

Arun Kumar And Another vs State Of U.P. And 4 Others on 31 January, 2025

Bench: Anjani Kumar Mishra, Jayant Banerji

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:14223-DB

Reserved on 09.01.2025

Delivered on 31.01.2025

Court No. - 3

Case :- WRIT - C No. - 10017 of 2022

Petitioner :- Arun Kumar And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Asha Parihar,Pratik Chandra,Rishikesh Tripathi

Counsel for Respondent :- Akshay Prakash Srivastava,Arun Kumar Tiwari

Connected

Case :- WRIT - C No. - 10466 of 2022

Petitioner :- Shayra Begum

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Asha Parihar,Pratik Chandra,Rishikesh Tripathi

Counsel for Respondent :- Akshay Prakash Srivastava,Arun Kumar Tiwari,Gaurav Kumar Chand

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Jayant Banerji,J.

1. Heard Shri Rishikesh Tripathi, learned counsel for the petitioners in these two writ petitions and Shri Akshay Prakash Srivastava, learned counsel for the respondents.
2. Both these petitions seek a writ of certiorari for quashing an order dated 29.08.2019 passed by the Sub Divisional Officer, Jalaun, restraining residential and commercial activities in a building, wherein the petitioners' allege to be running shops as tenants.
3. Also under challenge is a demolition notice dated 08.03.2022 issued to the petitioners by the Executive Officer, Nagar Palika Parishad, Jalaun calling upon the noticees to vacate the shops in their possession failing which on expiry of the period of the notice, steps will be taken for demolition of the structure which is dilapidated condition in public interest and for the protection of public at large.
4. The primary contention of learned counsel for the petitioners for assailing the impugned notice and order is that where law provides a procedure for doing something, the said procedure has necessarily to be followed and the action is to be done in that manner alone and in no other manner.
5. It is submitted that the petitioners being tenant, the remedy available to the landlord, respondent no.5 was either by means of an application under Section 21(1)(b) of the U.P. Rent Control Act, 1972 is provision provides the procedure for eviction of a tenant on the ground that the accommodation in his possession is in dilapidated condition and requires demolition.
6. It is also vehemently argued that the respondents had filed a suit for arrears of rent and eviction, which is pending and during the pendency of such proceedings for eviction on the basis of arrears of rent, the impugned demolition order is malafide and collusive and could not have been passed in exercise of powers conferred by Section 263 of the Municipalities Act, 1960.
7. In any case, Section 263, which has been invoked for passing the impugned orders does not talk of any tenancy and, therefore, this provision was not applicable in the matter.
8. The other submission of learned counsel for the petitioner is that in the proceedings before the S.D.O. also available on record was a report of the Lekhpal, which talked only of the accommodation being used for commercial activities and there was no mention therein, that the structure was in a dilapidated condition and required demolition. The S.D.O. while passing the order of 29.08.2019 has ignored this report and therefore, also the order dated 29.08.2019 is vitiated.
9. In rebuttal, the contention of learned counsel for the respondent no.5 is that the impugned orders have rightly been passed. The structure in question is well over a 100 years old and was constructed with small bricks with limestone. Moreover, all similar structures in the area had earlier in time been demolished as they were highly dilapidated. Only the structure in question remains and the same is in very dilapidated condition and is situated on a main road, resulting in danger to life of residents as also to passerby. He has placed reliance upon the decision of the Uttarakhand High

Court in Ishwari Datt Joshi vs. Bhuwan Chandra Mungali, 2006 (3) AWC 2704 especially paragraph 10, thereof. The said paragraph reads as follows:

"10. This Court has no hesitation in answering the substantial question of law that the landlord cannot seek eviction of tenant by circumventing the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, but the landlord (defendant No. 1) has nowhere sought eviction against the provisions of Act 13 of 1972. It is the Nagar Palika who is exercising its powers to save the life and property. In other words this Court is of the view that the powers conferred on Municipal Boards under Section 263 of U.P. Municipalities Act, 1916 are independent of the rights of landlord under provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, There is no case decided by prescribed authority under U.P. Act 13 of 1972, in respect of shop in question. The substantial questions of law raised in memo of appeal on this point are misconceived. The power of Prescribed Authority under aforesaid U.P. Act 13 of 1972 to give finding on application, moved under its Section 21 for release of house on the ground that building is in dilapidated condition are independent of the powers of Nagar Palika to issue notice under Section 263 of U.P. Municipalities Act, 1916. Each authority may have its independent satisfaction on the point, In the case of application by the landlord for release of house on the ground that it is in dilapidated condition, Section 24 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, provides that after reconstruction of such house by landlord, the tenant can make request to District Magistrate to allot the same premises. But purpose and object of Section 263 of U.P. Municipalities Act, 1916, is different as the Municipal Board is more concerned to save the lives of people living in the building or passing through the roads near by the dilapidated building."

10. The ratio of the judgment cited is that it is the duty of the Municipality to exercise powers under Section 263 of the Municipalities Act to save life and property and the same is independent of the rights of the landlord under the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Also the power of release under the U.P. Act No.13 of 1972 is independent of the power of the Nagar Palika to issue a notice under Section 263 of the Municipalities Act, 1916.

11. It is next submitted by learned counsel for the respondent that the petitioner, although his case is that if law provides for a certain things to be done in a particular manner, the same manner is necessarily to be followed, has been go by, by the petitioner himself. The petitioner instead of availing the remedy as provided under Section 326 of the Municipalities Act, which provides for a suit against the municipality or its officers has approached this Court. The petitioners should have filed a suit for injunction but have fail to avail that remedy. The impugned orders are therefore perfectly justified and call for no interference.

12. We have considered the submissions made by learned counsel for the parties and perused the record.

13. There is no quarrel on the legal proposition that where something is required under law to be done in a particular manner, the thing has to be done in that manner or not at all. However, this principle of law in our considered opinion cannot be applied in the facts and circumstances of the instant case. The order dated 29.08.2019, which restrains the occupiers of a structure from using it

for residential or commercial purposes as the structure was in dilapidated and ruinous conditions has been passed consequent to directions issued by the writ court.

14. Although it is the contention of learned counsel for the petitioners that the petitioners' father, the original tenant was not a party in the writ petition, nothing turns upon the submission because admittedly the orders impugned have been passed after due notice to the petitioners and they have also contested the proceedings and have filed their objection and have also been heard prior to the passing of the order dated 29.08.2019.

15. Learned counsel for the petitioner has also not been able to submit anything as regards the ratio of the judgment in Ishwari Datt Joshi (supra).

16. Insofar as the impugned notice dated 08.03.2022 is concerned, the same has been issued in exercise of powers conferred by Section 263 of the Municipalities Act upon the municipality. Earlier in time and after hearing the petitioners it had been held, consequent to directions issued by the writ court that the building in question was in dilapidated and ruinous condition and, hence, liable to be demolished to protect human lives and property. Therefore, in order to protect and safeguard human life and property, the occupiers had been restrained from using the same for residential or commercial purposes by the order dated 29.08.2019.

17. The impugned notice dated 08.03.2022 has ostensibly been issued consequent to the said order and in compliance thereof. The same therefor cannot be faulted with because it is nobody's case that the order dated 29.08.2019 was ever subjected to any challenge before any forum.

18. The contention of learned counsel for the petitioner that the proceedings for eviction of the tenant could have been filed by the respondent only in accordance with the provisions of the Rent Control Act, 1972 has also been adequately answered in the judgment of Ishwari Datt Joshi (supra) and the same therefore, requires no elaboration.

19. Insofar as the U.P. Regulation of Urban Premises Tenancy Act of 2021 is concerned, the same cannot be invoked because it is admitted by learned counsel for the petitioner on a pointed query by the Court that there exists no rent agreement between the respondents and the petitioners.

20. In view of the above and since the building in question has been held to be in dilapidated and ruinous conditions and is situated on a main road, its demolition has been ordered by the Municipality to protect human life and property, which power the municipality has the right to exercise in view of Section 263 of the Act, 2016.

21. Besides we see no illegality in exercise of powers by the municipality. The finding that the building in question is in dilapidated and ruinous conditions is a finding of fact. The only submission in this regard is that the report of the Lekhpal, which was available on record has not been dealt with.

22. We however do not find any substance in this submission because the order dated 29.08.2019 has been passed upon the reports of engineers of the Public Works Department, who are competent to assess the condition of a building. A Lekhpal lacks the technical exercise to give a valid assessment in this regard.

23. In view of the above discussion, we do not find any substance in the writ petitions.

24. The writ petitions are accordingly dismissed.

Order Date :- 31.01.2025 Mayank