

Dr. K.C. Tandon Vs. Ixth Additional District Judge, Kanpur Nagar and Others

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Court : Allahabad

Decided On : Mar-10-1998

Reported in : 1998(3)AWC1687

Judge : J.C. Gupta, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 22, 34 (1) and 34 (8); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rules 7 (7) and 22, 27; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 and 152 - Order 26, Rule 9

Appeal No. : C.M.W.P. No. 37476 of 1997

Appellant : Dr. K.C. Tandon

Respondent : ixth Additional District Judge, Kanpur Nagar and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ram Nath Bhalla, Adv.

Judgement :

J.C. Gupta, J.

1. Heard parties counsel. With their consent this writ petition is disposed of finally.

2. By means of this writ petition, the tenant has challenged the order of the lower appellate authority dated 23.10.1997 rejecting the petitioner's application for cross-examination of Smt. Prem Arora and the application for returning the will to the landlord which he had filed. By the same order, the prayer for issuing Commission has also been rejected on the ground that no such application was found on the record.

3. When this writ petition came for admission before Hon. Shitla Prasad Srivastava, J. on 11.11.1997, his Lordship was of the view that so far as the order rejecting the application for cross-examination of Smt. Prema Devi and of returning the will was concerned, it required no interference. Notices were, however, issued to the respondents with regard to the petitioner's prayer for quashing the order of the lower appellate court refusing to issue Commission.

4. It is provided under Order XXVI, Rule 9. C.P.C. that where the Court deems a local investigation to be requisite or proper for the purpose of adjudicating any matter in dispute, the Court may issue a Commission. The Court is vested with a discretion to order a local investigation or not and no party to the suit can claim as of right to get a Commission issued for the purpose of local investigation. Exercise of such a discretion should be judicial and not arbitrary. Like the trial court, the appellate court is also possessed with this discretionary power but it has to be exercised cautiously and not to fill in lacuna of the case of the party applying for the same. The appellate court would be perfectly right in ordering local investigation or local inspection if it feels that the ends of justice so required.

5. Section 34 (1) (c) of the U. P. Act No. XIII of 1972 (hereinafter referred to as the 'Act'), provides that the District Magistrate, the Prescribed Authority or any appellate or revisional authority shall for the purposes of holding any enquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in the Civil Procedure Code, when trying a suit in respect of the matters of inspecting a building or locality or issuing a Commission for the examination of witnesses or documents or for local investigation.

6. Rule 27 has been enacted by virtue of the powers conferred under Section 34 (8) of the Act in respect of local inspection by Court, while the power to issue

Commission is conferred by virtue of Section 34 (8) read with Rule 22 (f) of the Rules.

7. Rule 22 (f) provides that in addition to the powers conferred under clauses (a) to (d), the District Magistrate, the Prescribed Authority or any appellate or revisional authority shall also have powers referred to in Sections 151 and 152 of the Code of Civil Procedure to make any order for the ends of justice or to prevent the abuse of the process of the authority concerned. However, no guidelines have been laid down either under the Act or Rules as to in what cases local inspection be made or local investigation by Commission be ordered. The matter has been left to the sole discretion of the authority concerned and he is the sole Judge to decide whether such an order is necessary for the ends of justice. The exercise of this discretion should not be arbitrary but judicial after application of mind to the facts of the case and to the real question in controversy between the parties. Whether or not an order for local inspection or issuing a commission for investigation is necessary for the ends of justice and for just decision of the case, the answer to this question will depend upon the facts of each particular case and no hard and fast formula can be laid down in this regard. No party to the proceeding under the Act can claim such an order as of right and the decision has to be taken by the authority concerned by applying its mind to the matter in question and for that matter, if any party applies for such an order in appeal, the appellate authority will have to scrutinise, appraise and examine the evidence and other material for reaching to the conclusion either way. In my opinion, the examination of record is sine qua non for taking the decision whether the local inspection or local investigation is necessary.

8. Experience has shown that during the pendency of appeals under Section 22 of the Act, quite often applications are moved for making local inspections or for issuing Commission for local investigation with an oblique motive to delay the hearing of the appeal which otherwise is required to be decided within six months from the date of its presentation as provided under sub-rule (7) of Rule 7. Not only this, usually arguments on merits of the case are not advanced and there is insistence to pass order on such applications first before proceeding further in the matter of hearing of appeal. I fail to understand how an' appellate authority could

decide the question whether the ends of justice necessitate issuance of Commission or making of local inspection, unless it had the occasion of hearing arguments of both the sides, so that it could apply its judicial mind to the facts of the case and to the real question in controversy between the parties. It is only after the material on record is scrutinised by the authority in the light of the various contentions advanced by the parties or their counsel, that the authority can effectively answer the question whether or not Commission for investigation be issued or local inspection be made. There is neither any provision in the Act nor in the rules which may require the appellate authority to pass orders on such applications first before hearing arguments in the appeal. Therefore, in my opinion, the proper course for the appellate authority in such matters is to take up such applications and appeal for hearing together and it is not essential that such applications are to be heard and decided separately before hearing arguments in appeal. When this type of applications are heard along with the appeal, then only it will be possible for the appellate authority to take a just decision whether ends of justice require local investigation by Commission or local inspection by the authority. If after hearing arguments in appeal and on applications for issuing Commission, etc., the authority finds the necessity of issuing Commission or making of local inspection, it may so order and postpone the hearing to a future date. But if it finds otherwise, it may pronounce the judgment and reject the applications either by separate orders or in the judgment itself. This procedure will also help in discouraging scrupulous litigants to move such motivated applications solely with a view to prolong the proceeding to its maximum and will also be helpful for the appellate authority to reach to a just decision in the case. In the present case, appeal was fixed for hearing and disposal on 23.10.1997. On this date, instead of advancing arguments in appeal, two applications were moved from the petitioner's side. We are not concerned with the orders passed on these applications in view of this Court's order dated 11.11.97 which has been already indicated in the earlier part of this order. It further appears that on the same day, an oral prayer was made on behalf of the petitioner for issuing Commission for local investigation which was refused by the authority below in the impugned order.

9. In the circumstances, this writ petition is disposed of with the observation that the petitioner may, if he is so advised, move a fresh application for Commission and if such an application is moved, the same shall be dealt with in the manner indicated above.

10. It is further directed that the appeal shall be heard and finally disposed of expeditiously, preferably within a period of two months from the date of production of certified copy of this order.

11. With the above observations, the writ petition is disposed of with no order as to costs.

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