

Smt. Sharifan and anr. Vs. Xith Additional District Judge and ors.

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SooperKanoon Citation : sooperkanoon.com/492764

Court : Allahabad

Decided On : Aug-02-2007

Reported in : 2008(1)AWC65

Judge : Rakesh Tiwari, J.

Appellant : Smt. Sharifan and anr.

Respondent : Xith Additional District Judge and ors.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard learned Counsel for the parties and perused the record.

2. This is a tenant's petition. The landlady, respondent No. 3, purchased house in dispute vide sale deed dated 1.6.1989. She sent notice dated 10.9.1990, informed the petitioner that his tenancy is in a part of house in dispute. Considering of one room @ Rs. 50, that the tenement is in dilapidated condition and not a habitable condition as the walls have developed big cracks and have left their joints with passage of time and are in irreparable condition. It was also informed to the petitioner as tenant that he has also failed to pay the rent w.e.f. 1.6.1989 inspite of demand, as such his tenancy is determined, hence he should hand over vacant

and peaceful possession of the house in dispute within seven days of the receipt of the notice the respondents alongwith arrears of rent w.e.f. 1.6.1989 otherwise proceeding in accordance with law for her eviction would be initiated by the landlord.

3. It appears from the notice that the house in dispute was in dilapidated condition and the landlord wanted to demolish the existing building and construct a new building on the same site.

4. Respondent No. 3, thereafter filed release application on 20.9.1990 under Section 21 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. It was contested by the petitioner by filing written statement. An amendment application was also filed by the petitioner-tenant for amending his written statement bringing following text on record.

Clause 14 (a)-That the house in question is under the tenancy of O. P. since before its purchase by the applicant, from its earlier owner. The applicant has not been served with statutory notice of six months and the application has been moved within three years of the date of purchase of the house as such the same is not legally maintainable.

5. The petitioner also filed an affidavit dated November, 1991, that she has been informed that the plaintiff was not sole owner of the house and that the house is neither about 100 years old nor is in dilapidated condition. It was averred in the affidavit that part of the roof of first floor portion, in which the landlady was living earlier has been broken down by her and she has left the debris upon the roof of the ground floor portion with the sole motive that ground floor portion may cave in.

6. Averments were also made in the affidavit to the effect that the walls of the tenement were intact and strong enough to hold the weight of the entire building; that the house did not require any demolition and reconstruction. It was also averred that the grounds in this regards had been taken by the landlady only to give colour to the case. It was also denied that the land lady was living in two small rooms and it was averred that infact she is living in spacious house alongwith her family members in the adjacent house. It was stated in the aforesaid affidavit that

the tenants had definite information that landlord have no building plan and no source to arrange the requisite amount for reconstruction, as such there was no question for vacating the accommodation in dispute in the circumstances.

7. It was denied in the aforesaid affidavit need of the landlady was bonafide and she would not face any comparative hardship, that notice was only a ruse to pressurise the tenant to increase the rent and in the alternate for her eviction from the house in dispute.

8. The, aforesaid facts in the affidavit were replied by the petitioner vide affidavit dated 20.10.1984 appended as Annexure-6 to the writ petition. The prescribed authority vide its order and judgment dated 2.11.1995 allowed the application of the landlady for release of the accommodation in dispute in tenancy of the petitioner inter alia holding that landlady had proved that map had been sanctioned for reconstruction of the building had been prepared by the Architect in accordance with bye-laws after the house had been inspected by him on the spot in presence of the petitioner tenant that the landlady had also submitted his report before Small Cause Court has found that the petitioner has herself has constructed a house of her own. The relevant findings are as under:

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9. The appeal filed by the tenant was also dismissed by the appellate court disbelieving the case of the petitioner tenant. The Court also found that the landlord had applied the provision of Rule 17 is as under:

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10. The Court held that there is no illegality or infirmity in the order of the court below passed by the Judge Small Cause Court, Meerut and upheld the finding in P.A. Case No. 212/1990.

11. Counsel for the petitioner contended that the courts below have not considered the averment made in the affidavit of the petitioner. He also relied upon the decision rendered in Ram Kumar v. 3rd Add. District Judge, Faizabad and Ors. 1986 (2) ARC 275 and submitted that if the landlord purposely damages the building he is not entitled of release of tenement. He relied upon the averments made in the affidavit wherein it has been averred that the landlady herself damage the first floor building.

12. No other point has been argued.

13. It appears from the record that the courts below have found that the building was in dilapidated condition and that it was inspected in the presence of the petitioner by the Architect, who also submitted, which was filed by the court below. The courts below have recorded a finding of fact that the provision of Section 17 was complied with by the respondents landlady and also that the tenants' have left house and are living in their own house that the landlady, who was earlier being on the first floor of the tenement had to leave that part of the house as it was in such a bad state that it would have fallen down any time,

14. As regards the decision relied upon by the petitioner concerned, the courts below held that in order to attract Section 21 (1) (b) the building must be beyond repairs so much so that it has to be demolished for reconstruction.

15. From the record it appears that the walls of the building had developed big cracks and they had left joints and was not repairable. It further appears that the building had so much in dilapidated condition that it was almost in ruins in the natural course with the passage of time so much so that the landlady, who had been living on the first floor had to leave it and shift herself in two room accommodation in the adjoining house.

16. In the case of Ram Kumar (supra), relied upon by the petitioner tenant there was a finding of the fact that in the first floor of the house was entered into by the landlord after it have been vacated. The landlord then moved an application under Section 21 (1) (b) of Act No. 13 of 1972 for possession of the disputed house on the grounds that it was in a dilapidated condition and it required demolition and reconstruction, which is not in the instant case as the courts below have also given a finding that the landlord had not damaged the first floor of the building.

17. For the reason stated above and the fact that the petitioner has built her own house and has shifted there as well as in view of concurrent findings by the courts below, there appears to be no illegality or infirmity in the orders impugned.

18. The writ petition is accordingly dismissed. No order as to costs.