
(1980) 07 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6604 of 1979

Gyan Bharti Montessori School

APPELLANT

Vs

IV Addl. District Judge and Others

RESPONDENT

Date of Decision : 28-07-1980

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(8)

Citation : (1980) AWC 567

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : B.C. Kandpal, for the Appellant; A.N. Bhargava, for the Respondent

Final Decision : Allowed

Judgement

A.N. Varma, J.—This petition is directed against an order passed by the learned District Judge dated 1st of June, 1979 allowing an appeal filed by the landlord arrayed as Respondent No. 3 in the writ petition and releasing the accommodation in dispute in his favour u/s 21 of U.P. Act No. 13 of 1972.

2. The third Respondent filed an application u/s 21 of U.P. Act No. 13 of 1972 on the ground that he bonafide required the premises in dispute of which the Petitioner, an educational institution has been a tenant. The application was contested by the tenant on a variety of grounds. It was asserted that the need of the landlord was not genuine and that in any case as between the landlord and the tenant it is the latter who would suffer greater hardship.

3. The Prescribed Authority dismissed the application of the landlord holding that as between the landlord and the tenant, it is the latter who would suffer greater hardship.

4. Aggrieved by the order of the Prescribed Authority, the landlord filed an appeal which has been allowed by the IV Additional District Judge, Mathura by an order dated 1-6-1979 which is the subject of challenge in this petition. In the appellate

court the preliminary objection was raised on behalf of the tenant to the effect that the tenant being a recognized educational institution the application filed by the landlord was barred because of the provisions of Sub-section (8) of Section 21 U.P. Act No. 13 of 1972. The learned District Judge has dismissed this objection on the short ground that the Petitioner is an educational institution the recognition of which is being done from year to year and that, therefore it is not entitled to the protection available to the class of the building mentioned in Sub-section (8) of Section 21. The learned District Judge is of the opinion that the provisions of Sub-section (8) of Section 21 are not available to an educational institution enjoying such temporary recognition. The learned District Judge, therefore proceeded to examine the application of the landlord on merits and having found that the landlord bonafide required the accommodation in dispute, allowed the same. Hence this petition.

5. Counsel for the Petitioner submits that the learned District Judge has committed a patent error of law in taking the view that the provisions of Section 21(8) are not available to an educational institution, the recognition of which is being renewed from year to year. Counsel submits that the statute does not make any distinction between an educational institution enjoying recognition on a permanent basis and that to which recognition is accorded from year to year. Counsel for the Respondent on the other hand urged that on the facts of this case, this Court ought not to interfere with the order passed by the learned District Judge.

6. Having heard Learned Counsel for the parties, I am clearly of the view that the impugned order is unsustainable in law. I agree with the Learned Counsel for the Petitioner that the relevant statutory provisions contained in Section 21(8) of the aforesaid Act do not draw a distinction between an educational institution which is enjoying recognition on a permanent basis and one to which recognition is extended from year to year. Even before the learned District Judge, the last recognition granted to the Petitioner was valid upto June 30- 1979. The impugned order was passed on 1st of June, 1979. In any case, the fact that the recognition is being granted to the Petitioner institution from year to year cannot justify the conclusion that the Petitioner educational institution is not entitled to the protection granted under Sub-section (8) of Section 21. It has been asserted in the rejoinder affidavit that the recognition has been extended by the authorities concerned and is operative for the current year also in my view, on the facts existing in the present case, the Petitioner Institution is clearly entitled to the benefit of Section 21(8) of the aforesaid Act. The learned District Judge, has erred in law in holding to the contrary.

7. As regards the submission of Learned Counsel for the Respondent that this Court ought not to interfere, in the view that I am taking, namely, that the provisions of Section 21(8) of the aforesaid Act are attracted to the building in question, it is obvious that the orders passed by the court below are completely without any jurisdiction. If the statute affords protection to certain class of

buildings, it would not be permissible to entertain an application of a landlord even on the ground that his need is bonafide. Acceptance of the arguments advanced by the Respondent's counsel would result in the nullifying of the clear mandate of the Statute. I am, therefore, not persuaded to dismiss the petition on the argument advanced by the Learned Counsel for the Respondent.

8. In view of what has been stated above, this petition succeeds and is allowed. The order passed by the IV Additional District Judge, Mathura dated 1-6-1979 is quashed. The application of the landlord is, therefore, dismissed as incompetent in law. There will be no orders as to costs.