

Virendra Kumar Jain Vs. A.C.M. Vth/R.C. and E.O. and ors.

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Court : Allahabad

Decided On : Mar-17-2005

Reported in : 2005(1)ARC803; 2005(2)AWC1415

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 12

Appeal No. : Civil Misc. Writ Petition No. 19499 of 2005

Appellant : Virendra Kumar Jain

Respondent : A.C.M. Vth/R.C. and E.O. and ors.

Advocate for Def. : P.K. Srivastava, S.C.

Advocate for Pet/Ap. : Saurabh Srivastava and ;Yatindra Shukla, Adv.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. Heard learned Counsel for the parties.

2. The petitioner, aggrieved by an order dated 22nd February 2005 passed by the Rent Control and Eviction Officer/Additional City Magistrate Vth, Kanpur Nagar, approached this Court by means of this writ petition for quashing of the aforesaid order.

3. The brief facts are that the petitioner, who alleges himself to be the tenant of the accommodation in question, has asserted that he has been entered into occupation of the accommodation in question by the erstwhile landlord under an agreement dated 21st September, 1995. He further asserts that after the erstwhile landlord sold out the building to the present landlord the present landlord has issued a notice through his advocate informing about the sale of the house and the liability of the petitioner to pay rent to the present landlord, Smt. Sona Gupta. The landlord has filed an application before the Rent Control and Eviction Officer seeking declaration of vacancy under Section 12 of U.P. Act No. 13 of 1972. During the pendency of the aforesaid proceedings before the Rent Control and Eviction Officer the petitioner filed the application when the matter was fixed for orders on 18th March 2005 to the effect that since the present landlord Smt. Sona Gupta has denied the facts that erstwhile landlord Sri Dina Nath Srivastava has allowed the petitioner to occupy the accommodation in question by virtue of agreement dated 21st September 1995 that Smt. Sona has denied that she had issued any notice dated 10th December 2002 to the petitioner through her Counsel Sri Ramesh Chandra Srivastava, informing the petitioner about the change of ownership, it is therefore, necessary to summon Smt. Sona Gupta and cross examine her.

4. Smt. Sona Gupta has filed objection that the application has been filed only to delay the proceedings on incorrect facts. The case is fixed for order on 18th March 2005. The authority has considered the matter and held that in the circumstances of the case it is not necessary to summon either Sri Dina Nath or Smt. Sona Gupta as the statement whether the petitioner has been inducted by virtue of an agreement has nothing to do with the question of declaration of vacancy. In these circumstances Rent Control and Eviction Officer rejected the application filed by the petitioner. Thus this writ petition.

5. Before this Court also learned Counsel for the petitioner repeated the same arguments as were advanced before the Rent Control and Eviction Officer. Considering the facts and circumstances of the case I find that there is no justification, as held by Rent Control and Eviction Officer, for summoning Smt. Sona Gupta for cross-examination.

6. Learned Counsel for the petitioner has relied upon a decision Mohd. Rauf v. Prescribed Authority (Civil Judge, Senior Division), Unnao and Ors., 1997 (2) ARC 589, wherein this Court as relied upon by learned Counsel for the petitioner, has held in Paragraphs 5 and 6 as under:-

'5. A joint reading of the aforesaid provisions reveal that in the proceedings under the Act, the affidavits can be produced by the parties with the permission of the Prescribed Authority. In case the affidavits are permitted to be filed the parties are at liberty for making an application to cross-examine the deponents of affidavit.

6. In the present case the contesting respondents have been permitted to file affidavits in support of their case. In case the petitioner feels that cross-examination of the persons who file affidavits is necessary, he is at liberty to make an application before the Prescribed Authority for permission to cross-examine the said witnesses. In case any application as stated above is filed by the petitioner, the Prescribed Authority shall decide the said application expeditiously.'

7. There is no dispute to the proposition of law laid down by this Court and in my opinion the law laid down in the case of Mohd. Rauf (supra) has been fully complied with by the Rent Control and Eviction Officer.

8. Learned Counsel for the petitioner has further relied upon a decision of this Court reported in 1982 (1) ARC 449, Rang Lal v. Prescribed Authority and Anr., which demonstrates that the case is distinguishable in facts and therefore this case does not help to the petitioner.

9. Further decision relied upon by the learned Counsel for the petitioner is reported in 1985(1) ARC 72, Om Prakash Sharma v. Prescribed Authority and Anr., wherein learned Single Judge of this Court has quoted with approval the view

taken in the case of Ram Nath Yadav v. Illrd Additional District Judge, Allahabad and Ors., 1978 ARC 405, which is reproduced below:-

'.....No party has a right to enforce attendance of the person, who may have sworn the affidavit, for cross-examination. This contention, in fact, was also raised by the learned Counsel for the petitioner before the Additional District Judge, at the time of hearing of the appeal and having considered the same, he had rejected the same.'

10. I see no reason to disagree with the view of this Court on this point. In this view of the matter this decision does not help the petitioner.

11. In view of what has been stated above this petition has no force and is accordingly dismissed.

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