

Hari Prakash Vs. Ivth Additional District Judge and ors.

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Court : Allahabad

Decided On : Jul-06-2004

Reported in : 2005(1)ARC50

Judge : S.U. Khan, J.

Appeal No. : C.M.W.P. No. 8125 of 1985

Appellant : Hari Prakash

Respondent : ivth Additional District Judge and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : P.K. Sinha, Adv.

Disposition : Petition allowed

Judgement :

S.U. Khan, J.

1. Heard Sri P.K. Sinha learned Counsel for the petitioner. No one has appeared for respondent No. 2 even though the list has been revised.

2. This writ petition by allottee tenant is directed against judgment and order dated 24.5.1985 passed by IVth Additional District Judge, Kanpur in Rent Revision No. 231 of 1984 through which allotment order in favour of the petitioner passed by

R.C. and E.O. dated 24.8.1984 has been set-aside and shop in dispute has been allotted to respondent No. 2. For the allotment of the shop in dispute only petitioner and respondent No. 2 were applicants. Landlord before R.C. and E.O. filed an affidavit giving his consent for allotment in favour of the petitioner of the shop in dispute. Copy of the said affidavit is Annexure 6 to the writ petition.

3. Initially shop in dispute was allotted in favour of the petitioner by R.C. and E.O. on 16.8.1982 against which respondent No. 2 filed a revision, which was allowed, and the matter was remanded. After remand R.C. and E.O. again allotted the shop in dispute in favour of the petitioner through order dated 24.8.1984. True copy of the said order is Annexure 7 to the writ petition. The main contention of respondent No. 2 was that petitioner was having alternative commercial accommodation for running a business in premises No. 12/132. R.C. and E.O. on the basis of material brought on record as well as absence of material which could be brought on record by respondent No. 2 held that petitioner was having no commercial accommodation in house No. 12/132. According to R.C. and E.O. petitioner was only carrying on business on footpath in front of house No. 12/132. R.C. and E.O./Additional City Magistrate (V), Kanpur through order dated 24.8.1984 passed in case No. 373 allotted the shop in dispute bearing No. 12/62 Gwaltoli, Kanpur in favour of the petitioner. The Revisional Court interfered in the pure finding of fact and held that petitioner was carrying on business from the accommodation No. 12/132. Regarding contrary finding recorded by R.C. and E.O. Revisional Court held that this finding is not supported by cogent evidence. Even if this observations correct it is beyond the purview of revisional jurisdiction to correct the errors committed by the Courts below in assessment of evidence. The Revisional Court outrightly allotted the building in dispute to respondent No. 3.

4. In my opinion judgment and order passed by the Revisional Court is patently erroneous in law and liable to be set-aside.

5. Accordingly, writ petition is allowed. Judgment and order of the Revisional Court dated 24.8.1995 is set-aside and impugned order passed by R.C. and E.O. dated 24.8.1984 is restored.

