

(2001) 04 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31005 of 2000

Gurucharan Singh and Another

APPELLANT

Vs

N.P.Agarwal and Others

RESPONDENT

Date of Decision : 12-04-2001

Acts Referred:

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

Citation : (2001) 04 AHC CK 0048

Hon'ble Judges : O.P.Garg, J

Final Decision : Disposed Of

Judgement

O. P Garg, J.—Santokh Singh was originally a tenant of ground floor portion of premises No. 111/428, Ashok Nagar, Kanpur. The accommodation comprise two shops facing towards the eastern side having their openings on the road. Abutting the two shops there are two rooms, two kitchens and toilets with an open space to be used as Angan. In between the two shops, there is a passage leading up to Court yard. The petitioners are the sons of late Santokh Singh. Release petition (No. 56 of 1998) was filed by the respondentlandlord against the petitioners under Section 21 (1) of the UP. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act No. XIII of 1972) (hereinafter referred to as "the Act"). It was partly allowed by the Prescribed Authority by order dated 3081998. The order of release was passed in respect of only one shop. The application for release with regard to the remaining tenanted accommodation was rejected. The order passed by the Prescribed Authority gave rise to two separate appeals, one by the petitionertenants (No. 203 of 1998), and the other by the landlordrespondents (No. 210 of 1998) under Section 22 of the Act. The Appellate Court decided both these appeals by a common order dated 2952000. The appeal filed by the petitionertenants was dismissed while the appeal preferred by the respondentlandlords was allowed. The order of release in respect of the entire tenanted accommodation was passed. It is in these circumstances that the petitionertenants have come before this Court to

challenge the order passed by the Appellate Court.

2. Counter and rejoinder affidavits have been exchanged. Heard Sri Manoj Misra, learned Counsel for the petitioner and Sri RajeshTandon, Senior Advocate assisted by Smt. Rajni Agarwal, Advocate on behalf of the respondent.

3. From the material brought on record, the following facts are unfolded. The landlords of the tenanted premises are N.P. Agarwal who retired from engineering service his wife Smt. Pushpa and two sons Anurag Agarwal and Sandeep Agarwal. Wife of Anurag Agarwal is Smt. Priti Agarwal while Smt. Rajni, Agarwal, Advocate is the wife of Sandeep Agarwal who at the relevant time was posted in service at Lucknow, later on transferred to Jaunpur and has now come to Kanpur. The release petition was filed with the allegation that Anurag Agarwal requires one of the shops for the purpose of establishing a photo studio which was later on changed and limited to one shop to be used as a chamber for doing share business. The remaining accommodation was required for establishing a consultancy chamber by N.K. Agarwal, who retired from Public Works Department and for establishing an office and chamber for Smt. Rajni Agarwal, who is practising Advocate. It was also pleaded that Smt. Priti Agarwal, wife of Anurag Agarwal was not medically fit to go upstairs and, therefore, she required one of the rooms for her occupation on the ground floor. After taking into consideration the evidence of the parties and respective submissions made on their behalf, the Prescribed Authority rejected the need of N.P. Agarwal, Smt. Rajni Agarwal and that of Smt. Priti Agarwal. The need to have one shop to establish a chamber for doing share business by Anurag Agarwal was accepted. On appeal "the landlords" need for the entire tenanted accommodation was found to be bonafide and genuine.

4. Sri Manoj Misra, learned Counsel for the petitioner urged that the residentialcumcommercial accommodation released entirely for commercial purpose, which is not permissible under the provisions of proviso (iii) to Section 21 (1) of the Act maintained that the residential accommodation cannot be converted for commercial purpose. It was also urged that the need of Smt. Priti Agarwal wife of Anurag Agarwal has not been accepted by the Appellate Court and consequently the entire tenanted accommodation could not be released. It was also suggested that the tenanted portion has fallen to the share of Anurag Agarwal as a result of the partition and, therefore, Smt. Rajni Agarwal and N.P. Agarwal cannot be treated as the members of the family of Anurag Agarwal in view of definition of the expression family given in Section 3 (e) of the Act. The order passed by the Appellate Court was also criticized by Sri Manoj Misra on the ground that it had admitted additional evidence without passing a reasoned order. Sri. Manoj Misra maintained that it was eminently a suited case in which looking to the need of the landlords at best, a portion of the tenanted accommodation should have been released instead of passing a blanket and sweeping order for the release of the entire accommodation. All these submissions have been repelled by SriRajesh Tandon appearing on behalf of the

landlords.

5. A plethora of decisions of this Court as well as Apex Court was placed before this Court of consideration in support of one or the other contention.

6. I have given thoughtful consideration to the matter. The tenanted accommodation as described above, comprises of two shops and two adjoining rooms. The need of the landlords to occupy the said accommodation cannot be said to be fanciful or imaginary. It is bonafide and honest, insofar as it relates to the settlement of Anurag Agarwal in share business and Smt. Rajni Agarwal wife of Sandeep Agarwal in establishing a chamber for legal profession. Capital was sought to be made on the point that husband of Smt. Rajni Agarwal is posted at Lucknow and there appears to be no reason why Smt. Rajni Agarwal should stay away from her husband. It was also obliquely suggested that she is not in active practice as an Advocate at Kanpur. There is enough material on record to suggest that she is staying at Kanpur with her inlaws and brotherinlaw as her husband is posted at Lucknow on a transferable post. The children of Smt. Rajni Agarwal are admitted in Kanpur. Lucknow is a place not far away from Kanpur and Sandeep Agarwal is in a position to visit Kanpur off and on after office hours or on holidays. Now he has come back on transfer to Kanpur to live with his parents and wife. The President Bar Association on Kanpur has issued a certificate that Smt. Rajni Agarwal is enrolled as an Advocate and is, in fact, engaged in legal practice. The details of the cases in which Smt. Rajni Agarwal has put in her appearance before the various Courts in Kanpur as an Advocate have been given. There is substantial material of record to prove the fact that Smt. Rajni Agarwal in active practising. A practice Advocate undoubtedly is required to have a separate, office which may have enough space to house a library, record room to accommodate his juniors and clerks besides place consultation with clients and waiting room, for the clients. At least, two rooms accommodation is the minimum requirement for the purpose. A portion of the tenanted accommodation may be used by Anurag Agarwal for establishing a chamber to do share business. Over and above, the said requirement, the remaining portion of the tenanted accommodation is not required by the landlords who are in the occupation of the first floor of the house for their residential purpose.

7. During the course of arguments, the matter was discussed between learned Counsel for the parties and unanimous view which appeared to be was that a portion of the tenanted accommodation may be allowed to be retained by the petitioner tenanted and the order of release may be made operative in respect to the left over portion.

8. Smt. Rajni Agarwal, Advocate, who has been assisting Sri Rajesh Tandon, Senior Advocate, has herself prepared a site plan of the tenanted accommodation. She gave out that the portion which is encircled by red pencil may be allowed to continue in the occupation of the petitioner tenants while the entire remaining portion of the tenanted accommodation be permitted to be occupied by the landlords in pursuance of the order of release passed by the

Appellate Court on 3081998. This suggestion appears to be based on the finding that the need of Priti Agarwal to occupy the ground floor portion on medical grounds did not find favour with the Prescribed Authority or with the Appellate Authority. The need of the landlords may well be satisfied by release of the two shops facing the eastern side opening towards the road and one of the rooms, a kitchen, toilet as well as the Court yard. The correctness of the site plan made by Smt. Rajni Agarwal is not disputed by Sri Manoj Misra, learned Counsel for the petitioners. Gurucharan Singh petitioner No. 1, who was present to brief Sri Manoj Misra has agreed to restrict and limit the tenancy rights to a room, a kitchen and a toilet. To be more precise, the site plan filed by Smt. Rajni Agarwal is made a part of this judgment, which is duly signed by me.

9. In view of the above facts, the release order dated 2952000 passed by the learned Appellate Authority in Rent Appeal No. 210 of 1998 is modified to the extent that it shall be operative in respect of the tenanted accommodation except the portion which is encircled by red pencil and in which zebra lines have been drawn. The tenancy rights of the petitioners shall be confined and restricted to the encircled portion which is adjacent to the school and is to the west of shop No. 2 as detailed in the site plan.

10. The petitioners shall deliver vacant possession of the release accommodation to the landlords by 15th May, 2001 and shall shift to the limited portion as mentioned above in which both the petitioners shall be treated as joint tenants. The amount of rent payable by the petitioners to the landlords shall stand reduced in proportion to the accommodation, the possession of which they may be parting with in favour of the landlords.

11. The writ petition is accordingly disposed of. Petition disposed of.