

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 883 OF 2017
(Arising out of SLP (Crl.) No.7592 of 2014)

KALAWATI VERMA AND ORS

APPELLANT (S)

VERSUS

STATE OF UP AND ORS

RESPONDENT (S)

J U D G M E N T**A.M.KHANWILKAR, J.**

Leave granted.

2. This appeal emanates from the order passed by the Additional City Magistrate (Second), Kanpur Nagar in a proceeding under Section 133 of the Code of Criminal Procedure, 1973, directing the appellants to demolish the portion of premises No.133/771-H-5, Nayapurwa, T.P. Nagar, Kanpur Nagar which was in ruined condition and likely to collapse.

3. The Magistrate vide order dated 13th October, 2010 called upon the appellants to remain present and show cause in that regard. The

appellants did not file any objection or produced evidence to rebut the factual position. They even did not appear before the Magistrate. Resultantly, the Magistrate passed a final order on 22nd December, 2012. Relevant portion thereof reads thus:

“.....Having been prima facie satisfied with the said court issued conditional order dated 13.10.2010 under section 133(1) Cr.P.C. and having served on the respondents on 18.11.2010, it has been received back on record. No any objection or evidence was adduced on behalf of respondents and nor they appeared in the court. Thereafter, report was obtained from the Nagar Nigam. Executive Engineer, Zone-3, Nagar Nigam Kanpur Nagar submitted its report dated 22.10.2012 wherein, it has been mentioned that the above-said building is quite old and in ruined condition, its roof has been laid with old Dhannis. Orders are issued for demolish the portion of premises No.133/771 H-5, Nayapurwa T.P. Nagar which is in ruined condition and likely to collapse and portion of which is under the ownership of Smt Omanju Sharma for demolishing the same. One copy of the order to Inspector Incharge, Police Station Babupurwa and one copy be forwarded to the Deputy City Commissioner, Zone-3, Nagar Nigam for compliance. File be consigned to record room after initiating necessary proceedings.”

4. The appellants carried the matter before the High Court of Judicature at Allahabad by way of Criminal Misc. Writ Petition No.12561 of 2014. The appellants stoutly disputed that the suit

premises or any portion thereof was in a dilapidated condition. They contended that the owner of the structure has not followed the procedure prescribed in U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The High Court, however, declined to interfere in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. It held that the matter involved disputed questions of facts. Accordingly, the writ petition was dismissed on 31st July, 2014.

5. Aggrieved, the appellants have approached this Court. Considering the nature of controversy and after hearing the learned counsel for the parties, it was deemed appropriate to appoint a two-Member Committee to visit the premises who could submit a report about the status of the building as to whether the building in question is in a dilapidated condition or fit for habitation or not. The order passed on 20th January, 2017, reads as under:

“Heard Mr.Yahraj Singh Deora, learned counsel for the petitioners, Mr.Garvesh Kabra, learned counsel for the State and Dr.Monika Gusain, learned counsel appearing for the landlady.

Having heard learned counsel for the parties, it is apposite that a two-member committee shall go and visit the premises and submit a report whether the building in question is in a dilapidated condition or fit for habitation or not.

This Court in a similar matter had appointed Mr.Gopal Sankarnarayan and Mr.Gaurav Agrawal and keeping that in view it is directed that the Two-member committee shall go to Kanpur, visit the premises and submit a report within two weeks.

Learned counsel for the parties, namely, the landlady and the tenant, shall bear the 50% of the expenses i.e. to be spent by each of the members of the Committee. State of U.P. shall provide all the facilities for the members of the Committee.

Mr.Garvesh Kabra, learned counsel for the State shall inform the members of the Committee and fix a suitable date and make all necessary arrangements.

Let the matter be listed on 27th March, 2017.”

6. Pursuant to the aforementioned order, the two-member Committee along with officials visited the premises on 11th February, 2017. The premises were thoroughly inspected by the Committee in the presence of the appellant No.1 and her son and the advocate and relatives of the respondents. The committee then submitted its report dated 14th March, 2017. It may be useful to advert to the relevant portion of the said report which reads thus:

“.....The observations of the Committee with reference to the premises are as below:

a. The entire premises comprise a single tenement with a

frontage of about 12 feet and a depth of approximately 20 feet which comprise 3 distinct segments.

b. Segment 1: This portion seemed at first blush to be an encroachment as it fell outside the general perimeter of the larger colony of which the premises were a part. This portion is open on the front and is covered above by thin wooden poles crossed laterally by wooden planks. Covering these is a tarpaulin sheet, on top of which are two or three large asbestos/zinc sheets weighed down by bricks. The walls of this section are made of brick which do not seem to be strong enough to be of a permanent or durable nature. In the event of heavy rains or other adverse weather phenomena, this segment seems to be vulnerable. The relevant photographs are annexed as Annexure-II.

This segment is therefore dilapidated and not fit for habitation.

c. Segment 2: This portion which houses the cooking area has timber beams providing the roofing while crossing them are thin wooden poles. From above, the Committee observed that this layer was overlaid with concrete/cement and plastered. Members of the Committee, engineers and others climbed above and the ceiling did not seem to have any immediate perceptible weakness. The room itself had walls which are of brick and mud plaster, with the thickness being 40 cms (1 ½ feet), which seemed sufficient to bear the load presently placed on it. The relevant photographs are annexed as Annexure-III.

This segment is not dilapidated and seems fit for habitation.

d. Segment 3: The innermost portion which was the bedroom also had walls of the above thickness, providing what seemed to be reasonable strength. The ceiling of this room also had thick timber beams interspersed with other wooden beams. These beams supported closely placed wooden planks that were placed perpendicularly on the beams running the length of the room. Upon going upstairs, it was observed that another room had been constructed above, which was apparently in the possession of a relative of Respondent No.4 (the landlady). When this room was opened, it was seen that the floor was of mud and plaster, and that when members of the Committee entered, the floor was not as resolute as the floor just outside it. The load of this upstairs room needs to be countenanced when determining the strength and fitness of the room below. Unless steps are taken to reinforce the ceiling, it would be doubtful whether this portion of the premises would be able to withstand inclement weather or any other pressures being placed upon it. The Report of the Engineers dated 11.02.2017 seems to support this view. The relevant photographs are annexed as Annexure-IV.

This segment is vulnerable and unless reinforced at an early date, the same will pose a danger to continued habitation.

It needs to be stated in addition that this particular premises is a contiguous part of several other tenements forming what seems to be a small cluster colony. On a

cursory examination of the exteriors, this particular property seems quite similar to that of its neighbours. The plan below sums up the conclusion of this Committee.

ENTRANCE	
Segment 1	dilapidated and not fit for habitation
Segment 2	Not dilapidated and seems fit for habitation
Segment 3	Vulnerable and unless reinforced, will pose a danger to continued habitation

Mr.Gaurav Agrawal
Advocate

Mr.Gopal Sankaranarayanan
Advocate

14th March 2017"

7. Today during the course of hearing, learned counsel appearing for the private parties on both the sides in all fairness accepted the correctness of the report of the Committee. The learned counsel appearing for the respondent No.4 on instructions submitted that the respondent No.4 will take immediate steps to reinforce the vulnerable portion of the premises described as segment No.3, which poses danger to continued habitation. It has been also agreed that the dilapidated portion of the structure described as segment No.1 in the report, which is not fit for habitation will be removed. In view of

the assurance given as above and as agreed upon by the parties, nothing more survives for consideration in this appeal. The appeal can be disposed of in terms of the arrangement agreed upon between the private parties in the following terms:-

- (1) The dilapidated portion of the suit premises described as segment No.1 will be demolished forthwith, as it is not fit for habitation. After demolition, the structure of the same size and at the same place may be constructed subject to permission of the municipal authorities.
- (2) The owner of the structure (respondent No.4) shall forthwith carry out suitable repairs and reinforce the portion of the suit premises described as segment No.3, to remove the deficiencies noticed by the Committee in that behalf and to make it safe and habitable.
- (3) The owner of the suit premises (respondent No.4) is free to pursue the eviction proceedings filed against the appellants and the same shall be decided in accordance with law without being influenced by the arrangement arrived at between the parties in the present appeal, which is without

prejudice to the rights and contentions of the parties in the eviction proceedings. In other words, no equity can be claimed by the appellants on the basis of the arrangement arrived at in the present appeal.

8. The appeal is allowed to the extent indicated above.
9. No order as to costs.

.....J.
(DIPAK MISRA)

.....J.
(A.M. KHANWILKAR)

New Delhi;
17th April, 2017.

ITEM NO.39

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).7592/2014
(Arising out of impugned final judgment and order dated 31/07/2014
in CRMWP No.12561/2014 passed by the High Court of Judicature at
Allahabad)

KALAWATI VERMA AND ORS

Petitioner(s)

VERSUS

STATE OF UP AND ORS

Respondent(s)

(with appln. (s) for exemption from filing c/c of the impugned
judgment and exemption from filing O.T. and office report)

Date : 17/04/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR.JUSTICE DIPAK MISRA

HON'BLE MR.JUSTICE A.M. KHANWILKAR

For Petitioner(s)

Mr.Yashraj Singh Deora, Adv.
Ms.Priyadarshinee Singh, Adv.

Mr.Hariom Yaduvanshi, Adv.
Ds.Monika Gusain, Adv.

For Respondent(s)

Mr.Adarsh Upadhyay, Adv.
Mr.Vikas Chaudhary, Adv.

Mr.Gaurav Agarwal, Adv.
Mr.Gopal Sankaranarayanan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The civil appeal is allowed in terms of the signed
non-reportable judgment.

(Ashok Raj Singh)
Court Master

(H.S.Parasher)
Court Master

(Signed non-reportable judgment is placed in the file)