

(1980) 02 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7389 of 1978

Amaiya Kumar Mukerjee

APPELLANT

Vs

Rent Control and Eviction Officer, Allahabad and other

RESPONDENT

Date of Decision : 28-02-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 17(2), 21, 3(g)

Citation : (1980) 02 AHC CK 0046

Hon'ble Judges : A.N.Varma, J

Final Decision : Allowed

Judgement

A.N. Verma, J.

This petition is directed against orders passed by respondents Nos. 1 and 2 rejecting the petitioner's application for release of the accommodation in dispute and allotting it to respondent No. 3. Despite service of the notice, which has been treated to be sufficient by this Court, the respondent No. 3 has not put in appearance nor filed any counteraffidavit. The facts stated in the writ petition have, therefore, remained uncontroverted.

There are the undisputed facts. The petitioners are the owners and landlords of house Nos. 58 and 59 Bai Ka Bagh, Allahabad. They are residing on the first floor of the said building No. 58 as also in the groundfloor portion of house No. 59 aforesaid. The family of the petitioner as disclosed in paragraph of 2 of the writ petition consists of Asit Kumar Mukerji petitioner No. 2, his wife, one son and one daughter. The family of petitioner No. 1 consists of five persons. Deepak Kumar Mukerjee is unmarried and it is stated that he is going to be married shortly. There are besides two unmarried sisters of the petitioner, namely, Kumari Kanika Mukerjee and Kumari Mitali Mukerjee daughters of the late Hari Har Mukerjee, father of the petitioners. They are residing with the petitioners as members of their family, Further under the Hindu Successions Act, they have a right of

ownership over the house in dispute along with their brothers.

The learned District Judge has observed that those unmarried sisters of the petitioners though coowners of the building in dispute cannot be regarded as members of the petitioners' family and that, therefore, their needs cannot be taken into consideration while determining the question whether landlords bonafide require the accommodation in dispute.

Having heard learned counsel for the parties, I am clearly of the view that the order passed by the learned District Judge is unsustainable. On the own finding of the learned District Judge, the unmarried sisters of the petitioners have a right of residence in the accommodation in dispute by virtue of being owners of the property. They are besides residing with the petitioners as members of the family. The petitioners have stated that the sisters are dependent on them. Section 3(g) of U. P. Act No. XIII of 1972 reads as follows:

"(g) "family" in relation to landlord of tenant of a building means, his or her

(i) spouse;

(ii) male lineal descendants;

(iii) such parents, grand parents and any unmarried or widowed or divorced or judicially separated daughter or of a male lineal descendant as may have been normally residing with him or her and includes in relation to a landlord, any female having a legal right of residence in that building."

It would be clear from a perusal of the aforesaid definition that the family as defined under the Act, includes any female having a right of residence in that building. The unmarried sister of the petitioners have a right of residence in the building by virtue of being the owners thereof, quite apart from the facts that by virtue of being dependent on their brothers as members of the joint Hindu family. They fall with the definition of family. The learned District Judge therefore, erred in law in not taking into consideration the need for the house by these sisters also. The need of the sister also has to be taken into account.

The learned District Judge would also give a fresh finding on the question whether on the facts and circumstances of the present case, the provisions of subsection (9) of Section 17 of the Act were attracted or not. The learned District Judge does not appear to have considered this question in depth. The petitioners had led evidence to show that there are common amenities enjoyed by the parties in regard to the building which is at present in occupation of the landlords and the building in question. The learned District Judge does not appear to have applied his mind to the evidence led by the petitioner.

For the reasons stated above, this petition succeeds and is allowed. The order passed by the learned District Judge dated 2351978 is quashed. The case is remanded to respondent No. 2 for disposing of the petitioner's Revision afresh according to law, having regard to the observations made in this Judgment.

There will be no order as to costs.