

**Court No. - 3**

**Case :-** WRIT - A No. - 10463 of 2019

**Petitioner :-** Sanjay Alias Mathura

**Respondent :-** Onkar Arora

**Counsel for Petitioner :-** Awadhesh Kumar Malviya

**Hon'ble Dr. Yogendra Kumar Srivastava,J.**

1. Heard Sri A.K.Malviya, learned counsel for the petitioner.

2. The present writ petition seeks to challenge the order dated 01.05.2019 passed by the Judge, Small Causes Court, Saharanpur in P.A. Case No. 26 of 2016 whereby the application (*Application No. 52-Ga*) filed by the petitioner under Section 34 (1) (c) of U.P. Act No. 13 of 1972 read with Rule 16 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 has been rejected.

3. The records of the case indicate that upon an application for release having been filed under Section 21 (1) (a) by the respondent-landlord setting up his bonafide need, P.A. Case No. 26 of 2016 (Onkar Arora Vs. Sanjay alias Mathura) was registered. The parties had put in their appearance and after exchange of pleadings, the evidence of both the parties was closed on 10.07.2018, and after 25.07.2018 the case was being listed for arguments. On 07.03.2019 the arguments on behalf of the applicant-landlord were concluded, and the matter was posted for arguments of the defendant-tenant. It was at this stage that an application (*Application No. 52-Ga*) was filed by the petitioner-tenant for obtaining a demarcation report by Amin Commissioner in respect of certain other properties which were said to be in possession of the applicant-landlord. The aforementioned

application came to be rejected by the Prescribed Authority vide order dated 01.05.2019 and thereafter the present petition has been filed.

4. Contention of the counsel for the petitioner is that an application having been made under Section 34 (1) (c) of the U.P. Act No. 13 of 1972 for inspection and issuance of a commission for demarcation of other properties which were in possession of the respondent-landlord the court below has erred in rejecting the said application.

5. It is undisputed that after the parties had put in their appearance and pleadings had been exchanged the evidence of the parties had been closed on 10.7.2018 and after 25.7.2018 dates were being fixed for arguments. The arguments on behalf of the respondent-landlord had been concluded on 7.3.2019 and thereafter the case was posted for arguments on behalf of the defendant-tenant and it was at this stage of the proceedings that the petitioner-tenant had sought a direction for inspection and issuance of a commission under Section 34 (1) (c) of the Act of 1972.

6. In order to appreciate the controversy involved in the present case the provisions of Section 34 (1) of the Act of 1972 may be adverted to.

**"Section 34 - Power of various authorities and procedure to be followed by them:-** (1) *The District Magistrate, the Prescribed Authority or any [Appellate or Revising Authority] shall for the purposes of holding any inquiry or hearing [any appeal or revision] under this Act have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 (Act No. V of 1908), when trying a suit, in respect of the following matters namely,--*

(a) *summoning and enforcing the attendance of any person and examining him on oath;*

(b) *receiving evidence on affidavits;*

(c) *inspecting a building or its locality, or issuing commission for the examination of witnesses or documents or local investigation;*

(d) requiring the discovery and production of documents;

(e) awarding, subject to any rules made in that behalf, costs or special costs to any party or requiring security for costs from any party;

(f) recording a lawful agreement, compromise or satisfaction and making an order in accordance therewith;

(g) any other matter which may be prescribed."

7. Rule 22 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 which is with regard to the powers under the Code of Civil Procedure 1908 conferred on the District Magistrate, the Prescribed Authority and the Appellate or Revising Authority may also be referred to. Rule 22 is being extracted below.

**"Rule 22 - Powers under the Code of Civil Procedure, 1908 [Section 34(1)(g)]---** *The District Magistrate, the Prescribed Authority or the Appellate or revising authority shall, for the purposes of holding any inquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters namely,--*

(a) *the power to dismiss an application, appeal or revision for default and to restore it for sufficient cause:*

(b) *the power to proceed ex parte, and to set aside, for sufficient cause, an order passed ex parte:*

(c) *the power to award costs and special costs to any successful party against an unsuccessful party:*

(d) *the power to allow amendment of an application, memorandum of appeal or revision:*

(e) *the power to consolidate two or more cases of eviction by the same landlord against different tenants:*

(f) *the power referred to in Sections 151 and 152 of the Code of Civil Procedure, 1908 to make any order for ends of justice or to prevent the abuse of the process of the authority concerned."*

8. It is seen that Section 34 (1) confers on the District Magistrate, the Prescribed Authority and also the Appellate or Revising Authority, for the purposes of holding an inquiry or hearing in any appeal or revision under the Act of 1972, the

same powers as are vested in the Civil Court under the Code of Civil Procedure 1908, when trying a suit, in respect of the specified matters.

9. The object of the aforementioned provision is to lay down the powers of various authorities in respect of certain specified matters and to prescribe the procedure for conducting the proceedings contemplated under the Act. It lays down a procedure to be followed in the proceedings before the District Magistrate, the Prescribed Authority and also the Appellate or Revising Authority while holding an inquiry or hearing an appeal under the provisions of the Act of 1972.

10. The provisions under Section 34 thus provide a complete code in so far as the powers and the procedure to be followed by the Authorities under the Act are concerned. It may however be taken note of that Section 34 of the Act of 1972 and the Rule 22 of the Rules, 1972 are procedural in nature and they cannot be interpreted so as to enlarge the powers conferred on the authorities under the Act. The provisions are clearly to be interpreted in furtherance of their object.

11. Clause (c) of sub-section (1) of Section 34 makes a provision for inspection of a building or its locality or issuing commission. The District Magistrate, the Prescribed Authority or the Appellate or Revising Authority in exercise of powers under Section 34 (1) (c) can thus issue a commission for the examination of witnesses or documents or local investigation.

12. The powers for inspecting a building or its locality or issuing a commission under Section 34 (1) (c) by the District Magistrate, the Prescribed Authority, or the Appellate or

Revising Authority, are to be in the manner as are vested in the civil court under the Code of Civil Procedure 1908. The general provisions regarding the issuance of commission as contained under Order XXVI C.P.C. would thus be applicable to any commission issued for the purposes described under Section 34 (1) (c) by any of the authorities under the Act of 1972.

13. It is well settled that the powers conferred for issuance of commission are discretionary and it is the sole domain of a court to issue a commission or not and application for local inspection or issuance of a commission cannot be claimed as a matter of right by a litigant. The case set up by a litigant is to be proved by him by adducing evidence thereof and the court cannot come to the aid of a litigant for the purpose of collecting evidence. It is only when the Court feels that a spot inspection would be necessary for a proper and effective adjudication of the dispute and to arrive at a just conclusion, it may issue a commission, but it is not a right vested in the litigant.

14. In the case of ***Ranbir Singh Sheoran Vs. Vith Additional District Judge, Muzaffar Nagar & Ors.***<sup>1</sup>, it has been held as under.

*"The local inspection by Court is made only in those cases where on the evidence led by the parties Court is not able to arrive at a just conclusion either way or where the Court feels that there is some ambiguity in the evidence which can be clarified by making inspection. Local inspection by the Court cannot be claimed as of right by any party. Such inspections are made to appreciate the evidence already on record and Court is not expected to visit the site for collecting evidence."*

15. Again in the case of ***Son Pal Vs. Vth Additional District Judge, Aligarh & Ors.***<sup>2</sup>, it has been held as under.

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1 1997 (2) ARC 347

2 1999 (2) ARC 596

*"Whether or not a local inspection or commission is necessary for a just decision of case can only be decided after the Court hears the argument and it is for the Court, thereafter, to decide whether to go for local inspection or to issue commission. Instead of addressing arguments, it appears that the petitioner is causing unwarranted delay in disposal of the appeal."*

16. The same view has again been reiterated in the case of ***Avinash Chandra Tewari Vs. A.D.J., Court No. 3, Unnao & Ors.***<sup>3</sup>. wherein it was held as follows :-

*"To go for local inspection or issue of commission for the proper disposal of the controversy pending is a sole prerogative of the Court to decide whether to move the same or not. Hence, it is late in a day to quarrel that it is not mandatory on the part of the Court to issue commission. When an application is moved for the said purpose. The local inspection or commission by Court is made only in those cases where on the evidence led by the parties, Court is not able to arrive at a just conclusion either way or where the Court feels that there is some ambiguity in the evidence which can be clarified by making local inspection or commission. Local inspection or issue a commission by the Court cannot be claimed as of right by any party. Such inspections are made to appreciate the evidence already on record and Court is not expected to visit the site for collecting evidence."*

17. The aforementioned legal position has been considered in a recent judgment of this Court in ***Hari Kishore Vs. Smt. Subhasini Devi and others***<sup>4</sup>.

18. In view of the foregoing discussion the legal position, as it emerges, is that in a case where the parties have closed their evidence any application filed for appointment of a commissioner at the stage of arguments would not be permissible as it would amount to permitting the party to fill up lacunae in its evidence. The object of the provision for issuance of commission cannot be to assist a party to collect evidence or to initiate a roving enquiry.

19. In the facts of the present case, the proceedings arising out of the release application filed by the respondent-landlord

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3 2010 (2) ARC 84

4 2019 (134) ALR 817

being at an advanced stage before the Prescribed Authority where evidence of the parties had been closed and the arguments on behalf of the landlord had also been concluded and dates were being fixed for evidence of defendant-tenant, the conclusion drawn by the Prescribed Authority that the application for issuance of commission under Section 34 (1) (c) had been filed at the belated stage only with a view to delay the proceedings cannot be faulted with.

20. Counsel for the petitioner has not been able to point out any material error or illegality in the order impugned which may warrant interference.

21. The petition is devoid of merits and is, accordingly, dismissed.

**Order Date :- 15.7.2019**  
Pratima

(Dr.Y.K.Srivastava,J.)