. that an application under Section 21 of the Act is concerned only with the right of landlord and not of owners of the property, who are not proved to be landlords . An owner may not be landlord and landlord may not be an owner. As required by Section 21 of the Act, application for release can only be moved on behalf of landlord and not the owner.

14. The prescribed authority as well as appellate authority have held that since the petitioner/tenant had admitted the respondent Nos. 2 and 3 as owners of the premises in question, the application on their part was maintainable. The contention of the petitioner/tenant was that no doubt the respondent Nos. 2 and 3 were owners of the premises in question, but they were not landlord and landlord was their mother Smt. Pushpa Agarwal, who was realising rent from them. He further contended that the tenant had deposited the rent under Section 30 of the Act, which was withdrawn by the mother of the respondent Nos. 2 and 3. The respondent Nos. 2 and 3 have also alleged in paragraph No. 5 of the application under Section 21 of the Act that it was decided on the basis of compromise that the petitioner/tenant would be paying rent to their mother. That the petitioner/tenant deposited the rent of the premises in question under Section 30 of the Act, which was withdrawn by mother of respondent Nos. 2 and 3. This fact was also admitted to Smt. Pushpa Agarwal, mother of respondent Nos. 2 and 3 in her affidavit.

15. Therefore, the respondent Nos. 2 and 3 had neither alleged nor proved that they are landlords of the premises in question.

16. The learned counsel for respondent Nos. 2 and 3 contended that since the respondent Nos. 2 and 3 were earlier minors, their mother was realising the rent on their behalf and not in her individual capacity. This fact is neither pleaded in the application, nor there was any evidence and it was also not raised before the prescribed authority or appellate authority, which had not recorded any finding on this fact. As such, this new factual point cannot be raised in this petition under Article 226 of the [Constitution of India](#).

17. It shows that prescribed authority as well as appellate authority had committed gross illegality in holding that since the respondent Nos. 2 and 3 are admittedly owners of the premises in question, the application under Section 21 of the Act is maintainable on their behalf, without recording any finding that they are landlords also.

18. Rule 17 of the Rules says as under :

'Before allowing an application for release of a building under Section 21 (1) (b) on the ground that it is required for purposes of demolition and new construction. the prescribed authority shall satisfy itself.

(i) that the building requires demolition ;

(ii) that a proper estimate of expenditure over the proposed demolition and new construction has been prepared :

(iii) that a plan has been duly prepared and conforms to the bye-laws or regulation of the local authority or other statutory authority under any law in that behalf for the time being in force ; and

(iv) that the landlord has the financial capacity for the proposed demolition and new construction.'

19. The learned counsel for the petitioner contended that the finding recorded by the prescribed puthority as well as appellate authority was simply that the building was in dilapidated conditions, but the dilapidated condition of the building itself is not sufficient to allow the application under Section 21 (1) (b) as it has also to be considered by the prescribed authority that the building required demolition as required by Rule 17 (1) of the Rules. It has been held by this Court in the case of Pyare Lal v. IVth Additional District Judge, Bijnor and others, 1980 ARC 240, that the requirements of Rule 17 arc mandatory and the prescribed or appellate authority has to find that the building 'requires demolition'. The prescribed authority has not considered the applicability of Rule 17 (1) at all while the appellate authority had noted the contents of Rule 17 (1) and thereafter discussed the question where the premises were or were not in dilapidated condition. After considering the material, it has recorded the finding that it is, therefore, a dilapidated building and requires reconstruction . after demolition and the landlord had made compliance of Rule 17. The above observations of the appellate authority shows that it equated compliance of Rule 17 (1) with the dilapidated condition of the building. The trend of the finding is that if a building can be found to be dilapidated, it would follow that it requires demolition. This is notcorrect. The connotation of the phrase 'requires demolition' is clearly not the same as of 'It

required for the purposes of demolition and reconstruction' which occurs in Section 21 of the Act. Indeed if it were co-extensive with the meaning of either of the two conditions in the Section there would be no need to provide this third condition by a rule. The fact that 'requires demolition' is more objective than is 'required for the purposes of demolition and reconstruction' is clearly brought out in a number of decisions relating to provisions under the various Rent Control Acts permitting release where landlord bona fide required the premises for reconstruction. It was emphasised in these cases that the landlord's bona fide requirement for reconstruction was not the same thing as that the building required demolition and reconstruction. The words in Section 21 (1) (b) are slightly different from those in the statutes considered in the above cases but in substance the phrase is the same.

20. The appellate authority and the prescribed authority in the instant case have simply recorded that building was in dilapidated condition as mentioned in the report of Commissioner, but it has not recorded finding that building also required demolition.

21. Rule 17 (4) requires that landlord has the financial capacity for the proposed demolition and new construction. In this case, the appellate authority has not considered the financial condition of the petitioner, but has held that the mother of the petitioners had capacity for the proposed demolition and construction. As mentioned above, the prescribed authority and the lower appellate authority have held that the application on the part of respondent Nos. 2 and 3 was maintainable and, therefore, it had to consider the financial capacity of respondent Nos. 2 and 3 and not of the mother of the respondent Nos. 2 and 3. Moreover, in their petitions. the respondent Nos. 2 and 3 have alleged in paragraph 6 that their financial condition was very poor and they had no source of income. They had also mentioned that their mother had submitted a plan for sanction by the Nagar Palika Authorities. It is also mentioned in the affidavits of Amit Kumar and Sumit Kumar. respondent Nos. 2 and 3 that they had no other source of income except earning through a small shop, the Income of which was not sufficient to maintain themselves and their mother. Thus, there is no finding recorded by the courts below that the respondent Nos. 2 and 3 had financial capacity for the proposed

demolition and new construction.

22. In this way. the findings recorded by the prescribed authority as well as appellate authority are illegal and perverse and against the requirement of Section 21 (1) (b) and Rule 17 and, therefore, these findings cannot be sustained. The petition thus succeeds.

23. The writ petition is, accordingly, allowed. The order of the appellate authority dated 14.3.2001 is hereby quashed and the order of prescribed authority dated 23.5.2000 is restored.

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