

Smt. Chanda Vs. iind Additional District Judge, Pratapgarh and Others

Smt. Chanda Vs. iind Additional District Judge, Pratapgarh and Others

SooperKanoon Citation : sooperkanoon.com/482594

Court : Allahabad

Decided On : Apr-16-1998

Reported in : 1998(3)AWC2221

Judge : R.H. Zaidi, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21 and 21(1); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 16, 16(1) and (2); Constitution of India - Article 226

Appeal No. : W.P. No. 46 (R/C) of 1998

Appellant : Smt. Chanda

Respondent : iind Additional District Judge, Pratapgarh and Others

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : Ravi Nath Illhari, Adv.

Judgement :

R.H. Zaidi, J.

1.Heard learned counsel for the petitioner and also perused the record of the case.

2. By means of this writ petition, petitioner challenges, the validity of order passed by respondent No. 1 dated 26.3.1998 and the order dated 17.6.1986 passed by respondent No. 2 Prescribed Authority.

3. It appears that respondent No. 3 Smt. Haideri filed an application under Section 21 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short the Act) for release of the building in question on the ground of personal need and hardship. The petitioner, who happened to be the tenant in the building in question, objected to it and contested the release application. It was pleaded that neither the need of respondent No. 3 was genuine nor she was likely to suffer hardship in case the release application was rejected. Parties produced evidence for and against. The Prescribed Authority after considering the material on record allowed the release application vide the judgment and order dated 17.6.1986. Petitioner challenged the validity of the said release order by filing an appeal before the appellate authority. The appeal filed by the petitioner was also dismissed by the appellate authority on 27.9.1991. Challenging the validity of the judgments and orders passed by the Prescribed Authority and appellate authority, petitioner filed Writ Petition No. 175 (R/C) of 1991. Smt. Chanda v. Smt. Haidari and others. This Court affirmed the findings recorded by the authorities below on the question of genuine need of respondent No. 3 but the orders passed by the appellate authority was reversed on the ground of non-consideration of comparative hardships which was likely to occasion to the parties in case the release application was allowed or rejected. On the said question, no specific finding was recorded, therefore, the writ petition was allowed by judgment and order dated 24.9.1997. The orders passed by the appellate authority dated 27.9.91 was quashed and the case was sent to the appellate authority for decision afresh in the light of the observations made in the said judgment. The appellate authority in pursuance of the order passed by the Court, after hearing the parties, came to the conclusion that in case of rejection of release application, the landlady would suffer comparatively greater hardship than the tenant in case the building is not released in her favour.

4. Learned counsel for the petitioner vehemently urged that the appellate authority did not consider the material placed on record and has reached the conclusion

against the petitioner on the question of comparative hardship which is wholly arbitrary. It was also urged that the appellate authority has not taken into consideration the provisions of Section 16 (1) (d) of the Act while deciding the appeal.

5. Admittedly, the finding on the question of bona fide need recorded by the appellate authority has become final inasmuch as the petitioner did not challenge the validity of the order passed by this Court on 24.9.97 whereby the said findings recorded by the authorities below were affirmed and the case was sent back to the appellate authority only for recording finding on the question of comparative hardship. The respondent No. 1 after taking into account the entire evidence on record as well as the relevant authorities on the point recorded clear and categorical finding to the effect that in case of rejection of the release application, the landlady would suffer greater hardship than the tenant in case of the release of the accommodation. The finding recorded by respondent No. 1 is a finding of fact which cannot be interfered with by this Court in its jurisdiction under Article 226 of the Constitution of India. It has also been rightly held by the appellate authority that the petitioner did not make an attempt to search out an alternative accommodation during the pendency of the proceeding before the Court below. The said factor goes against her in view of the law laid down by Apex Court and this Court in various decisions referred to in the judgment and order passed by the appellate authority.

6. So far as the question of partial release of the building in question is concerned, no doubt authorities below while considering an application under Section 21 (1) (a) are required to have regard to such factors as have been enumerated under Rule 16 of the rules framed under the Act. Clause (d) of sub-rule (1) of Rule 16 of the rules provides that where the tenant's need would be adequately met by leaving him a part of the building and releasing the other part in favour of the landlord, the Prescribed Authority will pass order regarding the later part of the building. In this regard, it may be noted that the building in question, i.e., house No. 12/1 is a portion of house No. 12. The extent and size of the said portion has not been disclosed in the release application. Only the boundaries of it have been given. In the written statement, no plea has been taken that need of the petitioner

will be adequately met by leaving with her in a part of the building and the need of the landlady would be served by leaving another part. Before the Prescribed Authority also, no such question was raised when the case was decided by order dated 17.6.1986. The petitioner herself filed the appeal against the aforesaid order but the plea of partial release was not taken even in the said appeal which was decided against her on 27.9.1991. Petitioner thereafter filed Writ Petition No. 175 (R/C) of 1991 in this Court. Even in the said writ petition, no such plea was taken. Otherwise while remanding the case, there was no difficulty to direct the appellate authority to look into the matter of partial release, while passing order dated 24.4.1997. After the matter was remanded to the appellate authority, even before the appellate authority in the second round, no such plea was raised or pressed. In the present writ petition also, no foundation has been laid for raising the aforesaid plea, only in the grounds of the attack it has been stated that the authorities below have not considered the question of partial release under Rule 16 (1) (d) of the Rules. Under the aforesaid facts and circumstances, I decline to permit the learned counsel for the petitioner to raise the aforesaid plea at this stage as it involves the question of fact for which no foundation has been laid in the writ petition. In my opinion, landlord or tenant if they want to take plea based on anyone of the factors enumerated in sub-rule (1) or (2) of Rule 16 of the rules must take the plea in the release application or in the written statement, as the case may be and should substantiate the same by producing evidence before the Prescribed Authority. In case the plea are taken and evidence is produced as stated above, it will be obligatory upon the Prescribed Authority to look into that aspect of the matter while deciding the release application under Section 21 (1) (a) of the Act.

7. In my opinion, judgment and order passed by the authorities below do not suffer from any illegality or infirmity. Writ petition, therefore, fails and is dismissed in limine.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com