
(1985) 09 AHC CK 0034

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14270 of 1981

Chhedi Lal and Another

APPELLANT

Vs

The Vth Additional District Judge and Others

RESPONDENT

Date of Decision : 12-09-1985

Acts Referred:

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

Citation : (1985) AWC 967

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant; K.N. Dwivedi and S.C., for the Respondent

Final Decision : Allowed

Judgement

V.K. Mehrotra, J.—Sri Chhedi Lal and his wife Smt. Hira Devi who are Petitioners in this writ petition under Article 226 of the Constitution of India, are owners of house No. 105/326, Charoman Ganj, Kanpur. They purchased the house on April 15, 1962. Some portion of the ground floor and some on the first floor of the building is in occupation of tenants. Sarvashri Sarju, Baddal and Daulat Ram are three such tenants. They are occupying the portions in their tenancy on a monthly rent of about Rs. 13/- each.

2. According to the Petitioners, their family consists of 10 members. Most of their children are of school-going age. One son Kishori Lal, was nearly 20 years of age in the year 1972. Negotiation for his marriage was going on at that time.

3. Finding that the accommodation in their possession was grossly insufficient for their requirements, the two Petitioners made an application u/s 21 of U.P. Act XIII of 1972 for release of the accommodation in possession of Sarju, Baddal and Daulat Ram. The application, which was made in July 1978 mentioned the circumstances in which the two Petitioners were claiming the release of the

aforesaid accommodation. Amongst other things, it was said that having regard to the status of the Petitioners and their family it was imperative for them to have a dinning room and a drawing room, apart from five living rooms and necessary kitchen etc. It was also said that Kishori Lai was likely to get married and would be needing a room for himself. The application mentioned that most of the rooms were of the size of 2 ft x 2 ft and some of them would have to be converted into bigger rooms to suit the requirements of the Petitioners.

4. The three tenants contested the prayer for release made by the Petitioners on various grounds and in particular, on the ground that the accommodation in possession of the Petitioners was sufficient for their requirements. It was also said that the story about the marriage of Kishori Lal was set up with a view to make out a ground for release.

5. The Prescribed Authority decided the matter on August 21, 1980, It rejected the prayer for release. Annexure 4 to the writ petition is a copy of the order passed by the Prescribed Authority. On appeal by the two Petitioners, the appellate authority, namely the V Additional District Judge, Kanpur endorsed the decision of the Prescribed Authority by an order of August 11, 1981. Annexure 6 to the Writ Petition is a copy of the order of the appellate authority.

6. The Prescribed Authority, as also the appellate authority took the view that the Petitioners were not able to establish any bonafide need for the release of the accommodation in the tenancy of the three tenants in their favour. On this principal conclusion they, naturally, negatived the claim made by the two Petitioners.

7. Sri Ashok Khare, appearing for Chhedi Lai and his wife, has urged that the decision of both the authorities is vitiated in law for the they have not considered (he question of bonafide need of the landlords in accordance with law. The submission is that while judging the question of bonafide need of the landlords, these authorities have failed to take relevant considerations into account and have in fact, been influenced by irrelevant considerations.

8. A look at the order passed by the Additional District Judge shows that he was influenced largely by the fact that the two Petitioners claimed that they had purchased the entire building with a view to provide residential accommodation to themselves, yet, they had admitted that in a portion on the ground floor they were carrying on the manufacture of brushes. The learned Judge felt that conversion by the two Petitioners of a residential building into a non-residential one, for manufacturing purposes, was not permitted by the provisions of U.P. Act XIII of 1972. Since, admittedly, a part of the accommodation was being used for purposes other than residential, the two Applicants have mis-entitled the selves from seeking release of any other portion for residential purposes. Sri Ashok Khare argues, and in my opinion rightly, that this consideration was an irrelevant one with which the appellate authority should not have been impressed. The argument is that the third proviso to Section 21(1) of U.P. Act XIII of 1972 only

prohibited that an application for release of accommodation by a landlord under Clause (a) of Section 21(1) would not be entertained in case of any residential building, for occupation for business purposes. The said provision did not preclude a landlord from using his own residential accommodation for business purposes as such from before. The argument, on the facts of the instant case is sound. The two Petitioners have disclosed in the application made by them for release of accommodation in the tenancy of Respondent-tenants the circumstances in which they came to use some portion of the ground floor accommodation of the building for manufacturing brushes. Having regard to the location of building, and the circumstances mentioned in the application for release, it could not be said that the user by the two Petitioners of that portion of the ground floor for manufacturing brushes was violative of any provision of U.P. Act XIII of 1972. The appellate authority may have been right in its approach in case release of the accommodation in occupation of the Respondent tenants for the residential purposes was sought for using it for manufacturing brushes or other business. But, this is not the case here. It is obvious that the Additional District Judge was impressed by an irrelevant consideration.

9. The discussion made by the learned Judge of the question of bonafide requirement of the Applicants is rather cryptic. Largely, it recites the case of the parties. It has not expressly dealt with the question of the likely marriage of Kishori Lai. When one turns to the order of the Prescribed Authority, on finds that the likely marriage of Kishori Lai has been treated to be a future necessity of *he landlords which, according to the Prescribed Authority, could not be taken into consideration. This approach is not correct in law. Necessity for additional accommodation on the ground that a son of the landlords was likely to be married, if set up at a time when, in the normal course, the claim cannot be treated to be far fetched, is certainly a consideration which can be invoked for seeking release of accommodation. After all, the availability of additional accommodation, if necessary on account of an impending marriage, is to be thought of and ensured reasonably wed in advance of the occurrence of the marriage. The case of the Petitioners, based upon the likely marriage of Kishori Lal, could not be thrown out on the ground that it was a need in future which could not be taken into consideration. The principle that an event which is likely to take place within a reasonable future should be taken into consideration has been accepted by this Court earlier--See *Abhoy Singh v. District Judge (?) U.P.* RCC 644.

10. The appellate authority has, while discussing the question of bonafids need of the landlords, observed that:

....

Secondly, I find that there are only three adult members in the family of the landlord and the others are minors and school-going children. He has got three rooms in the first floor alongwith bath room etc. and he has got a barsati on the ground floor. This accommodation in any way cannot be said to be inadequate or

insufficient seeing the position of Kanpur city.

11. Sri Ashok Khare has lightly urged tint holding the accommodation at the disposal of the landlords to be sufficient on the ground of availability of three rooms on the first floor was improper in law in the instant case where the size of the rooms was very small-generally, being 2 ft x 2 ft. The authorities, proceeded the submission ought to have considered the need for additional accommodation in the light also of the size of the rooms which were available to the landlords. The submission is well founded for, consideration only of the number of rooms, irrespective of their size, is no consideration of the problem in accordance with law, which requires that the accommodation in possession of the landlords should be found to be sufficient for their need having regard to the actual space available to them and its sufficiency. Where, as in the instant case, the rooms are said to be of very small size and further accommodation, suited to the needs of the landlords having regard to their status and standard of living, is claimed for making the additional accommodation sought tit for use by them, non consideration of the size of the rooms vitiates the conclusion of the authority. That the size of a room is a relevant consideration cannot be doubted-See Ram Deo v. District Judge 1978 UP RCO Suppl 97.

12. In view of the aforesaid decisions, it has become necessary to quash the order of the appellate authority and require it to reconsider the matter in accordance with law.

13. In the result, the writ petition succeeds. The order dated August 11, 1981 passed by the learned V Additional District Judge, Kanpur in Rent appeal No. 297 of 1960 (Annexure 6 to the writ petition) is quashed. The appeal shall be restored to its original number and decided afresh, in accordance with jaw, after notice to the parties.

14. Since none has appeared on behalf of the Respondents at the hearing, I leave the Petitioners to bear their own cost.