
(1992) 01 AHC CK 0095

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 11891 and 12067 of 1982

Dal Chand

APPELLANT

Vs

VII Additional District Judge and Others

RESPONDENT

Date of Decision : 30-01-1992

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 : (1992) 2 AWC 842

Hon'ble Judges : S.C. Verma, J

Bench : Single Bench

Advocate : Prakash Gupta and H.S Nigam, for the Appellant;

Final Decision : Dismissed

Judgement

S.C. Verma, J.—Writ petition No. 11891 of 1982 is directed against the order dated 30-4-1982 passed by the VII Additional District Judge, Agra, herein Respondent No. 1, partly allowing the application of the landlord u/s 21 of U.P. Act 13 of 1972, hereinafter referred to as the Act. The Prescribed Authority by order dated 20-8-1975 released the ground floor portion of House No. 6/323, Belanganj, Agra which was in occupation of Jagdamba Prasad Nigam who has been running a shop of Engineering Works. Feeling aggrieved against the order dated 20-8-1975, an appeal was filed by the Petitioner which was dismissed by Sri U. S. Agarwal, III Additional District Judge, Agra vide his judgment dated 11-11-1978. The judgment was set aside by this Court in writ petition No. 10428 of 1978 by order dated 26-2-1979 and the appeal was remanded for fresh disposal with the following directions:

I have found above that as out of two needs only one had been established, the prayer for release of the ground floor if practicable, could have been granted only in respect of a part. But this does not mean that if the ground floor can not be divided, the application for release of the landlord would be rejected. Even in

that event the question of hardship would be considered and if it was found that the rejection of the application would cause greater hardship to the landlord, he would be entitled to the release of the whole premises on that ground alone. At this place I wish to make it clear that the appellate authority would be free to consider the question of release on the other ground also on which previously no finding was given. It will examine the evidence of the parties and give finding whether the landlords need additional accommodation.

2. The premises 6/323 Belanganj, Agra is a double storeyed building, the ground floor of which comprises of two inter-connected rooms which are in possession of the tenant. The first floor of the building is occupied by the landlord's family consisting of Dal Chand himself, his wife, son, daughter-in-law, three grand children and one married daughter having two children. The accommodation at the first floor is comprised of two big rooms two small rooms three side kotharis. kitchen, Sehan and a Barsati on the roof of the first floor. The accommodation was required by the landlord on two grounds. Firstly that the landlord is an old man of 67 years of age and a rheumatic patient and his wife is also a patient of high blood pressure and suffering from heart trouble They are not physically capable to climb the stairs and they have been advised to live on the ground floor. The second ground was shortage of accommodation considering size of the present family as also their growing needs. It was further alleged that the tenant owns two big buildings bearing Municipal No. 6/218, Madar Gate and 27/118, North Vijay Nagar Colony, Agra. Besides these two houses, the tenant has in his occupation two Railway Bridge Arches for business purposes and the business can conveniently be shifted to any of these buildings.

3. The case set up by the tenant was that the accommodation with the landlord is sufficient for residential purposes and since he is using the accommodation for business and has a huge establishment of five lathe machines, one snapper, one drilling machine, two heavy grinding machines, it is not possible to shift in House no 6/218. New Madar Gate which was situate in a blind bye-lane. House No. 27/118, Vijay Nagar colony is a residential house which, according to the bye-laws of the Nagar Mahapalika can not be used for business purposes. The two Railway bridge arches can only be used for godown purposes as the Railway authorities have not permitted to instal any electric connection etc. In these circumstances the need of the tenant is greater than that of the landlord,

4. The learned VII Additional District Judge held that considering the strength of the family members of the landlord and their status, the present accommodation was not sufficient to meet their requirements. The learned Judge also found the need to be bonafide and genuine on their second ground for medical reasons, and held that the landlord has a bonafide need for releasing the accommodation at the ground floor so that they may live comfortably without risk to their health. However, considering the hardship, it has been held that since the tenant is using the two room accommodation for business purposes where lathe machines are fixed on the eastern side having no ventilation and no independent access, this

room would not be suitable for residential purposes and the business can not be shifted to either of the two houses indicated by the landlord. In House No. 27/118 Vijay Nagar Colony, the factory can not be established being a residential house and House No. 6/218, New Madar Gate is in possession of a tenant. The arches under the Railway bridge also can not be used for business purposes as the Railway authorities have not permitted the tenant to instal electric connection. The suggestion that the tenant may get a plot allotted in Foundary Nagar to shift his business would also not be possible as no allotment of plot exists in his favour nor it would be possible to shift the business without making heavy investment in the construction of the building. The learned Judge considering the requirements of both the parties directed the division of two rooms by a partition wall and released the front room in favour of the landlord and also providing a gallery of five feet width for the access of the tenant to the eastern room where his business is housed.

5. In writ petition No. 12067 of 1982 the tenant has only challenged the feasibility of providing a passage of 5 feet for access to the eastern room. The tenant required a passage of 9 feet considering the requirement of the tenant to conveniently use the accommodation for business purposes.

6. The learned Counsel for the Petitioner raised a legal submission that in view of the unamended provision of Section 21 Explanation IV of the Act as it stood then at the relevant time, the landlord being in occupation of the remaining part of the accommodation, his need stood conclusively proved. Prior to deletion of Explanation IV by U.P. Act No. 28 of 1976, the Court which presumed the need of the landlord to be bonafide and genuine was not required to examine the question of hardship between the landlord and the tenant. The learned Counsel in support of his argument placed reliance on Gopal Das v. I Additional District Judge, Varanasi 1987 (1) ARC 281 (SC). The same is quoted below:

The amendment by which proviso fourth was added to Section 21 was specifically made retrospective. It is stated that the said proviso shall be deemed always to have been there. The result is that in disposing of the landlord's application which was filed in 1974, if Explanation (iv) applies to the facts of the present case, the need of the landlord shall have to be presumed to be genuine, and, in view of that proviso, the necessity to compare the relative hardship between the landlord and the tenant would stand obviated. It is true that before the courts below this plea was not specifically raised on behalf of the landlord. But from the facts which are not in dispute, it is apparent that Explanation (iv) was attracted to the facts of the present case.

7. In the present case also, the release application was made on 16th August, 1972 and as such the provision of Explanation (iv) would be applicable and the need of the landlord shall have to be presumed to be bonafide and genuine. The learned Counsel for the Respondents, however, contended that even if by virtue of Explanation (iv) the need of the landlord would be treated to be bonafide and genuine but that by itself would not establish that the need is bonafide and

genuine over the entire accommodation and by virtue of the provisions of Section 21(1) of the Act, the Prescribed Authority will have to consider as to whether the bonafide need of the landlord would be met either by the entire accommodation or by any specified part of the accommodation. This, in any view of the "matter, required the prescribed Authority to consider the extent of accommodation needed by the landlord. The argument has sufficient force. The provision of Section 21(1) in respect of proceedings for release of building under occupation of tenant requires:

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.

8. The provision of Explanation (iv) which formed part of Section 21(1) prior to its deletion in 1976 by U.P. Act 28 of 1976 read as follows:

(iv) The fact that the building under tenancy is a part of the building, the remaining part whereof is in possession shall be conclusive to prove that the building is bonafide required by the landlord.

9. Explanation (iv) which would be applicable in the present case does not take away the power of the prescribed Authority to consider the extent of the accommodation or any specified part of the accommodation which may be sufficient for the bonafide and genuine need of the landlord. Thus even if the need is treated to be bonafide and genuine, the extent of the accommodation required for those needs will have to be considered by the prescribed Authority. In this view of the matter, in the impugned order, the needs of the landlord have been found to be genuine and bonafide on both the grounds i.e. on medical ground as also on requirement of additional accommodation. But according to the learned judge, the aforesaid needs of the landlord would be met by release of part accommodation on the ground floor i.e. by release of the outer room facing the road on the western side.

10. The second submission of the learned Counsel for the Petitioner that the need of the landlord was found to be bonafide for medical reasons and on that account, this Court observed for part release of the ground floor and made it open to the appellate authority to consider the other grounds of additional requirement on account of number of family members and their growing needs to be considered by the appellate court. In the event of this ground also finding favour, the need in respect of the entire tenanted portion was to be considered and be released in favour of the landlord. It was further directed that in case the ground floor was not capable of being partitioned, then also the need of the landlord be considered for the entire accommodation on the ground floor. The learned VII Additional District Judge having come to the conclusion that additional accommodation is also required considering the number of family members and their need, the learned Judge should have released the entire ground floor accommodation in favour of the landlord. Having found the need of

the landlord to be bonafide and genuine on both the grounds, the release of part accommodation was not in accordance with law.

11. In my opinion, the learned VII Additional District Judge, after considering the extent of the accommodation required by the landlord, has rightly allowed part release of the ground floor. It may be that the need of the landlord has been found to be bonafide and genuine for the release of the ground floor for both the reasons i.e. on medical ground as also the size of the family and their need, but it would not mean that the need can not be reasonably met by release of part of the disputed accommodation; The tenant is using the disputed accommodation for business purposes and in case the entire ground floor accommodation is released for residential purposes, the tenant will be dislodged from the business. The learned Judge, after comparing the hardship and the requirement for release of part of the accommodation to conveniently adjust both the parties, has passed a just order. The learned Judge has further rightly come to the conclusion that the alternative accommodation available to the tenant at 27/118, North Vijay Nagar Colony and 6/218, New Madar Gate are not available to shift the business. Even the accommodation between the arches of Railway bridge can not be utilised to instal the machines. While making adjustment to accommodate both the parties considering the extent of accommodation needed by the landlord for convenient and comfortable living, the learned judge has correctly divided the disputed accommodation. The impugned order is very just and no interference is called for in exercise of jurisdiction under Article 226 of the Constitution. The division as indicated in the order dated 30-4-1982 and the map paper No. 14 C/4 is in accordance with law. I do not find that the learned judge has committed any error in determining the extent of accommodation required by the landlord to suffice his needs.

12. In the result, writ petition No. 11891 of 1982 fails and is hereby dismissed. There shall be no order as to costs.

13. Writ petition No. 12067 of 1982 is also liable to be dismissed. The only ground raised to assail the impugned order apportioning the premises is with regard to the size of the passage. The Petitioner indicated that this passage is narrow as he would not be able to carry through the passage big articles like boiler etc. Even earlier the passage to the machine room was only four feet wide through the door. If the tenant could manage his business all these days through this door and he never felt any difficulty, there appears to be no reason why by that passage of five feet and opening of five feet door, there would be any hindrance or difficulty in operating his business or the machines. This aspect was also considered by the learned judge in the review petition which was dismissed by order dated 6-10-1982.

14. No other reason has been indicated for the requirement of wider passage The prayer does not appear to be bonafide and on this ground alone the impugned order is not liable to be modifide or set aside.

15. The petition accordingly fails and is dismissed.