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Court : Allahabad

Decided On : Apr-28-2006

Reported in : 2006(3)AWC3040

Judge : Anjani Kumar, J.

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

Appeal No. : C.M.W.P. No. 26123 of 2001

Appellant : Ramesh Kumar

Respondent : A.D.M. (Civil Supply) Rent Control and Eviction Officer and ors.

Advocate for Def. : Som Narain Mishra, Adv. and ;Rama Goel, S.C.

Advocate for Pet/Ap. : A.N. Bhargava, Adv.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. The petitioner, who asserts himself as tenant of the accommodation in question on the ground-floor portion of house No. CK-8/13, Mohalla Gau Ghat, Varanasi filed this writ petition under Article 226 of the [Constitution of India](#) against the order dated 24.5.2001, whereby the Rent Control and Eviction Officer has declared the vacancy in the accommodation in question and directed the vacancy to be notified in accordance with the provision of U.P. Act No. 13 of 1972 (In short 'the Act').

2. The brief facts of the case are that respondents Vijay Kumar Mishra and Jai Kumar Mishra, both sons of Durga Dutt Mishra, resident of house No. CK-8/13 Mohalla Gau Ghat, Varanasi, filed an application to the effect that they are landlord of the accommodation in question and that Vijay Kumar Mishra, who is in employment of Railway department, would retire from service after completing the age of superannuation in the month of July, 2002, as a consequence of retirement of the landlord, he will have to vacate the railway quarter, which was allotted to him, he therefore requires an accommodation in the city and since he is landlord he has filed this application on the ground that there is a vacancy, therefore the allotment order may be issued in the name of landlord may be effected from the date of superannuation in the month of July, 2002. The landlord also described that they have a large family consisting of 25 members and that as the right leg of the landlord amputated, he would require the ground floor portion of the accommodation in question. This application was contested by the petitioner stating that he is the tenant of the accommodation in question and that he is paying rent regularly to the landlord. It is further asserted that the statement of the landlord that petitioner is unauthorised occupant is Incorrect. He also challenged the bona fides of the landlord for allotment of the accommodation in question and suggested that in case the landlord requires the accommodation, he should have approached the authority under Section 21(1)(a) of the U.P. Act No. XIII of 1972, and this application is liable to be dismissed. The petitioner has also taken a stand that from the extract of the assessment register filed by the respondent-landlord, it is clear that the accommodation in question is a trust to which the provisions of the Act are not applicable. The petitioner also argued that he is tenant since before 15.7.1972. The Rent Control and Eviction Officer after perusing and assessing the evidence on record have arrived at the conclusion that it is clear from the averments and materials on record that the accommodation in question was under

the tenancy of Avinash Lal as tenant w.e.f. 1.4.1976 to 31.3.1998, which clearly belies the case of the tenant that he is tenant since before 15.7.1972. In this circumstance, relying upon the decision of this Court the Rent Control and Eviction Officer has also found that the possession/ occupation of the petitioner is that of unauthorised occupant and his assertion that he is the tenant, cannot be believed, he therefore declared the vacancy in the accommodation in question and directed the vacancy to be notified in accordance with the provisions of 'the Act'. Aggrieved by the order passed by the Rent Control and Eviction Officer, the petitioner has filed this writ petition before this Court.

3. Learned Counsel appearing on behalf of the petitioner raised the similar points as were raised before the Rent Control and Eviction Officer, namely that from the extract of the assessment register filed by the landlord since the accommodation in question is owned by a trust, the provisions of 'the Act' are not applicable, therefore the application filed by the landlord is liable to be rejected. It is further asserted that petitioner is tenant and he is regularly paying the rent to the landlord. So far as the argument that the provisions of 'the Act' are not applicable, it appears that the argument that since the accommodation in question does not govern from the provisions of 'the Act', has not been raised before the Rent Control and Eviction Officer and since there is no material on record on the basis of which any decision can be taken with regard to this aspect of the matter. Learned Counsel for the petitioner fairly conceded and the objection raised by landlord before this Court that the petitioner cannot be permitted to raise these pleas for the first time in the present writ petition under Article 226 of the [Constitution of India](#) before this Court. On the question of petitioner being tenant, the case of the petitioner has been disbelieved by the Rent Control and Eviction Officer on the ground that the stand taken by the petitioner is belied from the documentary evidence itself extract of the assessment register filed by the landlord that Avinash Lal was the tenant of the accommodation in question w.e.f. 1.4.1976 to March, 1998, therefore the case of the petitioner that he is tenant of the accommodation in question, in my opinion, has rightly been rejected and no interference is required by this Court in exercise of jurisdiction under Article 226 of the [Constitution of India](#). Since no other point has been raised and in view of the discussions made above, this writ petition is devoid of any merit and is liable to be dismissed.

4. In view of what has been stated above, this writ petition is devoid of any merit and is accordingly dismissed. The interim order, if any, stands vacated. However, there will be no order as to costs.

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