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ikramuddin Vs. Prescribed Authority/Execution Court/Judge Small Cause Court and ors.

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Court : Allahabad

Decided On : Sep-13-2004

Reported in : 2005(1)ARC209

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1), 22 and 23; [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 36830 of 2004

Appellant : ikramuddin

Respondent : Prescribed Authority/Execution Court/Judge Small Cause Court and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : S.A. Gilani, Adv.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. This writ petition was heard by me and after hearing learned Counsel appearing on behalf of the parties, the same was dismissed on 13th September, 2004 for the reasons to be recorded later on. Now here are the reasons for dismissing the aforesaid writ petition.

2. Heard learned Counsel appearing on behalf of the parties.

3. By means of present writ petition under Article 226 of the [Constitution of India](#), the petitioner has prayed for the following reliefs:-

'(i) Issue a writ, order or direction in the nature of certiorari quashing the order of Execution Court dated 24.7.2004 and 2.9.2004 (Annexures 8 and 11 to the writ petition) and may also quash the execution proceeding in execution case No. 14 of 2000, Smt. Madhu Goel and Anr. v. Ikramuddin, declaring the eviction of the petitioner from the shop in dispute pursuant to the judgment and decree, which is nullity.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents not evict the petitioner in pursuance of the decree passed by Execution Court in execution Case No. 14 of 2000 (Smt. Madhu Goel and Anr. v. Ikramuddin).

(iii) Issue a suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iv) Award cost of the petition to the petitioner.'

4. From the assertions made in the writ petition, it is apparent that the contesting respondent-landlord filed an application before the Prescribed Authority under Section 21 (1) (a) of the U.P. Act No. 13 of 1972, which shall here-in-after referred to as the 'Act', for release of the shop in question in favour of the landlord on the ground of bonafide personal requirement. The prescribed authority vide its order dated 6th August, 2002 allowed the application filed by the landlord-respondent and directed the release of the shop in question in favour of the landlord and an appeal under Section 22 of the Act filed by the petitioner-tenant against the order dated 6th August, 2002 was dismissed by the Appellate Authority on 21st May,

2003. Aggrieved thereby, the petitioner-tenant preferred a writ petition before this Court being civil Misc. writ petition No. 27276 of 2003, which was also dismissed by this Court vide its judgment and order dated 9th July, 2003. This Court, however, granted one year time to the petitioner-tenant to vacate the shop in dispute in the following terms:-

'In view of above, I find no merit in the writ petition and it is accordingly dismissed however, tenant petitioner is granted one year time to vacate the premises in dispute provided that he files an undertaking before the prescribed Authority within one month to the effect that within one year from today he would willingly handover the vacant possession of the property in dispute to the landlord.'

Dt/- 9.7.2003.

Sd/-

S.U. Khan, J.'

5. The tenant thereafter filed a Special Leave Petition before the Hon'ble Supreme Court against the order of this Court passed in writ petition No. 27276 of 2003. The Special Leave Petition was dismissed by Hon'ble Supreme Court. It appears that the petitioner-tenant has not vacated the shop in dispute within the time granted by this Court, therefore, the landlord preferred an execution application, which has been registered as execution case No. 14 of 2000 Smt. Madhu Goel and Anr. v. Ikramuddin. During the pendency of the aforesaid execution proceeding, an Application 20G was filed by the petitioner-tenant on 21st May, 2004 to the effect that the application filed by the landlord 3G under Section 23 of the Act (execution application) deserves to be rejected on the ground that the landlord has not deposited the amount equivalent to two years rent, therefore, the landlord is not entitled for the execution of the order passed by the prescribed authority. The undertaking that has been given by the petitioner-tenant was under the orders of the appellate Court, which has not been reversed by either this Court while dismissing the writ petition, or the Apex Court when the Special Leave Petition filed by the tenant was dismissed, therefore, the order of release cannot be executed against the petitioner-tenant. It is, therefore, prayed that since the

decree-holder-landlord has not complied with the order of depositing the amount equivalent of two years rent, the petitioner-tenant cannot be evicted from the shop in dispute. Another application has been filed by the petitioner-tenant, which has been numbered as 26G with the prayer that the returns filed by the landlord before the Income Tax department and the Trade Tax department may be summoned and then it has been found that according to the own declaration of the landlord, the landlord possesses number of properties, which has not been considered either by right from the prescribed authority or the appellate authority. The prescribed authority vide its order dated 24th July, 2004 rejected the aforesaid application and directed the execution application under Section 23 of the Act to come up for disposal on 13th August, 2004. Ultimately, the prescribed authority vide its order dated 2nd September, 2004 rejected the Application 3G filed by the petitioner-tenant with the finding that from the facts of the case, it appears that the tenant is in habit of delaying the decision or the proceedings by one or the other grounds may be frivolous so that he may not be evicted from the shop in dispute. It is these two orders, namely the order dated 24th July, 2004 and the order dated 2nd September, 2004, Annexure-'8' and '11' to the writ petition, respectively, which have been challenged by means of present writ petition.

6. From the assertions made by the petitioner in the writ petition, it is apparent that the application under Section 21 (1) (a) of the Act has been allowed by the prescribed authority and the order of the prescribed authority has been affirmed by the appellate authority. The writ petition filed by the petitioner-tenant has been dismissed by this Court. Thereafter, Special Leave Petition was filed before the Supreme Court by the petitioner-tenant, which has also been dismissed by the Apex Court. In this view of the matter, in my opinion, the order which has attained finality and this finality having been affirmed by this Court on a writ petition and subsequently by the Apex Court by the dismissal of the Special Leave Petition cannot be questioned by way of present writ petition or by an application 3G as is sought to be done by the petitioner-tenant. From the perusal of the orders passed by the prescribed authority. I do not find any ground for interference in exercise of power under Article 226 of the [Constitution of India](#). This writ petition therefore, has no force and is accordingly dismissed. However, the parties shall bear their own costs.

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