
(1995) 04 AHC CK 0051

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 15702 of 1990

Anil Kumar Gupta

APPELLANT

Vs

VIth Addl. D.J., Kanpur & Ors.

RESPONDENT

Date of Decision : 04-04-1995

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (1995) 04 AHC CK 0051

Hon'ble Judges : M.Katju, J

Final Decision : Dismissed

Judgement

M.Katju, J.—This writ petition has been filed against the impugned orders dated 361986 and 12/1341990, Annexures 6 and 7 to the writ petition.

2. I have heard Shri R. P. Goel, learned counsel for the petitioner and Shri B. D. Mandhyan for respondent Nos. 3 and 4.

3. The petitioner is an officer of the Indian Air Force where he has been working since 1971. In 1983 he filed an application under Section 21(1)(a) of the U. P. Act No. 13 of 1972 against the respondents alleging his bona fide need, a true copy of which application is Annexure 1. The petitioner has submitted that he is an Indian soldier as defined in the Indian Soldiers (Litigation) Act, 1925 and hence he is entitled to the benefit of clause (iii) of the Explanation to Section 21(1)(a). In this connection the petitioner has filed certificate dated 3121983, true copy of which is Annexure 3. He has also filed two certificates, true copies of which are Annexures 4 and 5 to establish his claim. By the order dated 361986 the Prescribed Authority rejected the release application of the petitioner, a true copy of which is Annexure 6. Against this order the petitioner filed an appeal before the respondent No. 1 which was dismissed by order, dated 3041990. Hence this petition.

4. The Explanation (iii) to Section 21 states in the case of residential building i

"(iii) Where the landlord of any building is

(1) a serving or retired Indian Soldier as defined in the Indian Soldiers (Litigation) Act, 1925 (IV of 1925), and such building was let out at any time before his retirement, or

(2) a widow of such a soldier and such building was let out at any time before the retirement or death of her husband, whichever occurred earlier, and such landlord needs such building, for occupation by himself or the members of his family for residential purposes, then his representation that he needs the building for residential purposes for himself or the members of his family shall be deemed sufficient for the purposes of clause (a) and where such landlord owns more than building this provision shall apply in respect of one building only."

There is no denial that the petitioner is an Indian Soldier as defined in Indian Soldiers (Litigation) Act, 1925 because under the said Act even Air Force personnel are covered by the said Act. Hence the petitioner is entitled to the benefit of Explanation (iii). Under the said Explanation, the representation of soldier that he needs the building for his residential purpose for himself or his members of his family shall be deemed to be sufficient for the purpose of clause (a) hence the Explanation (iii) is a deeming provision which prescribes that if an Indian Soldier filed an application under Section 21(1)(a) his bonafide need will be presumed to exist and he does not have to prove such need. Moreover the fourth proviso to Section 21(1) states that where a case is covered by the Explanation the comparative hardship of the tenant has not to be taken into consideration. Thus a perusal of the provisions of Section 21 shows that certain benefit has been given to soldiers as defined under the Act and they do not have to prove either their bona fide need or that their need is greater than that of the tenant. Both these requirements are presumed to exist by legal fiction created by Explanation (iii) and the fourth proviso to Section 21. Obviously the intention of the Legislature was to give a benefit to soldiers since they are defending the country at the risk of their lives.

5. A perusal of the appellate judgment dated 1341990 shows that the petitioner's appeal has been dismissed on the ground that he has not been able to prove bonafide need as already held above. As already observed above, an Indian Soldier as defined under the Indian Soldiers (Litigation) Act, 1925 does not have to prove his bonafide need or that his need is greater than that of the tenant because by legal fiction created by Explanation (iii) and the fourth proviso to Section 21 both these requirements are presumed to exist.

6. In view of the above discussion, the impugned orders dated 1341990 and 361986 are erroneous in law and are hereby set aside. The petitioner's application under Section 21(1)(a) will be deemed to have been allowed. However, on the facts and circumstances of the case I grant the respondent Nos. 3 and 4 one year time to vacate. They will handover peaceful and vacant possession of the accommodation in dispute to the petitioner on or before

441996 and shall pay rent regularly till then.