
(2003) 10 AHC CK 0114
In the Allahabad High Court
Case No : Writ Petition No. 171 of 2002 (R/C)

Dharam Pal Jairath

APPELLANT

Vs

Additional District Judge,Court No.3,Lucknow & Ors.

RESPONDENT

Date of Decision : 14-10-2003

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (2003) 10 AHC CK 0114

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

Final Decision : Dismissed

Judgement

N.K. Mehrotra, J.—This is a petition under Article 226 of Constitution of India for issuing a writ of certiorari quashing the judgment dated 5102002 (Annexure No. 11), passed by the IIIrd Additional District Judge, Lucknow, the opposite party No. 1 and judgment dated 1082000 (Annexure No. 5), passed by the Prescribed Authority/Judge, Small Causes Court, Lucknow.

2. Heard the learned Counsel for the parties.

3. The opposite party No. 3 Nilendra Kumar Chaturvedi filed an application under Section 21 (1) (a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter to be referred as 'Act?') before the Prescribed Authority, Lucknow for release of the half of the portion of House No. 212 situated at Mahatma Gandhi Marg, Lucknow, occupied by the petitioner as tenant on behalf of the opposite party No. 3. The release petition was filed on the ground that the opposite party No. 3 is the landlord of House No. 212, Mahatma Gandhi Marg, Lucknow and the petitioner is the tenant in half of the portion of the house. The opposite party No. 3 is serving soldier as defined under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925) and the accommodation in question was let up to the petitioner while the opposite party No. 3 was serving as such. It was alleged that the opposite party No. 3 is an Indian Soldier and is subject to Army Act, 1950. He holds the rank of Colonel and

at the time moving release petition was posted as Deputy Judge Advocate General at Jodhpur and was deployed in active service. The family of the landlord consists of his wife Smt. Rekha Chaturvedi and two children namely; a daughter aged about 14 years and a son aged about 9 years. It was alleged that Smt. Rekha Chaturvedi is suffering from vitreous ratina detachment of right eye and has completely lost her vision. She has been advised to undergo bimonthly checkup by a specialist and carry out a special investigation to prevent any other complication in the left eye. She was advised to stay near a big hospital having specialist eye surgeon. The disputed building lies at a distance of about 500 Mts. of the Command Hospital, which is required for her medical care and attention. The landlord decided that his wife will stay in the disputed accommodation with children and she will be cared for and looked after by his father who is a retired ChiefEngineer of the Irrigation Department.

4. The petitionertenant contested the application on the ground that the tenancy was created by private negotiation against the provisions of the Act. The Landlord has another house situate at Lokmanganj, Lucknow. The need of the landlord is not bona fide. He further pleaded that he is also a retired Army Officer who has taken premature retirement as Lieutenant Colonel from the Army because of the serious medical problem of his wife Smt. Atul Jairath and she requires constant monitoring and regular treatment for hypothyroidism diabetes, highblood pressure and Neuroptha of both feet. She is under treatment in the Command Hospital, Lucknow which is situated near the house.

5. Both the Courts below have accorded the benefit of Explanation (iii) to Section 21 (1) of the Act which is as follows :

?Explanation (iii). Where the landlord of any building is

(1) a serving or retired Indian Soldier as defined in Indian Soldiers (Litigation) Act, 1925 and such building was let out at any time before his retirement, or

(ii) a widow of such a soldier and such building was let out at any time, before the retirement or death of her husband, whichever, occurred earlier and such landlord needs such building for occupation by himself or the members of his family for residential purpose, then his representation that he needs the building for residential purposes for himself or the members of his family shall be deemed sufficient for the purpose of Clause (a), and where such landlord owns more than one building this provision shall apply in respect of one building only.?

6. It is not denied that the landlord opposite party is serving as Indian Soldier as required for the purpose of this explanation. It is also not denied that he is availing this provision in respect of only this building.

7. Therefore, in my opinion, the need of the landlord shall be deemed sufficient for the purpose of Section 21 (1) (a) of the Act. In Jasbir Singh Rana v. IVth Additional District & Sessions Judge, Muzaffarnagar and others, 1998(2) JCLR 40 (SC) : ARC 1998(2) Page 79, it was held by this Court that Explanation (iii) of

Section 21 (1) (a) of the Act is in the nature of an exception which has the effect of lifting the rigour of providing the bona fide need by the landlord, who is a serving or retired Indian Soldier as defined under the Indian Soldiers (Litigation) Act, 1925. The need of the landlord on the existence of the conditions envisaged under such explanation is to be deemed sufficient by a legal fiction.

8. In view of the aforesaid provisions under the explanation, the contention that the landlord has another ancestral house in Lokmanganj or any other accommodation in Indira Nagar or he resides in Delhi cannot be entertained and need not be decided here in writ petition.

9. During the appeal, the petitioner submitted written argument raising certain contentions to oppose the release of the disputed house and those contentions have been decided by the Appellate Judge. These contentions are as follows :

(i) Whether the release application filed by Shri Nilendra Kumar Chaturvedi under Section 21 (1) (a) of the U.P. Act XIII of 1972 against a person who entered into occupation of the building in 1979 without obtaining an allotment order is maintainable ?

(ii) Whether after the amendment of the U.P. Act No. 28 of 1976, the occupation and possession by the appellant without obtaining an allotment order gives him the status of a tenant and can he be evicted under Section 21 (1) (a) of the said Act?

(iii) Whether the respondent Nilendra Kumar Chaturvedi is the absolute owner landlord of the property or there are three other owners and by this fact, whether the release application is based on bona fide requirement?

(iv) Whether the case law of Nootan Kumar v. IInd Additional District Judge, Banda and others, 1993(22) ALR 437(FB), is applicable to the present appeal?

(v) Whether the letting of the premises without allotment order and against the provisions of Section 11, Section 13, Section 15, Section 16 and Section 31 of the U.P. Act XIII of 1972 gives any right to the landlord to get the house vacated under the provisions of Section 21 (1) (a) of the said Act or not ?

10. The learned Appellate Judge has rightly repelled all the contentions of the petitioner.

11. The learned Appellate Judge has recorded a finding that under law it is permissible for a landlord to make a release application against the tenant. Admittedly, there are four co owners but admittedly the premises was let out by the opposite party No. 3 Nilendra Kumar Chaturvedi. The rent is being paid by the petitioner to Shri Nilendra Kumar Chaturvedi. Under Section 21 of the Act it is the landlord who can move an application for release. The landlord is defined in Section 3 (j) of the Act. The "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, or such persons. In Ramesh

Chandra v. IVth Additional District Judge, Aligarh and others, 1983 (1) ARC 479, this Court has interpreted the definition of landlord as mentioned under Section 3 (j) of the Act and it has been held that a person in whose favour the owner has executed an agreement to sell the tenanted accommodation and has authorised him to collect rent, will be landlord within the meaning of Section 3 (j). It means that the law is settled that a person to whom the rent is payable is the landlord for the purpose of this Act. Rule 15 of the Rules framed under the Act that the release application shall be signed by the landlord and if, there are more than one landlord, the application shall be signed by all the landlords. Here in the instant petition there are more than one coowner but admittedly the landlord is one. Therefore, the findings recorded by the learned Appellate Court are in accordance with law and is supported by Full Bench decision of this Court in Gopal Das v. 1st Additional District Judge, 1987 (13) ALR 275(FB), cited in the judgment. No interference is required on this finding.

12. The contentions raised at Point Nos. (i) , (ii), (iv) and (v) are all legal issues. The petitioners relied on a decision of this Court in Nootan Kumar v. IInd Additional District Judge, Banda and others, 1993(22) ALR 473(FB), which was set aside by the Supreme Court vide its judgment relied in Nootan Kumar and others v. IInd Additional District Judge and others, 2002(2) JCLR 961 (SC) : 2002(49) ALR 251 (SC). Therefore, all these contentions are to be decided in accordance with the decision of the Supreme Court in Nootan Kumar and others v. IInd Additional District Judge and others, 2002(2) JCLR 961 (SC) : 2002 (49) ALR 251 (SC). In this judgment the Supreme Court has held that the Full Bench judgment reported in AIR 1994 Allahabad 298, does not lay down a correct law. The Supreme Court has further held that the principles laid down in Nanak Ram v. Kundal Rai, (1986) 3 SCC 83 : 1986 SCFBRC 315, still hold field and the Full Bench was bound by the authority in Nanak Ram's case and could not have taken a contrary view. The Supreme Court further observed that Nanak Ram's case was decided by three Hon''ble Judges of the Supreme Court and it would also be binding on the Supreme Court. So all these contentions of the petitioner tenant now shall be decided in accordance with the decision of Nanak Ram's case. The ratio of the decision of Nanak Ram's case is that the lease between the landlord and the other persons in violation of the provisions of the Rent Control Act, would be a valid lease as between the parties thereto. In Nanak Ram's case the Supreme Court was dealing with the provisions of Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 which were similar to the provisions of U.P. (Temporary) Control on Rent and Eviction Act, 1947. At the time of dealing with the U.P. Rent Act, 1947 it was held that if any accommodation is let out in contravention of the provisions of Section 3 of the U.P. Rent Act, 1947, the lease between the landlord and the tenant would be a valid lease as between the parties but it would not be binding on the District Magistrate. On the basis of this ratio the learned Counsel for the petitioner has argued that if the lease between the landlord and tenant is not binding on the District Magistrate, the landlord cannot move an application under Section 21 of

the Act and he cannot take advantage of benefit of provisions under Section 21 of U.P. Act No. XIII of 1972 because the premises was not allotted in accordance with the provisions of Section 18 of the Act.

13. I may refer here the relevant portion of the judgment of the Supreme Court in Nootan Kumar and others, 2002(2) JCLR 961 (SC) : 2002(49) ALR 251 (SC), which is as follows :

?Unless statute specifically provides that a contract contrary to the provisions of the statute would be void the contract would remain binding between the parties and could be enforced between the parties themselves. In absence of any mandatory provisions under Rent Act obliging eviction in case of contravention of provisions of the Act, the agreement of lease between the landlord and the tenant is not void and the parties are bound as between themselves to observe conditions. Therefore, the agreement of lease between the landlord and the tenant for letting and occupation of a building in contravention of the provisions of U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 is not void. The said agreement is enforceable in law and a decree for ejectment of the tenant can be passed in favour of the landlord on the basis thereof.?

14. The learned Counsel for the petitioner has vehemently referred a judgment of Hon''ble Single Judge of this Court in Writ Petition No. 116 of 2002 (R/C), Nand Lal Chaurasia v. VIth Additional District Judge, Pratapgarh and others, in which this Court after referring the Paras 11 and 12 of the decision of Nanak Ram's case, has held that the lease between the landlord and the tenant contrary to the provisions of Sections 11 and 13 of the Act, will not be binding upon the Prescribed Authority under the said Act and the application would not be entertainable against that person treating him as tenant.

15. With utmost humility and reverence, I am of the opinion that nowhere either in the judgment of Nanak Ram's case or in Nootan Kumar's case, 2002(2) JCLR 961 (SC) : 2002 (49) ALR 251 (SC), it has been said that in case the tenancy has not been created in accordance that Sections 11 and 13 of the Act, the release application under Section 21 will not be entertainable. The Hon''ble Single Judge of this Court in Nand Lal Chaurasia v. VI Additional District Judge, Pratapgarh and others (supra) has referred a portion of the judgment in Nanak Ram's case, 1986 (3) SCC 83, which is as follows :

?(12) Now, in deciding Murlidhar Aggarwal this Court approved of the proposition of law laid down by the Allahabad High Court in Udhoo Dass. The High Court had the provisions of Section 7 and Section 7A of the U.P. Rent Act before it. Section 7 required the landlord to report to the District Magistrate if his house fallen vacant, and thereupon the District Magistrate was empowered to direct the landlord to let the premises to a person specified in the order. The High Court dealt with the question whether a lease between the landlord and another person in violation of the order of the District Magistrate would be a valid lease as between the parties thereto. It held that such a lease would be valid between the

parties. It would not, however, be binding on the District Magistrate. That it would not be binding on the District Magistrate was evidenced by the power conferred upon him under Section 7A (1) of the U.P. Rent Act to take proceedings for the eviction of such tenant. Section 7A (1) provided that if the vacancy in accommodation was not reported or a person occupied an accommodation in contravention of an order issued under Section 7 (2) the District Magistrate could require him to show cause why he should not be evicted from it. If, he failed to show cause, the District Magistrate could direct him to vacate the accommodation and if he failed to vacate the District Magistrate could use force to evict him. The power conferred on the District Magistrate to take proceedings for the eviction of such tenant was discretionary. It was open to the District Magistrate not to exercise the power if there was undue delay or if for other good reason he found it inexpedient to do so. If he did not exercise the power conferred by Section 7A (1), the lease between the landlord and other person would continue to subsist and that other person would continue to enjoy the status of a tenant. It would be a valid lease. It could not be regarded as a void lease. In a case under the Rent Control Order, with which these appeals are concerned, the position appears to be materially similar. The landlord is prohibited by Clause 22 (1) from occupying the house or granting a lease except in accordance with Clause 23. There is a prohibition under Clause 22 (2) on any other person seeking to occupy the house, except again in accordance with Clause 23. In Clause 23 it is the Deputy Commissioner who will order the landlord to let the vacant house not a person indicated by him, a person who falls in one of the categories specified in the clause or, if he is satisfied, he may permit the landlord himself to occupy the house. As was the position under the U.P. Rent Act, so also under the Rent Control Order, the Deputy Commissioner has power under Clause 28 to take steps and use force" for the purpose of securing compliance with or for preventing or rectifying, any contravention of the Rent Control Order. Clause 28 speaks of a power conferred on the Deputy Commissioner in that behalf. Nowhere does the Rent Control Order mandate that the Deputy Commissioner must eject a person who has entered into possession of a house in violation of Clause 22. If upon a view of the circumstances prevailing then, the Deputy Commissioner takes no action in the matter, there is no reason why the lease between the landlord and the tenant, although inconsistent with Clause 22, should not be binding as between the parties thereto. It is not void transaction. There is nothing in the Rent Control Order declaring it to be so. Now if the lease is not void then, it is not open to either party to avoid the lease on the ground that it is inconsistent with Clause 22. The parties would be found, as between them, to observe the conditions of the lease, and it cannot be assailed by either party in a proceeding between them.?

16. The conclusion derived by the Hon"ble Single Judge of this Court is not in accordance with the law laid down by the Supreme Court. I am inclined to follow Supreme Court judgments instead of the judgment of this Court. It is admitted that the provisions of U.P. Act No. XIII of 1972 are applicable. It cannot be said

that the provisions of U.P. Act No. XIII of 1972 are not applicable to the building in question. Section 2 of the Act provides exemption from operation of the Act in certain cases enumerated therein. It is nowhere provided under Section 2 of the Act that this Act will not apply in those cases where the tenancy is not created in accordance with Sections 11 and 13 of the Act. The tenant and landlord are defined in Section 3 of the Act. Section 21 of the Act is beneficial legislation for the landlord who can move to the Prescribed Authority for release of the disputed accommodation in case of bona fide requirement.

17. The learned Appellate Judge has rightly recorded a finding that the application under Section 21 of the Act for release of the disputed accommodation is entertainable for the reason given in the judgment. He has relied on a number of the cases decided by this Court. Therefore, the findings need not be interfered in this petition.

18. The learned Counsel for the petitioner has next argued that the landlord was posted in Jodhpur at the time, the release application was moved. At that time his need may be bona fide and genuine but later on he was transferred to Delhi where all the medical facilities are available for the treatment of his wife and all these subsequent events may be taken into consideration at the time of deciding this petition. In support of his contention the learned Counsel for the petitioner has relied on various decisions. In my opinion this Court need not go into the controversy as to whether the subsequent developments can be taken into consideration during the writ petition or not? At the same time, I do not reject this contention that subsequent events can be looked into for deciding the bona fide need of the landlord. In *Atma S. Berar v. Mukhtiar Singh*, (2003) 2 SCC 3, it has been held by the Supreme Court that the power of the Court to take note of subsequent events is well settled and undoubted. However, it is accompanied by three riders; firstly, the subsequent event should be brought promptly to the notice of the Court consistently with the rules of procedure enabling the Court to take note of such events and affording the opposite party an opportunity of meeting or explaining such events; and thirdly, the subsequent event must have a material bearing on right to relief of any party. But in the instant case the landlord has been given the benefit of Explanation (iii) to Section 21 (1) (a) of the Act. Under this Explanation, the need of the landlord shall be deemed to be sufficient for the purpose of Clause (a) of Section 21 (1) of the Act. The need of the landlord shall be deemed sufficient irrespective of the contentions raised by the tenant petitioner because admittedly the landlord has taken the benefit of this explanation only for the purpose of this building.

19. Both the Courts below have compared the comparative hardship of the landlord and the tenant and have recorded a concurrent finding that the comparative hardship caused to the landlord by refusal of the release application shall be greater than the hardship caused to the tenant by allowing the release application. The concurrent findings are based on evidence and are in accordance with the fact and law.

20. This is a writ of certiorari. In *Surya Dev Rai v. Ram Chaider Rai and others*, 2003(52) ALR 707 (SC) : 2003(9) AIC 1 (SC), the Supreme Court has held that:

“Certiorari under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the Rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

.....

Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied; (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.”

21. In the instant case I have examined the impugned judgments of the Courts below. I do not find any jurisdiction error or any manifest error occasioning grave injustice. The findings of the two Courts below are supported by the several decisions of this Court and Hon'ble Supreme Court.

22. In view of the above, the writ petition is dismissed. The tenantpetitioner is allowed onemonth's time to vacate the premises.