

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 458 of 2019

Harjinder Singh.

.....Petitioner

Versus

Harvans Lal.

.....Respondent

Mr. S. Bhupendra Singh, Advocate for the petitioner.
Mr. Vikas Anand, Advocate for the respondent.

Dated: 28th February, 2019

Hon'ble Manoj K. Tiwari, J.

This is tenant's petition against the order dated 12.02.2019 passed by learned IInd Additional District Judge, Udham Singh Nagar in Rent Control Appeal No. 9 of 2017.

2. Facts of the case, in brief, are as follows:

3. Petitioner is a tenant in respect of a shop situate in Punjabi Market, Rudrapur, District Udham Singh Nagar, which belongs to respondent, namely, Mr. Harvans Lal. Mr. Harvans Lal filed an application seeking release of the said shop under Section 21 (1) (a) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act No. 13 of 1972") with the contention that his son and daughter-in-law are doctors, presently serving in United States of America, who want to come back and establish a Clinic & Nursing Home at Rudrapur,

therefore, the shop in question is bonafidely needed for the said purpose.

4. Petitioner filed written statement, in which it was categorically stated in paragraph no. 4 that the locality, in which shop in question is situate, is not fit for establishing Clinic & Nursing Home, inasmuch as, the said locality is too crowded and four-wheelers are not allowed to enter in the said area. Both the parties lead their evidence and, thereafter, the Prescribed Authority allowed the release application filed by the respondent vide judgment & order dated 20.09.2017.

5. Feeling aggrieved by the judgment passed by the Prescribed Authority, petitioner filed a Rent Control Appeal under Section 22 of Act No. 13 of 1972, which is numbered as Rent Control Appeal No. 9 of 2017 and is pending before learned IInd Additional District Judge, Rudrapur, District Udham Singh Nagar.

6. Before the learned Appellate Court, petitioner moved an application purporting to be under Section 34 of Act No. 13 of 1972 read with Rule 27 of the Rules framed under the said Act, for making local inspection. In the said application, it was contended that the need setup by the landlord is artificial, inasmuch as, the locality, in which the shop in question is situate, is one of the busiest markets in Rudrapur, where Clinic & Nursing Home cannot be established, as there is neither any parking place nor any place to park the Ambulance and, moreover, entry of four-wheelers is prohibited

between 07:00 a.m. till 10:00 p.m. etc. Petitioner, therefore, prayed that an Advocate Commissioner be appointed to ascertain suitability of the locality for setting up Clinic & Nursing Home.

7. The said application has been rejected by the learned IInd Additional District Judge, Rudrapur, District Udham Singh Nagar vide order dated 12.02.2019 mainly on two grounds, (i) the Prescribed Authority has dealt with this aspect in his judgment & order dated 20.09.2019 and the (ii) the tenant has filed this application at a belated stage, which appears to be aimed at causing delay in disposal of the Rent Control Appeal. Hence, this writ petition.

8. Heard learned counsel for the parties and perused the record.

9. I have gone through the order passed by learned Appellate Court and I find no reason to interfere with the same. Section 34 of Act No. 13 of 1972 confers certain powers upon the District Magistrate/Prescribed Authority or the Appellate Authority, which are available to a Civil Court under Code of Civil Procedure, 1908. Powers conferred by Section 34 of Act No. 13 of 1972 are discretionary, which are meant to be used in appropriate cases to arrive at the truth. Similarly, Rule 27 of the Rules framed under Act No. 13 of 1972 enables the District Magistrate/Prescribed Authority or the Appellate Authority to inspect the building for the purpose of deciding a case. Since the powers conferred by Section

34 of Act No. 13 of 1972 and Rule 27 of the Rules framed under Act No. 13 of 1972 are discretionary, therefore, learned appellate court was justified in refusing to exercise its jurisdiction.

10. Thus there is no interference in the matter.

11. Consequently, writ petition fails and is hereby dismissed.

12. There will be no order as to costs.

(Manoj K. Tiwari J.)

28.02.2019

Arpan