

Devi Dayal and Another Vs. liird Additional District Judge, Kanpur and Others

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Court : Allahabad

Decided On : Aug-25-1999

Reported in : 1999(4)AWC3539

Judge : A.K. Yog, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21 (1), 22, 24, 24 (2) and 34 (8) (1); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 17; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P No. 3629 of 1982

Appellant : Devi Dayal and Another

Respondent : liird Additional District Judge, Kanpur and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : S.K. Gupta, Adv.

Judgement :

A. K. Yog, J.

1. Applications under Section 21 (1) (b), U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U. P. Act No. 13 of 1972) for short called 'the Act', were filed against four tenants by landlord, Mahesh Prasad (respondent No. 3) contending that accommodations in dispute are dilapidated and it require demolition and construction.

All the four tenants filed objections.

2. Prescribed Authority under the Act allowed these applications vide order dated 31.7.1981 (Annexure-V to the writ petition).

3. Feeling aggrieved by order dated 31.7.1981 (Annexure-V to the writ petition), these tenants preferred four appeals under Section 22 of the Act. All the appeals have been dismissed by common judgment and order dated 5.1.1982 (Annexure-VI to the writ petition).

4. Devi Dayal and Sita Ram (Appellants in Rent Appeal No. 265 of 1981) and Rent Appeal No. 263 of 1981) have, therefore, filed this writ petition.

5. Petitioners (tenants) claim writ in the nature of certiorari to quash aforementioned impugned orders dated 31.7.1981 and 5.1.1982 Annexure-Nos. 5 and 6 to the writ petition on the ground that (i) there was no evidence on record of the case with regard to compliance of Rule 17 (ii) of the Rules framed under the Act (called the Rules), (iii) findings recorded by the Courts below on the question whether building in question was dilapidated is unwarranted on the face of record in as much as the Court below have relied upon inadmissible evidence and (iv) even otherwise the facts of the case are such that the orders passed by respondent Nos. 1 and 2 are illegal and invalid.

6. Last two grounds are devoid of merit and rightly not pressed by the learned counsel for the petitioners.

7. The other finding that building in question is in dilapidated condition has not been seriously challenged before the Court. On appreciation of evidence, Courts below have recorded concurrent finding that building in question is in dilapidated condition. These findings of facts could be assailed on limited ground, namely, a

finding is perverse as it is not supported by evidence on record or that Court below has adopted a wholly fallacious approach in appreciating evidence on record. I find that neither of the two grounds are present in the instant case.

8. Building in question is in dilapidated condition which requires reconstruction, is a finding of fact and should not be interfered in the present proceedings under Article 226. [Constitution of India](#).

9. Petitioners have not pointed from the judgments or the record as to which inadmissible evidence has been taken into consideration by the two Courts below. This ground is not substantiated.

10. Coming to the first submission of the petitioners that statutory Rule 17 (ii) is a mandatory obligation upon Court to record a finding whether landlord has filed a, proper estimate of expenditure prepared over the proposed demolition and construction.

11. Relevant Rule 17 is reproduced below :

'17. Application for release on the ground for demolition and new construction (Sections 21(1) (b) and 34 (8) (1) before allowing an application for release of a building under Section 21 (1) (b) on the ground that it is required for purposes of demolition and new construction, the prescribed authority shall satisfy itself : (i) that the building require demolition ;

(ii) that a proper estimate of expenditure over the proposed demolition and new construction has been prepared ;

(iii) that a plan has been duly prepared and conform to the bye laws or regulations of the local authority or other statutory under any law in that behalf for the time being in force ; and

(iv) that the landlord has the financial capacity for the proposed demolition and new construction.'

12. Argument on behalf of the tenant petitioners is based upon legal ground No. A. of para 13 and averments in para 9 of the writ petition wherein it is alleged that

landlord did not file proposed estimate of expenditure over the proposed demolition and new construction. Said para of writ petition has been replied by the landlord vide para 12 of the counter-affidavit stating that 'estimate of expenditure over the proposed demolition and re-construction have been duly filed by the landlord and the averments made in writ petition are incorrect and misleading, hence denied.

13. In view of contrary statements on oath, it becomes necessary to find out whether 'Tenants' had raised, as a fact, the said plea before appellate court. The petitioners have not enclosed the memorandum of Rent Control Appeals (No. 283 of 1981 and No. 265 of 1981) giving to the present writ petition. Petitioner's learned counsel failed to produce a copy of it for perusal of this Court. This Court, however, refused to grant time to enable petitioners to file a copy of it by filing supplementary affidavit, since the case has already been too old and its hearing over delayed. Moreover, petitioners have not cared to file rejoinder-affidavit though copy of the counter-affidavit was received by their counsel on 11.11.1982. Secondly, this being main argument petitioners ought to have filed copy of memo of appeal to show that such a plea, involving pure question of a fact on record, was in fact urged and pressed before appellate court and that it was not a new plea taken as an afterthought or with an ulterior motive to succeed by making incorrect averment or for the purposes to delay hearing of the writ petition on this score. Petitioners cannot be permitted to reap fruit of his own default, inaction and/or negligence as otherwise it shall amount to abuse of process of Court and law both. Petitioners have failed to give explanation for not filing rejoinder-affidavit for last about 17 years. Presumed is against petitioner.

14. Perusal of the Impugned order passed by the appellate authority (Annexure-6) shows that objection with reference to Rule 17 (ii) was with respect to clauses 1 and 4 only.

15. Appellate authority at page 36 of the paper book observed as under :

'In the instant case at hand I find that the site plan has been duly sanctioned by the Nagar Mahapalika and as such it will be totally in line with the relevant Building Act. Further there is evidence on the record that the landlord has sufficient funds to raise the constructions.'

16. Absence of plea/objection in the appellate judgment go to show that no objection with reference to Rule 17 (ii) was raised and pressed before appellate court.

17. In view of the above, objection with reference to Rule 17 (ii) of the Rules cannot be allowed to be raised in the writ proceedings.

18. Learned counsel for the petitioners submitted that it was a statutory obligation upon the Courts below to record a finding with reference to Rule 17 (ii) of the Rules. In support of it, reliance has been placed on the decision in Pyare Lal v. SVth Additional District Judge, Bijnor and others. 1980 ARC 240. In the said judgment there is reference only to Rule 17 (ii) and (iii) of the Rules. The said decision is clearly distinguishable on facts.

19. Even otherwise reading of Rule 17 (ii) shows that landlord's application under Section 21 (1) (b) can be allowed provided four conditions contemplated under Rule 17 (i) to (iv) are fulfilled. When Prescribed Authority allows applications under Section 21 (1) (b) of the Act, without compliance of Rule 17 (ii) it is incumbent upon tenant to take a specific plea before appellate court and the same must be urged and pressed before appellate authority. In case tenant allows appeals to be heard without raising such objection before appellate court, then its judgment cannot be vitiated on this ground. Since it does not go to the root of jurisdiction.

20. Tenant-petitioners, therefore. as discussed above cannot be allowed to take advantage of their own default.

21. Learned counsel for the petitioners lastly referred to the case In Smt. Munni and others v. Vth Additional District Judge. Hardoi and others, 1986 (2) ARC 39 (Para 5), admittedly and urged that in absence of estimate of expenditure for demolition and new construction, application under Section 21 (1) (b) could not be allowed by the Courts below. Reading of para 5 of the said judgment shows that in that case admittedly no estimate for proposed demolition and proposed construction was filed and specific plea with reference to Rule 17 (ii) was pressed. In the instant case position is different. Petitioners have miserably failed to show that an objection to this effect was raised before appellate court nor there is

averment in writ petition to show that such plea was in fact urged and pressed before appellate court.

22. The aforesaid plea not taken at the first opportunity cannot be allowed to be taken now in the writ proceedings.

23. Learned counsel then urged that no direction has been given by the Courts below to require the landlord for raising construction within stipulated time and allowed reentry to the tenants after proposed construction of the building is over.

24. Learned counsel for the petitioners in support of his contention placed reliance on the decision in Anil Kumar Jain v. VIIth Additional District Judge, Saharanpur and others, 1995 (1) ARC 22 (Paras 7 and 8). In that case learned single Judge rightly observed that right of re-entry is provided by statutory provisions contained in Section 24 (2) of the Act. As for the question of giving direction In writ Jurisdiction for completing construction by specified time is concerned, there is no such provision under the Act. If Legislature has provided no contention to fix time, it is also not expedient to do so in exercise of iurisdiction under Article 226. [Constitution of India](#). Such observation or direction in a given case cannot be a precedent. I, however, refuse to Invoke my jurisdiction to Issue such a direction in the facts of the present case particularly when Court does not havefull picture of attending circumstance of the parties as well as condition in which a party is required to build a house. Moreover, there is no such ground averment in the writ petition on the point. I reject petitioner's plea. It is now high time that petitioners should vacate the accommodation in their tenancy and I direct them to vacate the accommodation in question on or before 31st December, 1999.

25. The writ petition falls and is dismissed. Costs easy.