

# SUPREME COURT OF INDIA

Ram Prakash

Vs.

Puttan Lal

C.A.No.3895-3896 of 2019

(L.Nageshwara Rao and M.R.Shah,JJ.,)

12.04.2019

## JUDGMENT

**M.R.Shah,J.,**

SLP(C)No.35494-95 of 2017

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned Judgment and Order dated 21.10.2016 and 11.08.2017 passed by the High Court of Uttarakhand at Nainital in Writ Petition (M/S) No.5459 of 2001 and Review Application No.877 of 2016 respectively, the original defendants/tenants have preferred the present appeals.

3. Respondent No.1 herein-landlord filed an application under Section 21(1)(a)(b) of the U.P. Urban Building Act (hereinafter referred to as 'the Act') for release of the building from the father of the appellant herein (Late Guru Charan Lal) who was a tenant in respect of two rooms with veranda on the back side on the lowest storey and the husband of Appellant No.2 (Late Roshan Lal) was tenant in respect of another portion of the property on the same floor. It was stated that the building is in a dilapidated condition. A bonafide requirement of the landlord was also pleaded, however, subsequently the landlord gave up the plea of bonafide requirement under Section 21(1)(a) of the Act and contested the eviction petition only on the ground that the building is in dilapidated condition under Section 21(1)(b) of the Act. That the learned Prescribed Authority, Almora rejected the release application filed by the landlord.

3.1 Being aggrieved with the Order passed by the learned Prescribed Authority, the landlord filed Rent Control Appeal No.7 of 1998 under Section 22 of the Act before the learned District Judge, Almora. That vide Judgment and Order dated 30.08.2001, the learned District Judge, Almora rejected the appeal filed by the landlord holding that the building is not in a dilapidated condition and it does not require demolition and reconstruction. Being aggrieved with the Order passed by the learned District Judge in confirming the Order passed by the Prescribed Authority, the landlord filed Writ Petition

No.5459 of 2001 before the High Court. By Judgment and Order dated 25.08.2014, the High Court allowed the said Writ Petition and ordered eviction of the appellants herein-tenants. That thereafter, the Review Application was preferred by the appellants herein which came to be dismissed by the High Court. That thereafter, the appellants filed SLP (C) Nos.442-443 of 2015 before this Court. Vide order dated 30.01.2015, this Court granted the leave and set aside the Orders dated 25.08.2014 and 20.11.2014 passed by the High Court and remanded back the matter to the High Court to decide the same in accordance with law. That thereafter, on remand, by impugned Judgment and Order, the High Court has allowed the said Writ Petition preferred by the landlord releasing the building in question under Section 21(1)(b) of the Act. That thereafter, the appellants herein-tenants preferred Review Application. The same came to be dismissed vide impugned Order dated 11.08.2017. Hence the present appeals.

4. We have heard learned Advocates appeared on behalf of the respective parties at length. We have also reappreciated the entire evidences on record, more particularly, the evidences which came to be considered by the High Court while passing the impugned Judgment and Order. From the material on record, it appears that the landlord relied upon the deposition of one Shri B. C. Joshi, Town Planning Engineer and also the notice issued by the Corporation in support of their case that building is in a dilapidated condition and is required to be re-constructed. On the other hand, the appellants-tenants seem to have relied upon the deposition of one Shri B. S. Rautela, Civil Engineer as well as one Shri P. C. Joshi, retired Assistant Engineer of PWD in support of their case that the building was in sound condition and does not require re-construction. However, according to the tenants, if some repair is done, in that case, the building in question can be in a habitable condition. Learned Counsel appearing on behalf of the tenants has stated at the Bar that the appellants-tenants are ready and willing to repair the building occupied by them at their own cost. On the other hand, the learned Counsel appearing on behalf of the respondents-landlord has opposed the above and has submitted that there is an imminent danger and the condition of the building is such that it can fall down at any time.

5. Having heard the learned Counsel appearing on behalf of the respective parties and considering the material on record and the different opinions/Reports and even considering the fact that the notice was issued by the Nagar Palika, Almora in the year 1996/1997 stating that the building was in a dilapidated condition and therefore the same is required to be demolished and still even after period of approximately 24 years, the building stands and as the tenants are ready and willing to get the building in question repaired at their own cost and the same is not to be deducted from the rent, we are of the opinion that one opportunity is required to be given to the tenants to get the building repaired.

6. Hence, the present appeals are disposed of by permitting the appellants-tenants to get the building in question repaired at their own cost and the tenants shall not claim any adjustment of the expenses incurred over repairing from the rent to be paid and the appellants-tenants to get the building repaired at their own cost within the period of six months from today. We direct that thereafter, the appropriate Town Planning Authority of the Corporation, to inspect the building in question and consider whether still the building is in a dilapidated condition and requires re-construction or not. If it is found that after the

repairs are carried out the building is safe, in that case, nothing further is required to be done. However, if it is found by the appropriate authority that even after repair, the building is in dilapidated condition and requires re-construction, the authority may communicate their decision/Report further after inspection and giving opportunity to both the parties, and thereafter, it will be open for the landlord to initiate appropriate proceedings for release/eviction before the competent authority/court, which shall consider the same in accordance with law and on its own merits. With the above observations, the present appeals stand disposed of.