

**SUPREME COURT OF INDIA**

Radhey Shyam Rastogi

Vs.

Ashish Kumar

C.A.No.5427 of 2008

(Tarun Chatterjee and Aftab Alam JJ.)

02.09.2008

**ORDER**

1. Leave granted.

2. The appellant is a tenant in respect of Northern portion the premises No.124, Mohalla Chaukasi, Shahjahanpur, U.P. [in short "the disputed premises] since 1955. An application was filed by the respondent for release of the disputed premises before the prescribed authority under Section 21 [1][b] of the *UP Urban Buildings (Regulation of letting Rent and Eviction) Act, 1972* (in short, "the Act"), inter alia, on the grounds that the building was in a dilapidated condition and was required for demolition and reconstruction. The application filed by the respondent was, however, opposed by the appellant by filing a written objection in which the ground of non-compliance of mandatory provision of Rule 17 framed in the Act was taken. However, during the pendency of the application before the prescribed authority, the respondent, without obtaining any order or direction from the prescribed authority, had filed a report obtained from a private architect who, in his report, indicated that the disputed premises was in a dilapidated and dangerous condition. Finally, on 29th of November, 1997, the prescribed authority allowed the application and passed an order of eviction against the appellant. An appeal was carried by the appellant before the learned District Judge against the order of eviction passed by the prescribed authority.

3. During the pendency of the appeal before the appellate court, the appellant filed an application for appointment of an Advocate/Engineer Commissioner to carry out an inspection of the disputed premises and submit a report stating therein whether the disputed premises was in a dilapidated and dangerous condition for which demolition and reconstruction was required which was the main ground for eviction of the appellant from the disputed premises under the Act. This application for appointment of a commissioner was, however, rejected by the Appellate Court and subsequently by an order dated 6th of September, 2003, the appeal filed by the appellant against the order of eviction passed by the prescribed authority was also dismissed.

4. Feeling aggrieved and dissatisfied with the final order of the Appellate Court, a Writ Petition was moved before the High Court which came to be registered as W.P. No. 41799/2003. Before the High Court, the appellant not only challenged the order of the Appellate Court but also submitted that an Advocate/Engineer Commissioner be appointed for the purpose of finding out whether the disputed premises is in a dilapidated condition and, therefore, required demolition and reconstruction. However, while disposing of the writ petition the High Court passed an order which is to the following effect:- "In the changed circumstances and in view of the subsequent events, in our opinion, the proceedings before the Court below may go on. There is no justification for staying the proceedings in the writ petition even after 25 years of filing of the application under Section 21 of the Act on merely interlocutory order. The costs of the reconstruction is increasing day by day. For the reason stated above, the writ petition is dismissed.

5. A plain reading of this order would show that the High Court did not apply its mind while disposing of the writ petition because, while passing the aforesaid order, the High Court in fact was under a wrong impression that the order rejecting the prayer of the appellant for appointment of an Engineer/Advocate Commissioner was not challenged in the said writ petition which was admittedly not the position.

6. Be that as it may, in the present case, we are of the view that since the eviction of the appellant from the disputed premises was based on the ground mentioned herein earlier, namely, dilapidated and dangerous condition requiring reconstruction, it would be fit and proper that an independent Engineer/Advocate Commissioner is appointed by the High Court for coming to a proper finding in that respect. However, since the matter has already taken for more than twenty five years, we are of the view that the High Court should appoint an Engineer Commissioner for the above purpose and direct the said Commissioner to submit a report within six weeks from the date of passing of an order appointing an Engineer Commission and then after receiving a report from the Commissioner, High Court shall decide the writ petition which was filed against the final order of eviction after giving hearing to the parties and after passing a reasoned order in accordance with law positively within two months from the date of submitting the report by the Engineer Commissioner.

7. Accordingly, the impugned order is set aside and the matter is remitted back to the High Court for a decision in the light of the observations made hereinabove. The appeal is thus allowed to the extent indicated above. There will be no order as to costs.