

Suresh Kumar Bhargava Vs. Xvth Additional District and Sessions Judge and ors.

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Court : Allahabad

Decided On : Aug-01-2002

Reported in : 2002(4)AWC3095

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 - Sections 21(1) and 22

Appeal No. : C.M.W.P. No. 9653 of 1995

Appellant : Suresh Kumar Bhargava

Respondent : Xvth Additional District and Sessions Judge and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Vishnu Sahai and ;B. Dayal, Advs.

Disposition : Petition allowed

Judgement :

Anjani Kumar, J.

1. By means of the present writ petition under Article 226 of the Constitution of India petitioner, who is landlord of the accommodation in question, challenges the orders dated 13.4. 1994 and 25.1.1995, Annexures-4 and 6 to the writ petition, passed by prescribed authority as well as by the appellate authority, respectively.

2. The facts giving rise to the filing of present petition are that petitioner-landlord filed an application under Section 21 (1) (a) of the U. P. Act No. 13 of 1972 (hereinafter referred to as the 'Act') for release of the accommodation in question, which has been rejected by the prescribed authority vide his impugned order dated 13.4.1994 holding that the need of the landlord is not bona fide as also the comparative hardship tilts in favour of the tenant than the landlord. Being aggrieved by the order of the prescribed authority, the landlord preferred an appeal under Section 22 of the Act before the appellate authority. During the pendency of the aforesaid appeal before the appellate authority, in view of the fact that since the landlord has retired from Government service of the State of Rajasthan he, therefore, filed an affidavit, which has been annexed as Annexure-5 to the petition, stating therein that certain new facts have come into existence during the pendency of the aforesaid appeal because of the retirement of the landlord from the Government service. It has been categorically stated in paragraphs 14 and 15 of the writ petition that this affidavit has not been considered by the appellate authority. A perusal of the appellate order also demonstrates that the appellate authority has cursorily observed without referring to this affidavit or any other evidence that it has gone through the evidence on record and upheld the order passed by the prescribed authority. The statutory authority under the Statute is not supposed to deal with the matter in the manner dealt with by the appellate authority in the present case. The fact that the appellate authority, has neither considered the affidavit, nor taken into account other evidence which was filed during the pendency of the appeal before the appellate authority, has neither been denied in the counter-affidavit, nor there is any recital in the counter-affidavit that the appellate authority has considered the matter. In this view of the matter, the appellate authority has failed to discharge statutory function entrusted to it under the Statute. The order of the , appellate authority, therefore, deserves to be quashed and is hereby quashed. The appellate authority is directed to decide the appeal afresh in the light of the observations made in this

judgment and also considering the evidence that has been adduced in the form of affidavit, Annexure-5 to the writ petition, which the petitioner-landlord undertakes to file along with this order before the appellate authority. The appellate authority shall further afford an opportunity to the respondent-tenant to file such evidence in rebuttal as are available to him. The appellate, authority shall decide the aforesaid appeal afresh within a period of three months from the date of production of a certified copy of this order in accordance with law and in the light of the observations made in this judgment.

3. In view of what has been stated above, this writ petition deserves to be allowed and is hereby allowed. The order dated 25.1.1995, Annexure-6 to the writ petition, passed by the appellate authority is quashed. The appellate authority is directed to decide the appeal afresh in the light of the observations made above. However, on the facts and circumstances of the case, the parties shall bear their own costs.

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