



2026:AHC:138516

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
MATTERS UNDER ARTICLE 227 No. - 4426 of 2026**

Romil Jain

.....Petitioner(s)

Versus

Ashok Kumar Jain and another

.....Respondent(s)

Counsel for Petitioner(s)	: Madhav Jain
Counsel for Respondent(s)	: Archana Singh

Court No. – 35

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Heard Shri Madhav Jain, learned counsel for the petitioner and Ms.
Archana Singh, learned counsel for the respondents.

Appeal No. 17 of 2025, whereby the petitioner's applications seeking appointment of a Commissioner for local investigation of property nos. 32/1/6 and 32/1/7, situated at Old Kutlupur, Chhipitola, Rakabganj Ward, Agra, came to be rejected. According to the petitioner, such local investigation was necessary to establish that the disputed premises constituted a newly constructed building exempt from the operation of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972¹.

3. The record reflects that property no. 32/1, comprising sub-numbers 1 to 13 and situated at Old Kutlupur, Chhipitola, Rakabganj Ward, Agra, originally belonged to Umrao Singh and his brothers. It is pleaded that pursuant to a family settlement dated 01.07.1998, property nos. 32/1/6 and 32/1/7 fell to the share of respondent no. 1, Ashok Kumar Jain.

4. According to the petitioner, after obtaining possession pursuant to the family settlement, respondent no. 1 got the old dilapidated structure standing over the property vacated and, after demolishing the same, reconstructed a triple-storeyed RCC building during the years 2000-2002. It is further pleaded that the disputed shop bearing no. 32/1/6, situated on the ground floor of the reconstructed building, was thereafter let out to the petitioner's predecessor-in-interest in the year 2002. Subsequently, respondent no. 1 instituted proceedings under Section 21(1)(a) of U.P. Act No. XIII of 1972, registered as P.A. Case No. 17 of 2020, seeking release of the disputed shop.

5. During the pendency of the release proceedings, the petitioner filed a written statement and affidavits asserting that the disputed premises constituted a new construction and, therefore, stood exempt from the operation of U.P. Act No. XIII of 1972. In support of the said defence, the petitioner moved an application seeking appointment of a Commissioner for local investigation of property nos. 32/1/6 and 32/1/7 to ascertain the nature

6. Aggrieved by the judgment of release, the petitioner preferred Rent Control Appeal No. 17 of 2025 before the Appellate Authority/District Judge, Agra. During the pendency of the appeal, the petitioner once again moved Application No. 17-C seeking appointment of an Advocate Commissioner for local investigation of the disputed premises. By order dated 11.09.2025, the Appellate Authority rejected the application holding that adequate documentary evidence regarding the age and nature of the construction was already available on record and that no case for issuance of a commission was made out. It is these two orders rejecting the petitioner's applications for appointment of a Commissioner which are under challenge in the present petition.

7. Learned counsel for the petitioner submits that the authorities below have committed manifest illegality in rejecting the petitioner's applications seeking appointment of an Advocate Commissioner under Section 34 of U.P. Act No. XIII of 1972 read with Order XXVI Rule 9 Code of Civil Procedure, 1908². It is contended that the principle defence raised throughout the proceedings is that the disputed shop forms part of a newly constructed building which came into existence during the years 2000–2002 after demolition of the old dilapidated structure standing over property nos. 32/1/6 and 32/1/7. According to the petitioner, once the building is held to be a new construction within the meaning of Section 2 of the Act, it would remain exempt from the operation of U.P. Act No. XIII of 1972 and, consequently, the release proceedings instituted under Section 21(1)(a) of the Act would not be maintainable.

8. It is further submitted that the prayer for local investigation was not intended to collect evidence or fill any lacuna in the petitioner's case, but merely to assist the authorities in ascertaining the true nature, age and mode of construction of the building. Learned counsel submits that the disputed

According to the petitioner, these physical characteristics could be objectively verified only through a local investigation by an Advocate Commissioner.

9. It is next contended that both the Prescribed Authority and the Appellate Authority failed to appreciate that the issue regarding the applicability of U.P. Act No. XIII of 1972 goes to the very root of their jurisdiction. Since the determination of such issue depends upon whether the disputed premises constitutes a new construction, refusal to permit local investigation has resulted in denial of an effective opportunity to establish the petitioner's defence.

10. Learned counsel submits that the petitioner had sought appointment of a Commissioner before the Prescribed Authority itself and merely renewed the same prayer before the Appellate Authority after rejection of the earlier application. It is, therefore, submitted that the respondent's contention that the petitioner sought to introduce additional evidence for the first time in appeal is factually incorrect.

11. Learned counsel also disputes the reliance placed by the respondent upon the municipal assessment records showing the year of construction as 1980. It is submitted that the said assessment records neither formed part of the record before the authorities below nor conclusively establish the age of the disputed building. According to the petitioner, the property was assessed in its present RCC form with effect from 01.04.2016 and the recital mentioning the year of construction as 1980 is erroneous, having allegedly been incorporated to avoid the consequences of raising construction without sanction of a building plan.

12. On the aforesaid premises, learned counsel submits that the impugned orders suffer from material illegality, manifest irregularity and failure to

13. Per contra, learned counsel appearing for respondent no. 1 supports the impugned orders and submits that neither of the authorities below has committed any jurisdictional error or material illegality warranting interference under Article 227 of the Constitution of India. It is contended that the petitioner's applications seeking appointment of a Commissioner were rightly rejected as they were intended merely to collect evidence and improve the evidentiary basis of the defence, which is impermissible in law.

14. Learned counsel submits that proceedings under Section 21(1)(a) of U.P. Act No. XIII of 1972 are summary in nature and are ordinarily adjudicated on the basis of pleadings, affidavits and documentary evidence. It is urged that a commission for local investigation cannot be issued to enable a party to establish facts which it is otherwise required to prove by leading legally admissible evidence. According to the respondent, appointment of a Commissioner is a matter resting entirely within the judicial discretion of the authority concerned and cannot be claimed as a matter of right.

15. It is further submitted that an identical application seeking appointment of a Commissioner had earlier been moved before the Prescribed Authority and was rejected by a reasoned order dated 27.11.2024. Having failed before the Prescribed Authority, the petitioner could not seek appointment of an Advocate Commissioner before the Appellate Authority on the same grounds in the absence of any subsequent event, fresh circumstance or additional material warranting reconsideration of the issue. The Appellate Authority, therefore, rightly declined the prayer.

16. Learned counsel further submits that sufficient documentary evidence regarding the age and nature of the construction was already available on record, rendering any local investigation wholly unnecessary. Reliance is

support to the respondent's case regarding the nature and existence of the construction.

17. It is, accordingly, submitted that where adequate oral and documentary evidence is already available to enable effective adjudication of the controversy, refusal to appoint a Commissioner cannot be said to suffer from any legal infirmity. The impugned orders represent a proper exercise of judicial discretion in accordance with the settled principles governing Section 34 of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 CPC.

18. Learned counsel, therefore, submits that the petition is devoid of merit and seeks interference with purely discretionary and procedural orders passed by the authorities below in accordance with law. It is, accordingly, prayed that the petition be dismissed.

19. The Court has carefully considered the rival submissions advanced on behalf of the parties and has perused the pleadings exchanged between them, the material brought on record, the impugned orders passed by the authorities below, as well as the statutory provisions and judicial precedents relied upon in support of the respective submissions.

20. In the light of the rival submissions, the following question arises for determination:

21. Whether the authorities below committed any jurisdictional error or material illegality in rejecting the petitioner's applications seeking appointment of a Commissioner under Section 34(1)(c) of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 of the Code of Civil Procedure for local investigation of the disputed premises.

22. In order to appreciate the controversy involved in the present case, it would be apposite to notice the statutory scheme governing appointment of

plea, reference is required to Section 2 and Section 34 of U.P. Act No. XIII of 1972, Section 75 read with Order XXVI Rule 9 of the Code of Civil Procedure, 1908. The relevant provisions are extracted below.

“Section 2. Exemptions from operation of the Act:

... ..

(2) Except as provided in sub-section (5) of section 12, subsection (1-A) if section 21, subsection (2) of section 24, section 24-A, 24-B, 24-C or subsection (3) of section 29, nothing in this Act shall apply to a building during a period of ten years from the date on which its construction is completed:

... ..

Provided further that where construction of a building is completed on or after April 26, 1985, then the reference in this sub-section to the period of ten years shall be deemed to be a reference to a period of forty years from the date on which its construction is completed.

Explanation I.—For the purposes of this section—

(a) the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and, in the case of a building subject to assessment, the date on which the first assessment thereof comes into effect and where the said dates are different, the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construction) for the first time:

Provided that there may be different dates of completion of construction in respect of different parts of a building which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by different tenants;

(b) “construction” includes any new construction in place of an existing

“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 --

... ..

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

... ..”

“Section 75. Power of Court to issue commissions.—Subject to such conditions and limitations as may be prescribed, the Court may issue a commission-

- (a) to examine any person;
- (b) to make a local investigation;
- (c) to examine or adjust accounts; or
- (d) to make a partition;
- (e) to hold a scientific, technical, or expert investigation;
- (f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;
- (g) to perform any ministerial act.”

Order XXVI Rule 9 CPC

“9. Commissions to make local investigations.—In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any *mesne profits* or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

23. A conjoint reading of the aforesaid provisions reveals a well-defined legislative scheme. Section 2 embodies the substantive law governing exemption of newly constructed buildings from the operation of U.P. Act No.XIII of 1972. It not only prescribes the period during which such exemption operates but also lays down objective statutory tests for determining the date of completion of construction. Explanation I specifically provides that the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and, in the case of a building subject to assessment, on the date on which the first assessment thereof comes into effect. Where these dates are different, the earliest of the said dates shall prevail and, in the absence of any such report, record or assessment, the date on which the building is actually occupied shall be deemed to be the date of completion.

24. Explanation I further clarifies that "construction" includes a new construction in place of an existing building which has been wholly or substantially demolished, while clause (c) extends the concept to cases where substantial additions are made to an existing building such that the existing building becomes only a minor part thereof.

25. Unlike Section 2, which creates substantive rights and liabilities, Section 34 is procedural. It incorporates, for the limited purpose of conducting inquiries, appeals and revisions under the Act, certain powers exercisable by a Civil Court under the Code of Civil Procedure. Clause (c) thereof authorises the District Magistrate, the Prescribed Authority and the Appellate or Revising Authority to inspect a building or its locality or to issue a commission for examination of witnesses or documents or for local investigation.

XXVI Rule 9 permits issuance of a commission only where the Court considers a local investigation to be "requisite or proper" for elucidating a matter in dispute. The provision, therefore, contemplates local investigation as an aid to the adjudicatory process and not as an independent mechanism for collection of evidence at the instance of a litigant.

27. Equally significant is the use of the expression "may issue a commission" in Section 75 CPC as well as Order XXVI Rule 9. The language employed is clearly enabling and discretionary, not mandatory. Consequently, no litigant possesses a vested or enforceable right to insist upon appointment of a Commissioner merely because an application has been made. Whether a local investigation is requisite or proper is a matter resting exclusively within the judicial discretion of the adjudicating authority, to be exercised having regard to the nature of the controversy, the evidence already available on record and the necessity of such investigation for effective adjudication.

28. Thus, while Section 2 prescribes the substantive criteria for determining whether a building is entitled to exemption from the operation of the Act as a newly constructed building, Section 34 equips the statutory authorities with procedural powers analogous to those exercised by a Civil Court. The substantive enquiry under Section 2 and the procedural power under Section 34 operate in distinct fields and ought not to be conflated. The question whether a building constitutes a "new construction" is ordinarily required to be determined on the basis of the objective statutory *indicia* contemplated under Section 2, whereas a commission under Section 34 read with Section 75 and Order XXVI Rule 9 CPC may be issued only where the adjudicating authority finds that a local investigation is indispensable for proper elucidation of the controversy and the dispute cannot satisfactorily be

Court, while interpreting Section 34(1)(c)(c) of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 CPC, held that the power to issue a commission is discretionary and cannot be exercised to enable a litigant to collect evidence, fill lacunae in its case or embark upon a fishing or roving enquiry. The Court observed that a commission for local investigation is intended to assist the adjudicating authority where such investigation is necessary for effective adjudication of the dispute and not to relieve a party of its obligation to establish its case by leading legally admissible evidence.

30. The view taken in **Sanjay alias Mathura** is in consonance with the long-settled line of authority of this Court. In **Ranbir Singh Sheoran v. Vth Additional District Judge, Muzaffar Nagar**,⁴ it was held that local investigation is warranted only where clarification of some ambiguity in the evidence becomes necessary and not for collecting evidence on behalf of a litigant. Likewise, in **Son Pal v. Vth Additional District Judge, Aligarh**,⁵ it was held that the necessity of local inspection lies entirely within the discretion of the Court. Similar principles were applied in **Avinash Chandra Tewari v. A.D.J., Court No. 3, Unnao**,⁶ wherein it was reiterated that appointment of a Commissioner is not a matter of right and that the power is to be exercised only where local investigation is necessary for proper adjudication of the controversy.

31. The common thread running through the aforesaid decisions is that the jurisdiction to appoint a Commissioner for local investigation is intended to aid the adjudicatory process and not to facilitate collection of evidence for either party. Such power is liable to be exercised only where a local investigation becomes indispensable for elucidating a matter in controversy which cannot satisfactorily be resolved on the basis of the pleadings and the

the evidence adduced by the parties, refusal to issue a commission is an equally valid exercise of judicial discretion.

32. Having examined the statutory scheme and the legal principles governing the exercise of power under Section 34(1)(c) of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 CPC, this Court now proceeds to consider whether the authorities below committed any jurisdictional error or material illegality in rejecting the petitioner's applications for issuance of a commission.

33. The principal plank of the petitioner's challenge is that the authorities below committed a manifest error in declining the prayer for appointment of an Advocate Commissioner despite the consistent defence that the disputed premises constitute a newly constructed building, allegedly reconstructed during the years 2000–2002 after demolition of the earlier structure. According to the petitioner, if the said plea is ultimately accepted, the building would stand exempt from the operation of U.P. Act No. XIII of 1972 and, consequently, the release proceedings instituted under Section 21(1)(a) of the Act would themselves be rendered incompetent. It is in this backdrop that the petitioner contends that a local investigation was indispensable for determining the nature and age of the construction.

34. It has further been urged that the prayer for appointment of a Commissioner was not intended to collect evidence but merely to enable the authorities to ascertain the physical characteristics of the existing structure, such as RCC pillars, beams, slabs and other constructional features, which, according to the petitioner, would objectively establish that the building was a fresh construction. It has also been submitted that since the question regarding the applicability of the Act goes to the very root of the jurisdiction

Section 34(1)(c) of the Act read with Section 75 and Order XXVI Rule 9 CPC is not intended to be exercised merely because a material fact is disputed between the parties. The jurisdiction is discretionary and is to be invoked only where the Court considers a local investigation to be requisite or proper for elucidating a matter in controversy which cannot satisfactorily be resolved on the basis of the pleadings and the evidence already available on record. The existence of a dispute, however substantial, does not by itself furnish a ground for appointment of a Commissioner.

36. Equally, the contention that the issue regarding the applicability of U.P. Act No. XIII of 1972 goes to the root of the jurisdiction of the Prescribed Authority does not, by itself, advance the petitioner's case. The significance of the issue cannot determine the procedure by which it is to be adjudicated. Whether the premises are exempt from the operation of the Act is undoubtedly a jurisdictional question; nevertheless, it remains a question to be decided by the competent authority upon appreciation of the legally admissible evidence produced by the parties. The appointment of a Commissioner is only a procedural aid to facilitate adjudication where necessary and cannot be elevated to a mandatory requirement merely because the issue involved is jurisdictional in nature.

37. The distinction sought to be drawn by the petitioner between "ascertaining the physical features of the building" and "collecting evidence" is equally devoid of substance. The application seeking appointment of a Commissioner itself discloses that the object of the proposed local investigation was to establish that the disputed premises constituted a newly constructed building exempt from the operation of the Act. The proposed inspection was, therefore, intended to substantiate the factual foundation of the petitioner's defence. Once the purpose of the commission is to prove a

38. The respondent has also rightly contended that proceedings under Section 21(1)(a) of U.P. Act No. XIII of 1972 are ordinarily adjudicated on the basis of affidavits and documentary evidence and that appointment of a Commissioner cannot be claimed as a matter of right. A litigant cannot invoke the machinery of local investigation merely because it considers such a course advantageous to its case or because it seeks to reinforce the evidentiary foundation of a plea already taken. These submissions are in consonance with the settled principles governing the exercise of power under Order XXVI Rule 9 CPC, as noticed hereinbefore.

39. Learned counsel for the petitioner has also questioned the reliance placed upon the municipal assessment records by contending that the said records neither formed part of the record before the authorities below nor conclusively establish that the building was constructed in the year 1980. It has further been urged that the first assessment of the RCC structure came into effect only from 01.04.2016 and that the recital regarding the year of construction is erroneous. These submissions, however, do not materially advance the controversy arising in the present petition. The Appellate Authority, in its order dated 11.09.2025, while rejecting Application No. 17-C filed by the petitioner seeking appointment of an Advocate Commissioner, recorded that the landlord had already placed the documents pertaining to the municipal assessment of the disputed premises and that the tenant had failed to adduce any evidence to the contrary. Moreover, the question before this Court is not whether the municipal assessment records conclusively determine the age of the building or whether the entries recorded therein are ultimately correct. Those are matters pertaining to appreciation of evidence in the substantive proceedings. The limited issue is whether the material available before the authorities was sufficient to enable them to form the opinion that local investigation was unnecessary. Viewed from that

40. Viewed holistically, the petitioner's application for local investigation did not seek elucidation of any ambiguity which the existing record was incapable of resolving. The real object of the application was to secure additional material in support of the plea that the disputed premises constituted a newly constructed building exempt from the operation of U.P. Act No. XIII of 1972. The petitioner had already been afforded adequate opportunity before the Prescribed Authority to establish the said plea by leading oral as well as documentary evidence. Having failed to place even *prima facie* material capable of substantiating the plea of new construction, the petitioner could not legitimately invoke the machinery of local investigation to overcome the evidentiary deficiency in its case.

41. In the facts of the present case, appointment of a Commissioner would not have served the object contemplated under Section 34(1)(c) of the Act read with Section 75 and Order XXVI Rule 9 CPC, namely, to assist the Court in elucidating a matter which could not satisfactorily be determined on the basis of the evidence already available. On the contrary, it would have converted a procedural device intended to aid the adjudicatory process into a means of collecting evidence or strengthening the factual foundation of the petitioner's defence. Such an exercise falls clearly outside the scope of Order XXVI Rule 9 CPC and would run contrary to the principle enunciated by this Court in **Sanjay alias Mathura**, as also the long-settled line of authority commencing from **Ranbir Singh Sheoran**, followed in **Son Pal** and **Avinash Chandra Tewari**, that a commission cannot be issued for collecting evidence, filling lacunae or embarking upon a roving enquiry. Equally well settled is the principle that where the controversy is capable of being effectively adjudicated on the basis of the pleadings and the evidence already on record, refusal to appoint a Commissioner constitutes an equally valid exercise of judicial discretion.

of the statutory framework contained in Sections 2 and 34(1)(c) of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 CPC and are in accord with the settled principles governing appointment of Commissioners for local investigation.

43. The supervisory jurisdiction of this Court under Article 227 of the Constitution of India is intended to ensure that courts and tribunals subordinate to it act within the bounds of their authority and in accordance with law. It is neither appellate nor intended to correct every erroneous decision. Interference with a discretionary or procedural order is warranted only where the authority has acted without jurisdiction, failed to exercise jurisdiction vested in it, acted in patent disregard of settled legal principles, or where the order suffers from manifest perversity, patent illegality or has occasioned a failure of justice. The mere possibility of another view or the fact that this Court may have exercised the discretion differently cannot, by itself, justify interference.

44. Tested on the aforesaid parameters, the impugned orders do not warrant interference. The discretion vested in the authorities below has been exercised upon due consideration of the pleadings, the documentary material on record and the governing statutory provisions. The view taken is in consonance with the settled principles governing the exercise of power under Section 34(1)(c) of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 CPC.

45. The petition, being devoid of merit, is accordingly **dismissed**. There shall be no order as to costs.