

(1998) 03 AHC CK 0040
In the Allahabad High Court
Case No : C.M.W.P. No. 11533 of 1982

Budhu Lal alias Budh Ram (Decd.) through L.Rs.	APPELLANT
Vs	
District Judge, Allahabad and others	RESPONDENT

Date of Decision : 04-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16, 21(1)
Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16, 21(1)
Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16, 21(1)

Citation : (1998) 2 AWC 1499

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Rajiva Srivastava, for the Appellant;

Judgement

J. C. Gupta. J.

1. Since counter and rejoinder-affidavits have been exchanged, this writ petition is disposed of finally.
2. This is tenant's writ petition against the order dated 23.4.1982 passed by respondent No. 2 and the order dated 6.9.1982 passed by respondent No. 1.
3. The dispute relates to part of accommodation of House No. 51, Khushal Parvat, Allahabad, which is in the tenancy of the petitioner. The landlord, the respondent No. 3, moved an application u/s 21 (1) (a) of the U. P. Act No. XIII of 1972 for the release of the said accommodation on the ground that the house which is in occupation of the landlord is not sufficient to cater the need of his family members inasmuch as three rooms of the said house have fallen down and the landlord resides in a portion of the said house in its upper portion which

comprises of only two small rooms, one small kitchen and a small store room while the tenanted accommodation consist of one room measuring 16" x 9" facing the lane in the ground floor. It was further alleged that two sons of the landlord are of marriageable age and for additional accommodation was required them. The tenant was in no need of the disputed accommodation inasmuch as he resides at 60, Akhara Man Khan, Allahabad, where he has a shop also. In the said accommodation, the tenant has at his disposal one room about 22" x 11" as also a Dalan of the same size.

4. The petitioner-tenant contested the said application and there was no dispute with regard to number of family members of the landlord. However, it was alleged that the entire first floor and second floor along with two rooms, a tiled room having Khaprall and courtyard on the ground floor is in use of the landlord. In short, the tenant case was that the landlord was having sufficient accommodation With him to cater the need of his family members. In respect of the accommodation at 60, Akhara Man Khan, the case of the tenant was that the said accommodation was being used by him for business purpose only and he was not residing therein.

5. On appraisal of evidence, both the Courts below have recorded concurrent findings of fact that the landlord's need is bona fide and genuine. On the question of comparative hardship also, both the Courts have concurred that the landlord was likely to suffer a greater hardship than that of the tenant. It is well-settled law that in exercise of powers under Article 226 of the Constitution of India, this Court does not ordinarily interfere with the concurrent findings of fact unless it could be shown that the said findings are perverse or suffer from any manifest error of law. In the present case, it could not be shown that the concurrent findings of fact recorded by the respondent Nos. 1 and 2 suffer from any such infirmity or illegality.

6. The main argument of the learned counsel for the petitioner is that once the landlord himself came with the case that the petitioner-tenant was not residing in the tenanted accommodation and was actually residing at 60 Akhara Man Khan accommodation, there occurred a deemed vacancy as per his own admission and, therefore, the only course open for him was to move an application u/s 16 of the Act and application u/s 21 (1) (a) of the Act was not legally maintainable. This argument of the learned counsel for the petitioner must be rejected outrightly as not tenable. It may be relevant to mention here that in his application u/s 21 (1) (a) of the Act, the landlord made an averment that the tenant-petitioner was not in need of the disputed accommodation as he has started residing at 60, Akhara Man Khan, Allahabad. From this averment, it cannot be inferred either on fact or in law that the petitioner no longer remained the tenant of the landlord. So long as tenancy subsists, it is always open for the landlord to move an application u/s 21 (1) (a) of the Act. It was also open for the landlord to have approached the Rent Control and Eviction Officer u/s 16 of the Act for the release on the ground that the accommodation should be deemed to

be vacant by legal fiction under the provisions of Section 12 of the Act. It is true that different considerations weigh with the authorities while considering an application u/s 21 (1) (a) and an application u/s 16 of the Act. In an application" moved u/s 21 (1) (a), besides proving bona fide need, the landlord has also to show that he will suffer a greater hardship than that of the tenant. Such a comparison of hardship is not at all required to be gone into in an application u/s 16 of the Act.

7. Learned counsel for the petitioner referred to a decision of this Court in Naubat Ram Sharma u. Additional District Judge IXth , Moradabad and others 1987 (2) ARC 121. In that case, the tenant had been transferred from Moradabad to some other station and the landlord had moved an application u/s 16 of the Act with the allegation that on account of cessation of occupation by the tenant, the accommodation had become vacant and was open for release. The revisional court accepted the landlord's contention about the bonafide need and accordingly, the accommodation was released in favour of the landlord. Before this Court, it was argued on behalf of the tenant that the finding with regard to bona fide need of the landlord was based on irrelevant considerations. It was in this connection that this Court considered the scope of applications moved u/s 16 and u/s 21 (1) (a) of the Act and it was in this context that this Court observed that different considerations are to be seen while deciding such applications. It was nowhere held in the said decision that in a case where provisions of Section 12 are attracted, the landlord is debarred from moving an application u/s 21 (1) (a) of the Act even though he may be having bona fide and genuine personal need for the release of the tenanted accommodation.

8. On a consideration of the relevant provisions of the Rent Control Act, I am of the view that no provision is contained therein which could bar moving of an application u/s 21 (1) (a) of the Act even where there may have occurred a deemed vacancy u/s 12 of the Act.

9. It was then argued that the tenant, who is a poor man, is in occupation of only one room while the landlord has several rooms in his occupation and this aspect of the matter has not been considered by the Court below. This contention of the petitioner's counsel must also be rejected as both the Courts below have gone into this question and have recorded a concurrent finding that the accommodation in occupation of the landlord was not sufficient and adequate to cater his need. A bona fide need of landlord cannot be sacrificed merely on the ground that the tenant would suffer hardship in case he is evicted. In every case where an application for release is allowed, some inconvenience and hardship is inevitable which the tenant would face in each case. If the application for release is to be rejected on that ground alone, in that event no application for release can ever be allowed.

10. The judgments of both the Courts below are based on appraisal of evidence and are concluded by findings of fact which do not call for Interference by this Court in exercise of a writ jurisdiction.

11. For the above reasons, this writ petition is dismissed.

In the circumstances of the case, parties are directed to bear their own costs.

12. However, the petitioner is allowed two months" time to vacate the premises in question subject to his filing an undertaking in writing on affidavit before the prescribed authority within twenty days from today to the affect that he shall hand over vacant possession to the landlord on or before the expiry of aforesaid period of two months and shall not pass on possession to any other person and that the petitioner shall deposit the entire rent up to date by 30.3.1998 after adjusting the amount that may have been already been deposited in Court. In case no undertaking as aforesaid is filed within the specified period of twenty days and/or a default is committed in making compliance of other condition, this order extending the period of delivery of possession shall stand vacated and the landlord shall be at liberty to get the Impugned order enforced forthwith.