
(1991) 08 AHC CK 0049
In the Allahabad High Court
Case No : Writ Petition No. 3883 of 1988

Gyanwati

APPELLANT

Vs

12th Addl.District Judge, Lucknow and others

RESPONDENT

Date of Decision : 07-08-1991

Acts Referred:

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

Citation : (1991) 08 AHC CK 0049

Hon'ble Judges : S.N.Sahay, J

Final Decision : Dismissed

Judgement

S. N. Sahay. J.

1. This is a petition under Article 226 of the Constitution for quashing the order of the Prescribed Authority (Rent Control) dated 25101986 (Annexure 4), allowing the application for eviction moved by respondent No. 3 under Section 21 (1) (a) of U.P. Act No. 13 of 1972 and the order of XII Additional District Judge, Lucknow dated 20th April, 1988 (Annexure 4) dismissing the appeal of the petitioner and confirming the said order.

2. The application under Section 21 (1) (a) was moved by respondent No. 3 for the release of house No. 197, Talab Gagni Shukla, Model Houses, Lucknow which was occupied by the petitioner as a tenant. It was alleged by respondent No. 3 that he is the sole owner and landlord of the said house by virtue of a partition that had taken place between him and his brother Munni Lal and the said house is bonafide needed by respondent No. 3 for his personal use and occupation. The respondent No. 3 who lives at present in house No. 118/136 Cantonment Road, Lucknow has alleged that this house does not have sufficient accomodation for his family members and they are put to great hardship and inconvenience. The application was contested by the petitioner on a number of grounds. However, the Prescribed Authority allowed the application under Section 21(1) (a) and directed that the disputed house be released in favour of respondent No, 3 and

the petitioner shall deliver vacant possession of the disputed house to respondent No. 3 within two months. The learned XII Addl. District Judge who heard the appeal against the order of the Prescribed Authority agreed with all the findings recorded by him and dismissed the appeal and directed the petitioner to deliver possession of the disputed house to respondent No. 3 within one week.

3. It has been alleged on behalf of the petitioner that the findings relating to the alleged requirement of respondent No. 3 recorded by the Prescribed Authority and confirmed by the appellate authority is not correct. The Prescribed Authority has held that the family of respondent No. 3 consists of himself, his wife and his three sons and three daughters and another son Siyaram and his wife. The three sons of respondent No. 3 namely, Sangam Lal, Hari Krishna and Raj Kumar are aged about 24 years, 21 years and 17 years respectively and his three daughters, Km. Krishna about 19 years, Km. Renu about 25 years and Km. Sunita about 9 years. He has further held that the present requirement of respondent No. 3 is to have six bedrooms, one for himself and his wife and one for Siyaram and his wife, one each for Sangam Lal, and Hari Krishna, who are of marriageable age and two bedrooms for Raj Kumar and three daughters. In addition to it, respondent No 3 also requires one kitchen room, one store room and one drawing room. According to the Prescribed Authority, the present accommodation in occupation of respondent No. 3 consists of two bedrooms, one Verandah, one Chhajja and open terrace in house No. 118/136 and the remaining portion of that house is used by the respondent for carrying on the business of sweet meat shops and photostat machine shop. On the basis of these facts, the Prescribed Authority has held that respondent No. 3 requires additional accommodation and his requirement will be satisfied by the accommodation available in the whole of the building occupied by the petitioner. As observed earlier, this finding of the Prescribed Authority has been confirmed by the learned Additional District Judge. In my opinion, they have not committed any error in coming to the conclusion that in the facts and circumstances of this case, additional accommodation is bonafide required by respondent No. 3 for the personal use and occupation of his own and his family members.

4. The next point that has been urged on behalf of the petitioner is that the Prescribed Authority as well as the appellate authority have committed error in determining the issue of comparative hardship. The Prescribed Authority has held that the petitioner's daughter, Shila Srivastava, is employed in the Food Corporation of India and Chitra Srivastava, another daughter of the petitioner, is employed in U.P. State Road Transport Corporation and thus the financial position of the petitioner is sound and she is in a position to take another house on rent. The petitioner has not made any effort to find out alternative accommodation for herself and it is not enough that she would be thrown on street, if she has to vacate the disputed accommodation. Thus the Prescribed Authority has concluded that the comparative hardship of the petitioner will not be greater.

5. The appellate authority has held that in the disputed house there is one small

room and two small Kothries on the ground floor and one small room and two Kothries on the first floor and thus there are two rooms and four Kothries in all. The additional requirement of the respondent No. 3 can be satisfied if the two looms and four Kothries are made available to him. The respondent No 3 cannot be compelled to search for alternative accommodation, when he has got a house of his own. On the other hand, the petitioner who is a tenant and has good financial means can very well make alternative arrangement. The appellate authority has accordingly taken the view that the likely hardship which may be caused to the petitioner will be less than the hardship of respondent No. 3 and hence the issue of comparative hardship should also be decided in his favour. It has been pointed out on behalf of the petitioner that her daughter, Chitra Srivastava, working in U.P.S.R.T.C., was married in November, 1985 and since then she has been living with her husband. She is no more an earning member of the petitioner's family. The only earning member in the petitioner's family is Shila Srivastava, who is employed in the Food Corporation of India. The petitioner's husband died in 1970 and the petitioner has no independent source of income except a mere sum of Rs. 285/ which she gets as pension. The petitioner's son is also without any job even after completing M. Sc. It is stated that the petitioner is extremely hardpressed both financially and otherwise and has no other accommodation in the city of Lucknow and so if she is thrown out of the disputed house she would have to face inexplicable hardship. It may be true that the family circumstances of the petitioner are very pitiable, but that will not be a sufficient ground for holding that her hardship is greater than that of respondent No. 3. It has been rightly observed by the teamed Prescribed Authority that after all, the petitioner is a tenant and it is for her to search for an alternative accommodation. The landlord cannot be deprived of the right of enjoyment of his own house, when it is bonafide required by him. The question of hardship referred to in the fourth proviso to subsection (1) of Section 21 of the abovementioned Act is to be determined on the basis of the physical requirements of the landlord and the tenant and not on the basis of sentiments.

6. Lastly, it has been urged on behalf of the petitioner that the in question can be suitably bifurcated or the accommodation at Road, Lucknow can be made available to the petitioner as an alternative accommodation so as to suit the respective needs of the parties. R has been placed in support of this contention on *Rahman Jeo wangoo V. Ram Chandra* (AIR 1978 SC 413) and *Smt Rajrani Mehrotra V. Il Addl. District Judge* (1980 All Rent Cases 311).

The case of *Rahman Jeo Wangoo* arose under Section 11 (I) (h) of the Jammu & Kashmir Houses & Shops Rent Control Act, 1966. It was held that under the mandatory provisions of the Proviso to the Explanation to Section 11 (1) (h) of the Act, the Court had to consider whether partial eviction, as contemplated therein, should be ordered or the entire holding should be directed to be evicted. No finding had been recorded on this issue. Therefore, the case was remanded for determination of the question whether the reasonable requirement of the landlord may be substantially satisfied by evicting a tenant from a part only of

the premises as contemplated in the proviso. Certain other directions were also given regarding disposal of the case pursuant to the findings that may be arrived at on the said question.

8. In the other case of Smt. Rajrani Mehrotra also, their lordships of the Supreme Court have taken the view that under Rule 16 (1) (d) of the U.P. Urban Buildings (Regulation of Letting Rent & Eviction) Rules, 1972, it is the duty of the Court to take into account as to whether the landlord's needs could have been satisfied by releasing only a part of the premises, while considering the requirements of personal occupation of the landlord and it does not matter that no such plea has been raised by the tenant in the written statement.

9. The statutory provisions which have a bearing on the contention raised on behalf of the petitioner are contained in the fourth Proviso to subsection (1) of Section 21 of the aforesaid Act and clauses (d) and (f) of subrule (1) of Rule 16 of the said Rules which have been framed under the Act. The abovementioned fourth Proviso lays down 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 eviction and for that purpose, shall have regard to such factors as may be prescribed. The provisions of the Explanation are not relevant for the purposes of this case.

10. Rule 16(1) which purports to have been made under Section 21 (1) (a) and Section 34 (8) of the Act lays down that in considering the requirements of personal occupation for purposes of residence by the landlord or any member of his family, the Prescribed Authority shall also have regard to such factors as are contained in Clauses (a) to (g). Clause (d) provides that where the tenant's need would be adequately met by leaving with him a part of the building under tenancy and the landlord's need would be served by releasing the other part, the Prescribed Authority shall release only the latter part of the building. Clause (f) says that where the landlord offers to the tenant alternative accommodation reasonably suitable to the needs of the tenant and his family, the landlord's claim for release of the building under tenancy shall be considered liberally.

11. Section 21 (1) (a) refers to the fact that the building is bonafide required by the landlord for occupation by himself or any member of his family or any person for whose benefit it is held by him. It is in continuation of this provision that the fourth Proviso dealing with likely hardship to the tenant and the landlord has been enacted. Section 34 (8) provides that for the purpose of any proceeding under the Act and for purposes connected therewith the authorities shall have such other powers and shall follow such procedure, principles and proof, rules of limitation and guiding principles as may be prescribed.

12. Rule 16 (1) which is intended to give effect to the provisions of Section 21 (1) (a) and its fourth Proviso and to complete the same is to be read in the context of and for the purpose of determining the bonafide requirement of the

landlord and the likely hardship of the landlord and tenant. Factors, expressly mentioned in the opening words of Rule 16 (1) and detailed in the following clauses (a) to (g) are such factors as have been referred to but not detailed in the fourth Proviso to Section 21 (1) (a). These factors are in the nature of principles and proof or guiding principles mentioned in Section 34 (8). The scope of the provisions of clauses (a) to (g) of Rule 16 (1) is to be delineated within the limits of Section 21 (1) (a) and its fourth Proviso. It would suggest that Rule 16 (1) (d) suffers from the vice of excessive delegation and is *ultravires* to the extent it provides that 'the Prescribed Authority shall release only the latter part of the building'. The power to release part of the building is in the nature of substantive power which does not bear reasonable relationship to the powers and procedure referred to in Section 34 (8). However, it is not necessary for the purposes of this case to express final opinion on the *vires* of Rule 16 (1) (d) as indicated above.

13. It may be observed that the plea raised by the petitioner in this Court does not find place in the pleadings. It was not raised before the learned Prescribed Authority and was also not raised as such before the learned Additional District Judge. The contention of the petitioner before the learned Additional District Judge was that the petitioner is prepared to vacate the house in question, if the accommodation at Cantt. Road namely, house No. 118/136, is made available to her. The learned Additional District Judge has observed that the petitioner has admitted in para 12 of the written statement that there are two rooms and four small Kothris in the disputed house and there are only two living rooms in house No. 118/136 and the accommodation therein on the ground floor is used for business purposes. He has, accordingly, taken the view that in these circumstances it cannot be said that the need of the landlord would be served by the disputed house alone and hence the offer of the petitioner cannot be accepted.

14. The material on record is sufficient for deciding the question raised by the petitioner and it is not necessary to remand the case in view of the decision rendered in *Krishna Kumar Srivastava Vs. Additional District Judge* (1985 (1) Allahabad Rent Cases 271). According to para 12 of the application under Section 21 filed by respondent No. 3, the accommodation in occupation of the petitioner consists of one small room, two small Kothris, one small Verandah and one small kitchen with doors situated on the ground floor and one small room and two Kothris on the first floor. There is no dispute between the parties with regard to the actual accommodation available in the house in question. It may be appreciated that the requirement of respondent No. 3 for another house has been held to be genuine and bonafide in view of the number of his family members, their age, sex and marital status and the extent of accommodation available in house No. 118/136. All this has been discussed above. The family of the petitioner is no less small and if the whole of the residential accommodation in house No. 118/136 is made available to her or in the alternative if only part of the house in question is released in favour of respondent No. 3 the arrangement

is not going to serve the reasonable need of any party. It has been held in Varanasi Ramanand Balika Vidyalaya V. II Addl. District Judge. Varanasi (1981 All. Rent Cases, 364) that where the release of the part of the accommodation will neither serve the purposes of the landlord nor of the tenant, no benefit of Rule 16(1) (d) would be available to the tenant. Thus there is no substance in the contention of the petitioner.

15. Rule 16 (1) (f) does not create a legal obligation and does not compel the landlord to offer alternative accommodation to the tenant. But, where the landlord offers alternative accommodation, his claim for the release of the building will be construed liberally. However, the landlord must have power to piece the tenant in possession of the accommodation offered to him (Tavfeeq Ahmad V. District Judge 1978 A.R.C. 206) and the same must be suitable for the purpose for which the tenant requires it (Mohd. Raseed Vs. Ram Kishor : 1985(1) All. Rent Cases 470). The converse is not true and if the landlord does not offer alternative accommodation he cannot be penalised and his claim for release of the building cannot be thrown out on that account. It will have to be considered even then on merits in accordance with the law with the rider that it may not be liberally considered, unless of course liberal consideration is warranted under some other provision. The matter which is of fundamental nature and importance for the purpose of Section 21 (1)(a) is the bonafide requirement of the landlord and all other provisions relating to hardship or partial release or offer of alternative accommodation or the like are subservient as they have a nexus with the basic issue and have a bearing on the requirement of the landlord or its bonafide character. While interpreting the provisions of the Act under consideration and the rules made thereunder, one cannot forget that lease is only an incumbrance and the object of the Act is regulation of eviction, the Act is not an expropriatory legislation but is a social welfare legislation which has been passed in the interest of the general public living in urban areas where there is great shortage of accommodation. The duty of the Courts is to strike a balance between the rights of the landlord and the tenant so that the Act may not become an instrument of oppression in the hands of either and may serve the just and reasonable requirements of both in a fair manner. In the instant case, the suggestion of the petitioner for handing over the accommodation in house No. 118/136 in exchange for the house in question has not been found to be acceptable by the learned Additional District Judge and as discussed above, is not reasonable. Therefore, it is not possible to accept the contention of the petitioner with regard to partial release or exchange of accommodation from any point of view.

16. For the above reasons the writ petition fails and is hereby dismissed. The petitioner shall deliver vacant possession of the disputed premises to respondent No. 3 within three months and in the meantime make alternative arrangement. Cost easy.

(Petition dismissed.)