

Peer Mohammad Vs. District Judge, Jalaun and Others

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Court : Allahabad

Decided On : Jan-21-2000

Reported in : 2000(2)AWC1466

Judge : Shitla Prasad Srivastava, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 3, 3(1) , 21 and 21(1,2); [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 16578 of 1995

Appellant : Peer Mohammad

Respondent : District Judge, Jalaun and Others

Advocate for Def. : S. C. and ;Namwar Singh, Adv.

Advocate for Pet/Ap. : M. A. Qadeer, Adv.

Judgement :

Shitla Prasad Srivastava, J.

1. This writ petition under Article 226 of the [Constitution of India](#) has been filed by the petitioner for quashing the order dated 23.5.1995 (Annexure-12 to the writ petition) passed by the respondent No. 1 and further for issuance of a writ commanding the respondents not to give effect and not to implement the

impugned order and not to evict the petitioner from property in dispute in pursuance thereof.

2. Brief facts, as stated in the writ petition, are that the contesting respondent Nos. 2 to 26 claiming themselves to be the landlord of the premises in question filed an application under Sections 21 (1) (a) (b) and 2 of the U. P. Act No. XIII of 1972 (hereinafter referred to as the Act). It was alleged in the application for release that the heirs of Abdul Gafoor had let out one room and open land measuring 10 feet to the petitioner but the petitioner has wrongly claimed in his tenancy 60 feet 85 feet land along with one room and chhappar. It was further pleaded that there was a family settlement between the landlords and they set up a claim of bona fide need and sought relief under Section 21 (1) (a) (b) of the Act. The application of the landlord was contested by the petitioner on the ground that the applicants have no right to file the release application nor their need is genuine nor the building in dispute is in dilapidated condition. The opposite parties had filed affidavit of Abdul Hameed son of Abdul Shakoor dated 14.12.1987, affidavits of Mohammad Saleem, D. C. Dubey, Junior Engineer, Abdul Rashid, Khursheed Ahmad, Mohammad Alim. On the other hand, the petitioner also filed affidavit of himself. Mohammad Naim and Abdul Hameed.

3. The prescribed authority also appointed Advocate-Commissioner who had submitted his report 67C and map. The prescribed authority considered the evidence available on record and rejected the release application on 21.7.1994 with the finding that the landlord has failed to establish the bona fide, need and building in dispute has fallen down therefore, the application is not maintainable.

4. Aggrieved by the aforesaid Judgment and order of the prescribed authority, the contesting respondents preferred an appeal being Rent Appeal No. 17 of 1994, which was allowed on 23.5.1995. The petitioner has challenged this order.

5. Sri M. A. Qadeer, learned counsel for the petitioner has urged that the appellate court has wrongly observed that the landlords have been evicted on 4.10.1980 in Execution Case No. 11 of 1980, arising out of J.C.C. Suit No. 48 of 1972. His submissions are that there was no documentary evidence to the effect that there was any family settlement between the co-landlords on 1.1.1979. Learned counsel

for the petitioner has further urged that the respondent No. 1 has wrongly observed that the petitioner has purchased property in the year 1972 whereas the property was sold in the year 1982. His submission is that so far as the property purchased by the petitioner in the name of his wife on 21.2.1983 is concerned, the same is not in the possession of the petitioner but is in the possession of his sons, namely, Nafis, Anwar and Azad. It is further submitted that the landlords did not lead any evidence that they have complied with the mandatory provisions of Rule 17 framed under the Act and the opposite parties had neither submitted any sanctioned map nor estimate of expenditure to be incurred in the demolition and construction nor lead any evidence to the effect that they had possessed of sufficient means to spend in demolition and fresh construction. Sri Qadeer further contended that the appellate court completely ignored the inspection report and map prepared by the Commissioner appointed by the prescribed authority therefore, the findings recorded by him suffer from error apparent on the face of record.

6. A counter-affidavit was filed by the contesting respondents. In paragraph 11 of the counter-affidavit, it is stated that the landlord respondents were evicted in Execution Case No. 11 of 1980 from the house in question on 4.10.1980. It is also stated that dakhnama was also filed and the document of family settlement was also submitted which were considered by the appellate court. A finding of fact has been recorded, therefore, the finding of fact cannot be interfered in the writ jurisdiction. It is further stated in the counter-affidavit that the property purchased by the petitioner in the name of his wife who sold the same during her illness was not proved by the petitioner and which was rightly disbelieved by the Appellate Court. It is further submitted in the counter-affidavit that the landlord-respondents have fully complied with the Rule 17 framed under the Act as they have filed sanctioned map and estimate of expenditure and their evidence about the financial capacity and means to raise the constructions which was fully considered by the Appellate Court. It is further submitted that the petitioner had an alternative accommodation and also owner of a truck and has sufficient source of income.

7. A supplementary counter-affidavit has also been filed. Along with the supplementary counter-affidavit, the Judgment of the Prescribed Authority has

been filed. A rejoinder-affidavit has been filed by the petitioner. In para 11 of the rejoinder-affidavit, it is denied that the landlords were evicted from their rented house in Execution Case No. 11 of 1980. It is also denied that the petitioner has got alternative accommodation.

8. A supplementary counter-affidavit was filed by the respondents annexing therewith a certified copy of the release application and affidavits of Abdul Rashid and Mohammad Salim. In reply to the said supplementary counter-affidavit, a supplementary rejoinder-affidavit has also been filed.

9. I have heard the learned counsel for the parties and have also perused the records. The prescribed authority held that now the disputed property is in the shape of land and Section 21 of the Act will apply only after reconstruction of a building, the application for release was not maintainable, the application was rejected. The appellate court observed that the prescribed authority did not record any finding about the comparative hardship or the bona fide requirement and the appellate court held that the landlords have been evicted from the house in Execution Case No. 11 of 1980 in which they were living and only property they have is the property in dispute. The appellate court also observed that only point is whether the building requires demolition or not. Considering the Amin's report dated 26.4.1988 wherein it is mentioned that the bamboos and beams of the room and khaprail were in a dilapidated condition, he has also observed that on 27.9.1990 an application was moved by the applicants that the room under the tenancy in question had fallen down on 26.9.1990 due to rains in the morning. He had also considered the Advocate Commissioner's report who had submitted the report to the effect that the room Aa, Ba. Sa. Da was found fallen at the time of inspection and that its material was lying hither and thither which has been shown by him in the map, the appellate court observed that now the building has fallen down. The appellate court ultimately held that the findings of the prescribed authority that the Act does not apply is misconceived as on the date of application the building was in dilapidated condition. He further held that the building is bona fide required by the landlords for the purpose of profession as well as for the purpose of residence, it required demolition and new construction and it can be released with surplus land. He accordingly allowed the appeal and set aside the

judgment of the prescribed authority and the application of the landlords for the release of the building under Sections 21 (1) (a) and 21 (1) (b) and 21 (2) of the U. P, Act No. XIII of 1972 was allowed and the tenancy of the tenant was terminated and held that it shall stand determined on expiry of 30 days from the date of his order as provided under law.

10. Sri Namwar Singh, learned counsel appearing for the respondents urged that the prescribed authority has held that there is no building but that finding has been reversed, therefore, the application filed by the landlord who is respondent in the case was maintainable for the release under Section 21 of the Act. He further submitted that the need of the landlord under Section 21 (1) (a) can be considered even if the building is in dilapidated condition and requires demolition and for that purpose, he has placed reliance on a decision report in *Guru Prasad v. Ist Additional District Judge, Kanpur*. 1997 (1) AWC 191, wherein the Court has observed in paragraph 5 of the said judgment that 'When the composite application under clauses (a) and (b) of Section 21 (1) is made by the landlord, it is open to him to press his case under any of the two clauses. He may claim eviction of the tenant under clause (a) if proves bona fide requirement of the building for his personal occupation and also satisfies the other requirements laid down by the relevant rules. In such a case even if the building is in dilapidated condition which requires demolition and reconstruction, the case will be covered by clause (a) and not by clause (b). If the landlord fails to satisfy the requirement of clause (a), he can still press the application for release of the building under clause (a).' He has also placed reliance on *Ashok Kapil v. Sana Ullah and others*, 1997 (I) AWC 94 (SC). In which it has been held that even after losing roof, building can continue to be building In its general meaning.

11. After hearing the learned counsel for the parties and going through the record, I am of the view that the sole point for consideration was as to whether the application under Section 21 (1) and (b) of the Act was maintainable or not as there was no building on the spot. The word 'Building' has been defined under Section 3 (1) of the Act, which is reproduced below :

'building', means a residential or non-residential roof structure and includes-

(i) any land (including any garden), garages and out houses appurtenant to such building ;

(ii) any furniture supplied by the landlord for use in such building ;

(iii) any fitting and fixtures affixed to such building for the more beneficial enjoyment thereof.'

12. The prescribed authority held that now disputed property is in the shape of a land, therefore, after reconstruction the provisions of Section 21 of the Act shall apply, the application under Section 21 (1) (a) and (b) of the Act was not maintainable. The appellate authority held that the building was in a dilapidated condition and the landlord required it for demolition and re-construction, therefore, the application under Section 21 of the Act was maintainable, as there was bona fide need of the landlord.

13. The point which was to be determined in the present case was as to whether on the date of application, the building as defined under Section 3 (1) of the Act, which is quoted, above was in existence or not. It was urged by Sri Namwar Singh that if the roofed structure can be a building, then the definition of the building as defined under Section 3 of the Act can be interpreted as a structure without roof can also be a building, the building had the roof on the date of the application but subsequently, it was dismantled.

14. In the instant case, the finding of the prescribed authority is that at least on the date of the decision, there was no building. He has placed reliance on the Commissioner's report. The appellate authority held otherwise. From the judgment of the prescribed authority, it is apparent that he has not considered the existence of building on the date of application rather he held that after reconstruction Section 21 will apply. In absence of any such finding, even if the judgment of the Supreme Court cited above is applied in the present case, a finding has to be given as to whether on the date of application, there was a building or not. The prescribed authority has held that at least on 27.9.1990 subject-matter was not there. There is no clear cut finding as to what was the position on the date of the application. The prescribed authority held that the accommodation was in

dilapidated condition on the date when the application was made, therefore, the application under Section 21 of the Act can be filed and it can be allowed on merit under Section 21 (1) (a) (b) of the Act, which deals with the application for release. The relevant section is quoted below :

'Section 21. Proceedings for release of building under occupation of tenant.-- (1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely,--

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlords for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust for the objects of the trust;

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

15. From a perusal of the aforesaid Section, it is clear that the application can only be filed in respect of the building. The definition of 'Building' has already been quoted in the preceding paragraph of this judgment.

16. The question for determination is as to whether the prescribed authority was right in rejecting the application on the ground that building fell down during the pendency of the application or not. A perusal of Section 21 of the Act would show that the cause of action to the application will accrue on the date earlier to the filing of the application in respect of the building. The application was filed in the case by the landlord treating the building in question in dilapidated condition and the petitioner who was tenant contested the case that the building was not in dilapidated condition, therefore, the application was rightly maintainable on the date when it was filed. Now the question, which emerges, is as to whether the application was maintainable or not when the building fell down during the pendency of the application before the prescribed authority. It is settled law that the law as stands is to be seen on the date when the cause of action accrues.

Admittedly, when the building was in existence on the date of application, the findings recorded by the prescribed authority that now building has fallen down, therefore, the application was not maintainable, is not correct. The appellate authority has held that the application for release was maintainable as the building was in existence on the date of application and tenant said that it is not indilapidated condition. I therefore, agree with the finding recorded by the appellate authority that the application was rightly maintainable. The question of bona fide need, etc. and the question of partition are questions of fact which are not to be seen by this Court in exercise of jurisdiction under Article 226 of the [Constitution of India](#). I am, therefore, of the view that the view taken by the appellate authority is correct and the application of the landlord was maintainable. I therefore, dismiss the writ petition. There will be no orders as to costs.

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