

(1984) 04 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 827 of 1979

Bhagwati Mandir Biraiman

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-04-1984

Acts Referred:

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

Citation : AIR 1984 All 300

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : J.C. Bhardwaj and S.N. Agarwal, for the Appellant; A.K. Yog,
Standing Counsel., for the Respondent

Final Decision : Allowed

Judgement

B.N. Sapru, J.—This is a petition by the landlord and arises out of proceedings u/s 21 (1) (a) of the U. P. Urban Buildings (Regulation of Letting. Rent & Eviction) Act. 1972. (hereinafter referred to as "the Act").

2. The landlord had applied for the eviction of a tenant from the temple premises on the ground that the accommodation in question was required for Hawan, Kirtan, Bhajan etc. which were held in the temple and for which the accommodation has become short because of the growing number of devotees.

3. The application was contested by the tenant who alleged that the shebait, Haridesh Chand had converted a portion of the accommodation belonging to the temple into a shop. It was also asserted that sufficient open space was available for the activities of the temple. It was also the case of the tenant that if the application is allowed, he would be deprived both of his business which he carried on in the premises in dispute and also of his residence. It is submitted that a greater hardship would be caused to the tenant by allowing of the application than by its rejection. The tenant also pleaded that the application u/s 21 (1) (a) of the Act was not maintainable.

4. The Prescribed Authority after considering the respective cases of the parties allowed the application.

5. The tenant was aggrieved and preferred an appeal. The appellate authority held that the application u/s 21 (1) (a) of the Act was not maintainable as the accommodation was not required by the landlord who was a deity for the landlord's personal residence. The appellate authority went on to hold that Haridesh Chand, the shebait, has converted the Baithak into a shop which he was running. It was held by the appellate authority that this accommodation could have been used for the purposes of the temple. It then went on to hold that since the number of worshipers was not known, it was not possible to hold that the building was required for the purpose. It then held that a greater hardship would be caused to the tenant by the grant of the application than by its rejection.

6. Aggrieved the landlord has come in writ petition.

7. The first and foremost question to be considered in this writ petition is whether an application u/s 21 (1) (a) for the purposes mentioned in the application, was maintainable at the instance of the deity.

8. Section 21, Sub-section (1), Clause (a) of the Act runs as follows :--

"21. Proceedings for release of building under occupation of tenant.-

(1) The Prescribed Authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely-

(a) that the building bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, or calling or where the landlord is the trustee of a public charitable trust for the objects of the trust:"

9. The deity is a juristic person and it is not disputed that a deity is installed in Bhagwati Mandir.

10. "Building" is defined in Section 3 (i) of the Act which is the definition clause, as residential or non-residential roofed structure. The Mandir would undoubtedly be a residential building as it is the abode of the deity,

11. Section 21 (1) (a) of the act speaks of a building being required by a landlord for occupation either for residential purposes or for the purposes of any profession, trade or calling or where the landlord is a trustee of a charitable trust for the objects of the trust. A deity was installed and the property was made the property of the deity by means of an endowment deed which is on record.

12. The view of the Appellate Authority was that the word "residence" in Section 21 (1) (a) of the Act means actual physical dwelling by a landlord. The Appellate

Authority went on to hold that if the accommodation would have been required for installation of a deity, it would have been a residential purpose. It, however, held that the application stated that the accommodation was required for holding Bhajan, Kirtan, Hawan, etc. and the appellate authority held that these purposes were not residential purposes.

13. In the case of *Deoki Nandan v. Murlidhar*. AIR 1957 SC 133, it was held that true beneficiaries of the religious endowment are not idols but the worshippers when the purposes of the endowment is the maintenance of the worship for the benefit of worshippers. It has further been held in that decision that-

"Under the Hindu law, an idol is a juristic person capable of holding property and the properties endowed for the institution vest in it."

14. Keeping in view the purposes of a Hindu endowment to a deity, the use of the premises is for the benefit of the true beneficiaries of the dedication to a deity who are its worshippers. While interpreting Section 21 (1) (a) of the Act, the words "residential purposes" will have to be interpreted in a broader sense than actual physical residence by a deity. They should be interpreted in a manner which takes within its sweep all manner of activities by the devotees which necessarily follow the public dedication of a property in favour of a deity, i.e. all religious activities associated with the Place where the deity is installed. All those purposes necessarily have to be interpreted as residential purposes in cases where the property vests in a deity.

15. In *Words and Phrases*. Permanent Edition, while considering the meaning of word "residence" at page 322, it has been observed that-

"The terms "reside," "residing." resident" and "residence" are elastic and should be interpreted in the light of object or purpose of statute in which such term is employed."

16. I would, therefore, hold that the learned appellate authority was in error in holding that the application u/s 21 (1) (a) was not maintainable.

17. I may here notice an argument advanced by the learned counsel for the respondent who drew my attention to Section 3 (e) wherein the words "religious institution" has been defined to mean a temple, math, mosque, church, Gurudwara or any other place of public worship and includes a waqf not being a waqf-alal-aulad.

18. He urges that if the temple wanted the accommodation for its own use, it could have made an application under Rule 3 of the Rules framed under the Act, under which any public charitable or public religious institution may seek exemption from all or any of the provisions of the Act in respect of any building owned by it. He urges that an application under Rule 3 was the proper forum for release by the deity.

19. I am unable to accept this argument, because the purposes of Rule 3, which

exempts a building from the operation of the Act, and an application u/s 21 (1) (a) of the Act are entirely different.

20. The learned counsel for the respondent has urged that there is a finding by the appellate authority that the need of the deity for the accommodation in question was not genuine and further refers me to the finding that the tenant would suffer greater hardship by the grant of the application than by its rejection.

21. At this stage, it is necessary to take into account the fact that the subsequent to the decision of the appellate authority, the tenant had acquired land and constructed four shops at a place at some distance from the accommodation in question. The subsequent development has now to be taken into account while deciding the matter. It is not for this Court to decide whether the property acquired by the tenant is suitable for the business or not or what degree of hardship will be caused to him at this stage if the application is allowed. The appropriate forum to decide this question is the appellate authority.

22. In the result, the writ petition is allowed, the impugned order of the appellate authority is set aside, and the appeal will now be decided afresh by the appellate authority treating the application u/s 21 (1) (a) of the Act as maintainable. However, it will decide all other disputes between the parties on which I express no opinion. The parties will bear their own costs.