

(1987) 02 AHC CK 0061

In the Allahabad High Court

Case No : Writ Petition No's. 4089 and 5240 of 1981

Gopal Das and Another etc.

APPELLANT

Vs

Ist Addl. District Judge, Varanasi and Others

RESPONDENT

Date of Decision : 09-02-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1), 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 15, 15(2), 16

Citation : AIR 1987 All 261 : (1987) 1 AWC 538

Hon'ble Judges : K. Jagannath Shetty, C.J.; B.N. Sapru, J; A.N. Verma, J

Bench : Full Bench

Advocate : M.P. Singh, for the Appellant; S.O.P. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

K. Jagannath Shetty, C.J.—Amid the divergent views of this Court in *Devi Charan v. III Addl. Dist. Judge*, 1980 All Rent Cas 381 : (1980 UPLT NOC 143) and *Rang Nath v. State of U. P.*, (1984) 1 All Rent Cas 642 : (1984 All LJ 455) a Bench of this Court has referred the case for decision by a larger Bench.

The facts are not disputed. They may briefly be stated as follows :

Gopal Das (petitioner in Writ Petition No. 4089 of 1981) is a tenant occupying premises No. CK 21/40, situate in Thatheri Bazar, Varanasi. It was a property belonging to joint family consisting of Murlidhar Sah (the petitioner in Writ Petition No. 5240 of 1981) and some others. The rent payable thereon was Rs. 175/- per month. On June 24, 1974, there was a partition in the joint family by which the tenanted premises were allotted to two co-parceners Northern portion fell to the share of Murlidhar Sah while the Southern portion fell to the share of his brother Brij Chandra Sah. After the partition, the tenant was called upon to pay the proportionate rent to the respective persons. The tenant agreed and

accordingly has been paying Rs. 100/- to Murlidhar Sah and Rs. 75/- to Brij Chandra Sah in regard to their respective portions.

2. On October 8, 1974, Murlidhar Sah filed an application under S, 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U. P. Act No.XIII of 1972) (the "Act") for release of the northern portion of the premises which fell to his share. The Prescribed Authority, by order dated March 23, 1980), allowed the application in part. The tenant was ordered to be evicted from one hall in the first floor and from the entire second floor. Both the parties appealed to the District Judge, Varanasi to the extent they were aggrieved. On February 6, 1981, learned District Judge allowed partly the appeal of the landlord directing the tenant to vacate the entire first floor also. He however, did not accede to the request of the landlord for releasing the ground floor. Consequently, he rejected the appeal preferred by the tenant.

3. Challenging the appellate order, the tenant has filed Writ Petition No. 4089 of 1981 while the landlord, Murlidhar Sah, has preferred Writ Petition No, 5240 of 1981.

4. The question raised before us is that the application for eviction filed by Murlidhar Sah alone was not maintainable without impleading the other erstwhile co-sharers of the family.

5. In Devi Charan's case 1980 All Rent Cas 381 : 1980 UPLT NOC 143 R.R.Rastogi, J., observed (para 9): --

"It would, thus, be seen that in so far as the law in this behalf is concerned, it is settled that the transfer of a portion of the property under tenancy does not result in the splitting up of the tenancy and the transferor or the transferee cannot claim ejectment of the tenant from the respective portions of the accommodation of which they become the lessors. The effect is that instead of one lessor there come into existence two lessors. They, of course, are entitled to receive rent from the tenant to the extent of their share in the property under the tenancy. The conduct of the tenant in agreeing to pay rent to the different lessors according to their shares would not imply any fresh tenancy. The tenancy can be split up only when the transferor, the transferee and the lessee agree to it. In other words it is only when a fresh contract of lease comes into existence with the consent of the parties concerned, the splitting up of tenancy can take place."

6. This decision proceeds on the ground that unless there is a fresh tenancy between the parties, the application for eviction filed by one co-owner is not maintainable. In fact the basis for this decision was the earlier unreported decision of this Court in Second Appeal No. 2693 of 1967, Sahu Hari Krishna Khanna v. Government and others. Both these decisions, in. our opinion are no longer good law.

7. In Rang Nath v. State of U. P., 1984 All LJ 455 one of us (B. N. Sapru, J.) after

relying upon the decision of the Supreme Court in *Sri Ram Pasricha Vs. Jagannath and Others*, and *Kanta Goel Vs. B.P. Pathak and Others*, has held that one co-owner can bring an action for eviction of the tenant, and it is not necessary to implead all the co-owners in such proceedings. The learned Judge has also observed that the two decisions of the Court in *Jamir Ahmad Vs. Madhawanand and Others*, and *Prayag Sonar and Another Vs. Motar Singh and Another*, are no longer good law in view of the decisions of the Supreme Court referred to above.

8. The question urged in this case, in our opinion, is no longer *res integra*. It stands concluded by the decision of the Supreme Court in *V.N. Sarin Vs. Ajit Kumar Poplai*, : --

"Where a property belongs to an undivided Hindu family and on partition it falls to the share of the co-parceners of the family there, is no doubt a change of the landlord of the said premises, but the said change is not of the same character as the change which is effected by transfer of premises to which Section 14(6) refers. In regard to cases falling u/s 14(6), a person who had no title to the premises and in that sense, was a stranger, becomes a landlord by virtue of the transfer. In regard to a partition, the position is entirely different. When the appellant was inducted into the premises, the premises belonged to the undivided Hindu family consisting of respondent No. 1, his father and his brother. After partition, instead of the undivided Hindu family, respondent No. 1 alone had become landlord of the premises."

9. Apart from that, in *Sri Ram Pasricha Vs. Jagannath and Others*, the Supreme Court has observed at page 2339 as follows :

"Jurisprudentially it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with the others and it cannot be said that he is only a part-owner or a fractional owner of the property. The position will change only when partition takes place. It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of Section 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of Section 13(1)(f) as long as he is a co-owner of the property being at the same time the acknowledged landlord of the defendants."

10. In *Kanta Goel Vs. B.P. Pathak and Others*, the above principles have been reiterated by the Supreme Court while dealing with a case arising under the Delhi Rent Control Act, 1958. It was a case in which the rent was being paid to one Dass who had let out the premises to the tenant. Upon the death of the former, the rent was being paid to one of the legal representatives who signed the receipts in his name, but on behalf of the estate of the deceased Dass. At a later stage the receipts were issued by that legal representative in his own name. The Supreme Court held that that legal representative fell within the definition of

"landlord" of the premises for the purposes of the Delhi Rent Control Act.

11. In view of these decisions, there can, therefore, be little doubt as to the maintainability of the action for eviction brought by one co-owner without impleading the other co-owners. The view taken in Devi Charan's case 1980 UPLT NOC 143 cannot be said to have laid down the correct law and it is overruled. The view taken in Ranga Nath's case (1984 All LJ 455 is correct and we reiterate the same.

12. In the instant case, it has been found that the tenant has been paying rent to the petitioner, and also to the other sharer in proportion to their respective shares allotted to them under the family partition. The rent has been accepted by the parties. They are, therefore, the respective landlords in respect of different portions.

13. The "landlord" has been defined u/s 3(j) of the Act to mean : --

"3. Definition.-- In this Act, unless the context otherwise requires --

(i) "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, of such person."

14. Murlidhar Sah having accepted the rent and being entitled to receive the rent, shall be considered as landlord of the portion of the premises which were allotted to him under the family partition.

15. It was next contended for the tenant that Rule 15(2) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 ("the Rules in short) requires that the application for eviction shall be signed by all landlords if there are more than one and the application signed and filed by Murlidhar Sah alone was not maintainable. Rule 15 reads as follows :

"15. Application for release of buildings under occupation of tenant (Section 21(1)).

(1).....

(2) The application or its reply shall be signed and verified in the manner prescribed under Rules 14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure, 1908. If there are more than one landlord, the application shall be signed by all the co-landlords.

(3)"

16. So far as the applicability of this Rule to the present case is concerned, there is no problem. Murlidhar Sah who has brought the action for eviction of the premises in question is undoubtedly the landlord. He has signed the application. He alone is competent to sign the application. However, we may point out that the requirement of Rule 15(2) that an application for release of premises owned by co-owners should be signed by all co-owners would be invalid. One co-owner

is competent to maintain an action of eviction of the tenant of the entire premises, since he can be considered as a landlord within the meaning of Section 3(i) of the Act. One co-owner alone would be competent to sign such an application.

17. We may now advert to the decision in *Suresh Kumar Saxena v. Rajendra Agarwal*, 1975 AH LJ 153 on which reliance was placed by learned counsel for the tenant. The facts of the case were that there was a tenant occupying a premises, a portion of the premises was sold by the landlord. Thereafter the tenant started paying the rent separately to the original landlord and also to the transferee. The original landlord filed a suit for eviction of the tenant in regard to premises still owned by him. This Court observed that it was a settled law that a landlord could not eject a tenant from a portion of the accommodation in his possession. He had to sue for eviction of the tenant from the entire accommodation. The Court went on to observe that the tenancy could not be split up on the sale of a portion of the premises. It was also held that even the attornment will not split up the tenancy unless the tenant agreed to split up the tenancy. It was accordingly held that the application of the landlord u/s 3 of the U. P. (Temporary) Control of Rent and Eviction Act, 1947, was not maintainable. The view taken in this case also is no longer a good law.

18. Apart from that, Section 21(1)(a) of the Act, as it stands today, permits the eviction of a tenant from the building or any specified part thereof.

19. Having disposed of the issue relating to the maintainability of the landlord's application u/s 21 of the Act, we proceed to consider the submissions made on facts.

20. Counsel for the tenant submits that the Courts below have not decided the question whether the landlord bona fide required the premises in dispute in accordance with the guidelines contained in Rule 16 of the Rules framed under the Act. Neither have the Courts below, counsel contended, examined the issue relating to comparative hardship as prescribed by Section 21 read with Rule 16(1) (d) of the Rules. It was urged that in his application u/s 21 the landlord has not stated the precise number of members of his family nor the extent of their requirements as was mandatory under Rule 16. The contention was that neither the Prescribed Authority nor the appellate Court addressed themselves to these questions and without discussing the entire evidence on record they have allowed the application of the landlord.

21. However, it does not seem necessary to enter into a detailed enquiry on the contentions urged since this part of the case can be decided on a short ground.

22. The application u/s 21 of the Act was filed in 1974. Until its deletion in 1976 by the U. P. Act No. 28 of 1976 there was an Explanation (iv) to Section 21 of the Act, which read as follows : -

"(iv) the fact that the building under tenancy is a part of a building the remaining

part whereof is in the occupation of the landlord for residential purposes, shall be conclusive to prove that the building is bona fide required by the landlord."

23. Simultaneously with the deletion of Explanation (iv) to Section 21 of the Act, a proviso was added to Section 21 after the 3rd Proviso thereto which reads as follows : --

"Provided also that the Prescribed Authority shall, except in cases provided for in the Explanation take into account the likely hardship, to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed."

24. The amendment by which this proviso was added to Section 21 was specifically made retrospective. It 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 we find that 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. The building in dispute, namely, the northern portion of premises No. 21740 Thatheri Bazar, Varanasi, consists of three portions -- ground floor, first floor and second floor. Together, these portions constitute a building as defined in Section 3(i) of the Act- The landlord was admittedly in occupation of the second floor accommodation when he moved the application u/s 21 in 1974, while the first and second floor portions of the building were in occupation of the tenant. The tenant is, thus, occupying a part of a building, the remaining part of which is in occupation of the landlord for residential purposes. Explanation (iv) was hence applicable in terms to the facts of the present case. That being so, the need of the landlord shall have to be presumed to be bona fide.

25. In the case of *Bimla Devi Vs. First Additional District Judge and Others*, it was observed that Explanation (iv) deals not merely with a particular procedure but with the substantive rights of the parties. It has asserted and affirmed a substantive right of a landlord to get the portion of the building which is in occupation of a tenant, where landlord happens to be in occupation of the remaining part of it, vacated. That being so, the Supreme Court observed, a substantive right must be deemed to have been vested in the landlord, if he had filed an application prior to deletion of Explanation (iv) and the same could not be taken away except by an express provision to that effect.

26. In the present case, the application was filed by the landlord in October, 1974. The landlord could hence fall back on Explanation (iv) in support of his claim that he bona fide required the building under tenancy for his own use and

occupation and in view of the 4th proviso added to Section 21, the Courts below were not required to go into the question of relative hardship between the landlord and the tenant.

27. The impugned order passed by the appellate Court partly allowing the landlord's appeal and releasing the whole of the first floor accommodation in his favour is, therefore, perfectly legal and proper and calls for no interference.

28. The appellate Court has, however, dismissed landlord's appeal in respect of the ground floor portion of the accommodation in dispute against which the landlord has filed the Writ Petition No. 5240 of 1980. It has observed that the ground floor portion must be left with the tenant as admittedly the tenant is occupying the southern portion of premises No. 21/40. It was found that the only passage for going to the southern portion of the said building is through the ground floor portion of the premises in question and in case the tenants are ejected from this portion, they would be put to considerable hardship.

29. It is not disputed that the entire building both southern and northern portions of premises No. 21/40 belonged to a joint family of which the present landlord was a co-sharer and both the portions constituted a single tenement under occupation of the present tenant. That being so, we would not like to disturb that part of the appellate order in exercise of our discretionary power under Article 226 of the Constitution of India.

30. In the result and for the reasons stated above, both the writ petitions fail and are dismissed without any order as to costs.