
(1978) 02 AHC CK 0058

In the Allahabad High Court

Case No : Civil Misc. Writ No's. 1252 and 1253 of 1977

Balwant Singh

APPELLANT

Vs

VII Addl. Distt. Judge and Others

RESPONDENT

Date of Decision : 23-02-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 21, 3

Citation : (1978) AWC 273

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : S.H.S. Abidi, for the Appellant; Suresh Prasad, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—Respondent No. 3 Smt. Santosh Kumari was the owner of house No. 8, Supentine Road, Bareilly Cantt. She appears to have purchased this house by a sale deed dated August 7, 1956. She retained a few rooms in her possession and let out the rest of it to two tenants, Subedar Balwant Singh and Captain Roshanlal Jetlay. In March 1976, she applied for release of the two rooms u/s 21 of the Rent Control Act on the ground that her husband was in the State Police Service. He was Deputy Superintendent of Police posted at Etah. He was due to retire on August 31, 1976. She along with her husband and children desired to live to their own house at Bareilly after retirement.

2. The tenants contested the application. The Prescribed Authority, however, relying on Sub-section (iv)(1-A) of Section 21 of the Rent Control Act, 1972, granted the application and directed the eviction of the tenants. The tenants went up in appeal but failed. They have now come to this Court under Article 226 of the Constitution.

3. The lower appellate court held that it was established that the owner's husband was in the police service. He retired in 1976. Till his retirement, he was

in occupation of government residence at Etah. It was also observed:

It is also not denied that cessation of service of the husband of the landlady will have the same effect as the cessation of service of the landlady.

Accordingly, the landlady was entitled to the benefit of Sub-section (iv)(1-A). Under it the courts were not permitted to look into the comparative needs of the landlord and the tenant. On this view the appeal filed by the tenants was dismissed.

4. Section 21 provides for release of buildings in occupation of tenants. Sub-section (iv)(1-A) says:

Notwithstanding anything contained in Section 2, the Prescribed Authority shall, on the application of a landlord in that behalf, order the eviction of a tenant from any building under tenancy if it is Satisfied that the landlord of such building was in occupation of a public building for residential purposes which he had to vacate on account of the cessation of his employment:

Provided that an application under this Sub-section may also be given by a landlord in occupation of such public building at any time within a period of one year before the expected date of cessation of his employment but the order of eviction on such application shall take effect only on the date of his actual cessation.

Clause (j) of Section 3 defines a landlord as follows:

(j) "landlord" in relation to a building, means a person to whom its rent is or if the building, were let would be, payable, and includes except in Clause (g), the agent or attorney of such person.

Clause (g) defines "family" in relation to a landlord or tenant of a building. It includes his or her spouse, male lineal descendants, parents, etc., and also includes, in relating to a landlord, any female having a legal right of residence in that building.

5. Section 3 which is the definition section, begins by saying "In this Act, unless the context otherwise requires." Though the definition of landlord in Clause (j) excludes the agent or attorney of such person, except for purposes of Clause (g), yet it cannot be gainsaid that the agent or attorney would not be included within the meaning of the word "landlord" as occurring in the Act. Sub-section (iv)(1-A), gives a personal privilege to the landlord to apply for release on satisfaction of the conditions mentioned in it. It will be preposterous if the landlord is supposed to include the agent or attorney of the tenants for purposes of Sub-section (iv) (1A).

6. It is significant that the word "landlord" unlike the definition of the word "family" does not include the spouse of the landlord or his children or his parents. In my opinion, the term "landlord" as defined will not include the husband of the person who really is the owner or the landlord of the building.

7. Clause (iv)(1-A) applies to land lords *stricto sensu*. Its conditions are that the landlord must be in occupation of a public building for residential purposes which had to be vacated on account of the cessation of his employment, namely, cessation of the landlord's employment. In my opinion, this condition cannot be satisfied by the cessation of the landlord's husband's employment. So even though the landlord may be in occupation of a public building for residential purposes which she or he may have had to vacate, but unless the landlord has to vacate the public building on account of the cessation of his own employment Sub-section (iv)(1-A) will not be attracted.

8. In the present case, the landlord is Smt. Santosh Kumari. She was not in employment. There is no question of her employment having ceased. Her husband was in public service and in that capacity was occupying a public building. Her husband's employment ceased with the result that he had to vacate the public building. Nonetheless the landlady was not within the terms of Sub-section (iv)(1-A); The authorities below have granted the application for release solely under Sub-section (iv)(1-A). Those orders cannot be sustained.

9. The case of the landlady was that after the retirement of her husband she had no other place to live except her own house and that her need was bonafide. This aspect has not been considered by the courts below nor have they considered the respective needs of the two parties, because they applied Sub-section (iv)(1-A) of Section 21 of the Act. The case has, therefore, to go back.

10. The petition is allowed. The order of the Prescribed Authority is set aside. The case is sent back to the lower appellate court for decision of the appeal afresh and in accordance with law and in the light of the observations made above.