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Court : Allahabad

Decided On : Apr-20-1998

Reported in : 1998(3)AWC1886

Judge : J.C. Gupta, J.

Acts : Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1) and 24(2); Constitution of India - Article 226

Appeal No. : C.M.W.P. No. 13708 of 1998

Appellant : Suresh Chandra

Respondent : ivth Additional District and Sessions Judge, Muzaffarnagar and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : B. Malik and ;A.K. Jain, Advs.

Judgement :

J.C. Gupta, J.

1. Heard.

2. This is tenant's writ petition, Landlord's application moved under Section 2! (1) (b) of the U. P. Act No. XIII of 1972 Iheretnafter referred to as the Act) has been allowed by the Prescribed Authority by the order dated 19.5.1994, which order has been confirmed by the appellate authority in its order dated 27.3.98. Both the Courts below have found concurrently that the building under tenancy of the petitioner is in a dilapidated condition and requires demolition and reconstruction. The requirements of Rule 17 of the Rules framed under the Act have also been complied with by the landlord as par the findings recorded by the Courts below.

3. It was argued by the learned counsel for the petitioner that the finding of the Courts below that the building is in a dilapidated condition and requires demolition is erroneous inasmuch as there is no specific finding that the building is beyond repairs and in the absence of such a finding, the building could not be held to be dilapidated. In support of his contention reliance has been placed on a few decisions.

4. First decision relied upon is the case of Om Prakash Saraswat v. Third Additional District Judge. Nainital and others, 1980 ARC 149. In this case, the Courts below had recorded a concurrent finding that the shop in dispute was not dilapidated. Before this Court, it was contended on behalf of the landlord that the said finding stood vitiated as the Commissioner's report was not considered by the Courts below. This Court found that the said report of the Commissioner, which was filed in another suit, was in relation to the adjacent shop and its precise bearing on the disputed shop was not clear, hence the finding of fact as regards the dilapidated condition of the building was upheld. In the decision itself, it was held that the dilapidated condition does not mean ruinous, fallen down or wholly unsafe and there is no hard and fast formula for deciding that at what point of time the condition of old building can be said to have reached the dilapidated state.

5. Reliance is next placed on a decision in Om Prakash Gupra v. IInd Additional District Judge. Agra and others. 1983 (2) ARC 489. It was held in this case that the word 'dilapidated' has not been defined in the Act. It means beyond repairs meaning thereby that if the building is in ruinous condition and outlived its life and cannot be repaired and its use is risky, then the building will be in a dilapidated

condition. There can be no hard and Jast rule whether the building is in a dilapidated condition or not as the same depends upon a number of factors including situation and locality.

6. In the case of Pyare Lal v. IVth Additional District Judge. Bijnor and others. 1980 ARC 240 and Phool Chand Prasad and another v. IInd Additional District and Sessions Judge. Azamgarh and another. 1982 (1) ARC 766. It was held that the word 'dilapidated' means in a state of disrepair but it is not necessaiy that the building should be in a fallen state or ruinous condition.

7. In the present case, both the Courts below on appraisal of evidence including the reports of the expert and the Commissioner and on the basis of the local Inspection made by the Prescribed Authority have come to the conclusion that the building which is about hundred years old has outlived its life, its bricks have left the mortar and have loosened and living therein has become risky to the human life. From these findings, it naturally follows that the building is beyond repairs. There is a marked distinction between repair and construction. Whether the building simply requires repairs or has reached to the dilapidated state requiring demolition and re-construction is a question whose answer will depend upon facts of each case and no strait-jacket formula can possibly be laid down. Many factors are to be considered while examiningthis question such as nature and quality of the construction of the building : the material used therein : the nature and quality of the soil where the building has been erected and so on. A building in which only mud mortar has been used for binding the bricks may start decaying earlier than the one where cement mortar has been used. Similarly the decaying process may start faster in a building built with inferior quality of bricks and mortar. A building which is situate at a place in a water logged locality may have a shorter life than the building erected at any other place. Therefore, it is not possible to prepare an exhaustive catalogue of the factors which have to be examined for answering the above question and each case will depend upon its own facts.

8. It was argued by the learned counsel for the petitioner that the petitioner has been living peacefully in the disputed premises since long and the building has not fallen down and, therefore, the Courts below should have presumed that the

building was not in a dilapidated condition. This submission is not correct because the law does not require that a building should be in the Imminent danger of falling to be treated in a dilapidated condition requiring reconstruction. In fact waiting for the building to get on the verge of collapse and then to allow its demolition and re-construction will be putting human life itself in jeopardy and would be a negation of the basic principle of safety and security underlying the provisions of Section 21 (1) (b) of the Act. This view is fortified by the law laid down in the case of Ramesh Chandra and others v. IIIrd Additional District Judge, Aligarh and others. 1995 (1) ARC 181 and Smt. Shanti Devi v. 1st Additional District Judge. Kanpur and others, 1983 (1) ARC 20.

9. It may again be stated for repetition sake that the P'rescribed Authority itself made local inspection of the building and in the light of the said local inspection, evidence adduced by the parties have been examined. The inspection note of the Prescribed Authority has not been annexed with the writ petition nor the same appears to have been assailed before the lower appellate court. It could not be pointed out before this Court also that any incorrect statement has been made in that note.

10. The petitioner has got a right of entry under the provisions of Section 24 (2) of the Act which provides that where the landlord after obtaining a release order under clause (b) of sub-section (1) of Section 21 demolishes a building and constructs a new building or buildings on its site, then the District Magistrate may, on an application being made in that behalf by the original tenant within such time as may be prescribed, allot to him the new building or such one of them as the District Magistrate after considering his requirements thinks fit, and thereupon that tenant shall be liable to pay as rent for such building an amount equivalent to one percent per month of the cost of construction there (Including the cost of demolition of the old building but not including the value of the land) and the building shall, subject to the tenant's liability to pay rent as aforesaid, be subject to the provisions of this Act. This provision, thus, safeguards the interest of the petitioner.

11. After having considered the contentions advanced by the learned counsel for the petitioner, I find that the Courts below have recorded concurrent findings on the essential issues Involved in the case and. In my opinion, they do not suffer from any such defect or error which may require interference by this Court in exercise of its extraordinary Jurisdiction under Article 226 of the Constitution of India.

12. For the reasons stated above, this writ petition is dismissed in limine.

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