
(2009) 10 AHC CK 0072

In the Allahabad High Court

Case No : Writ Petition No. 13294 (R/C) of 1990

Haider Ali and Others

APPELLANT

Vs

IXth Addl. District Judge and Others

RESPONDENT

Date of Decision : 29-10-2009

Acts Referred:

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

Citation : (2010) 4 AWC 3515

Hon'ble Judges : Y.K. Sangal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Y.K. Sangal, J.—This writ petition has been filed to quash the order dated 15.12.1990 and 20.3.1986, passed by the opposite party Nos. 1 and 2 in P.A. Case No. 142 of 1984, Mehndi Hassan etc. v. Baquar Ali and Rent Control Appeal No. 45 of 1986, Baquar Ali v. Mehndi Hassan, respectively. By the judgments and orders, both the courts below have allowed the application of the landlord/ Respondent Nos. 3 to 9 u/s 21(1)(a) of U. P. Act No. 13 of 1972 (hereinafter referred to as "the Act").

2. Heard learned Counsel for the Petitioner and learned Counsel for the Respondent Nos. 3 to 9. Respondent Nos. 1 and 2 are I Xth Additional District Judge, Lucknow and prescribed authority, Vth Additional Civil Judge, Lucknow who passed the aforesaid orders, so have been joined.

3. Mainly on two points, application u/s 21(1)(a) of the Act (hereinafter referred to as "the application") are decided by the Courts :

(1) Bona fide, genuine and pressing need of the landlord regarding tenanted premise.

(2) Comparative hardship of the landlord in rejecting the application u/s 21(1)(a) of the Act moved against the tenant.

4. Dispute in the case is regarding the residential accommodation detailed in the application. Relationship of landlord and tenant regarding the disputed premise is not disputed between the parties. Rate of rent of the tenanted premise, Rs. 25 per month also not disputed. In the same house of the tenanted premise, in a part landlord also resides and it is the part and partial of the residential house of the landlord, is also not denied by the tenants. Detail of the accommodation in possession of the landlord given in paragraph 6 of the application indicates that only two rooms and open roof at first floor and it is said that these are also used as place of worship and storing the goods, also used for Zardozi work (Embroidery work for business purpose) and for sleeping of family members and other daily routine purposes. Rasta for first floor accommodation also passes through one of the rooms, amongst these two rooms. There are seven members in the family of the landlord, detail given in the application. All the members of the family of the landlords are now major persons. Applicants 1 to 6/landlords are brothers and sisters and are of marriageable ages and applicant No. 7 is their widow mother aged 60 years. Need of all the applicant Nos. 1 to 6 shown for the tenanted premise for residential and study purposes and also to maintain secrecy of the life etc. Need of applicant No. 7 was also to live in the tenanted premise which lies on the ground floor showing that she is an old lady and unable to climb the stairs. It is said that three applicants are college/school going persons. On the other hand, it is said on behalf of the Petitioners in the written statement that they are 19 persons in number residing there. In paragraph 19 of the written statement details of tenanted premise shown, two rooms, two kotharis, one varanda, one angan on the ground floor and one room and open roof on the first floor. This accommodation was let out to Baquar Ali, ancestor of the Petitioners (who died during the pendency of the case) more than 50 years ago from today by the father of the Petitioner Nos. 1 to 6 and husband of Petitioner No. 7. Both the original landlord and tenant have died and now parties are their heirs. Disputed accommodation situates in middle of the Lucknow city in posh area, i.e., Latoosh Road and rent amount is only Rs. 25 per month.

5. Petitioners' family members admittedly having two other accommodations in their possession in the vicinity of the Lucknow city. One in Wazirbag and Anr. in Mohalla Muftiganj (said in possession of Ysuf son of Baquar) as said, in paragraphs 22 and 23 of the written statement. Some of the family members of original tenant Baquar (deceased) reside in these houses, it is also not in dispute. As per case of the Petitioners, due to paucity of the accommodation for the family members these two other houses/accommodations were arranged later on. Why a big accommodation or any other 3rd accommodation for other family members to accommodate whole of the family members was not searched, it is not sufficiently explained. It was said that they cannot afford to take any other house and pay rent for other accommodation. For other accommodation they will have to pay more rent only on this ground, bona fide, genuine and pressing need of the landlord cannot be denied. Learned Counsel for the Respondents argued that landlord cannot be forced to arrange some other

accommodation to meet out their bona fide need and tenants cannot be permitted to occupy his house on this nominal rent. Argument of learned Counsel cannot be said without force.

6. In the same house where Petitioners reside as tenant, in a portion at first floor in two rooms, accommodation about six family members of the Respondents are residing undisputedly. They all are now major persons. Three out of them are studying in School/college. Naturally, they should be provided some independent room/place for study purpose. Major girl of the family also requires a separate accommodation. They all are of marriageable age. After marriage, their requirements to live in separate accommodation, also cannot be denied. As regards, the matter of applicant No. 7, she is more than 80 years of age at the present time. At this age climbing by her stairs cannot be advised medically also. The house was let out more than 50 years ago by the father of the applicant Nos. 1 to 6. Later on due to increase in family, after about 30 years when the premise was let out, this application was moved to meet out the needs of the family members. If it is released, they can accommodate themselves in the said premise it is said in the application. Two other accommodations are shown at the disposal of the landlord, one in Kuchamirjan and Anr. adjacent to the house in dispute No. 52, Kuchamirzan's accommodation was shown that it is being used as imambara and is in possession of other co-sharers. Admittedly, landlord/applicants are not now residing in the house of Kuchamirzan. It is also said on behalf of the applicants that it cannot be get partitioned as it is an imambara. As regard the house No. 52, adjacent to the house in dispute, it was explained that it is in the shape of business premise and shops are there and they are in possession of the tenants and cannot be used for residential purpose. It was specifically denied that this property No. 52 can be used for residential purpose. No believable, admissible evidence was adduced to rebut the case of the Respondents on behalf of the Petitioners. No Commissioner's report was also made available on the record to show that this property is not being used for business purposes. There is no reason to disbelieve the case of the Respondents in regard to these properties shown in their possession. All these facts are sufficient to show the bona fide, pressing and genuine needs of the landlord.

7. As regard the comparative hardship, it is said on behalf of the Petitioners that there are no pleadings in application in this regard. My attention was drawn in paragraphs 15 to 17 of the application where applicants/landlord have clearly stated that other buildings in possession of the tenants. It is correct that specifically in a separate paragraph, it was not averred that in comparison landlord will have more hardship than that of the tenant if application is rejected. It may be a case of defective drafting by the counsel. Party cannot be blamed and punished for the act of their counsel. Nowhere it has been pleaded by the tenant in their written statement that they have made any effort to search out any other accommodation but not available. No application for allotment was also said has been moved before the competent authority. Matter is pending since last 25 years. It is established law that if no efforts are made on behalf of the tenants to

search out any other accommodation, it will adversely affect their case, when the comparative hardship is considered. In *N. S. Dutta v. VI Ith Additional District Judge*, 1984 ARC 113, it was held by this Court that "the Court is entitled also to take into account the fact that the tenant has neither alleged nor proved to have made efforts to have an alternative accommodation. Moreover, the non-availability of alternative accommodation to the tenant is itself not adequate ground to reject the landlord's application." When they can arrange two other accommodation, as said above why they have not tried to arrange a big house where whole of the family can be adjusted or why they have not tried to arrange other 3rd accommodation, it is also not sufficiently explained. My attention was drawn by the learned Counsel for the Respondents on the first explanation of Section 21(1) which reads as follows :

Explanation.--In the case of residential building:

(1) Where the tenant or any members of his family (who has been normally residing with or is wholly dependent on him) has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this Sub-section shall be entertained.

[Note.--For the purpose of this clause a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee.]

8. From the above explanation, it is clear that sons of original tenant Baquar who had died during the pendency of the case are having two other accommodations in their possession and they are residing there. Hence, objections of the tenant, against the application under this explanation shall not be entertained.

9. There is concurrent findings of fact of the two courts below about bona fide, genuine and pressing needs of the landlord regarding premise in dispute. It is also held by both the courts below that landlord will suffer more hardship, if there application is rejected. These are findings of fact of both the courts below. There is no reason to disturb these findings of both the Courts.

10. In *Haridavar Gir Vs. Mallinath @ Malikar Jun and another, Abdul Naim Quraishi Vs. Masi-Uddin Khan, and v Dharam Raj Singh Vs. IXth A.D.J. and Others*, it was held by the Courts that the concurrent findings of facts arrived at by the courts below, the High Court will not sit in appeal over such findings in writ jurisdiction. It was further argued on behalf of the Petitioners that the learned first appellate court has not discussed the evidence of the parties available on record and not considered the facts and circumstances of the case, judgment of the appellate court is not according to the provisions of Order XLI, Code of CPC Learned Counsel for the Respondents argued that where the judgment of the appellate court is of a affirmations, it is not necessary that every piece of the evidence be considered once again, Only requirement is that there must be sufficient discussion to show that the court has applied its mind to the

facts and circumstances of the case.

11. From the above all discussions and considering the arguments raised by the parties counsel and the law laid down on the two points to be decided in such matters referred above, I am of the opinion that there is no illegality, invalidity and impropriety in both the impugned orders of the courts below. The writ petition has not been filed bona fide and Petitioners have not approached the Court with clean hands.

12. It is clear from the record of the case that appeal was dismissed by the first appellate court in the year, 1990. More than 18 years have lapsed, tenants are enjoying the property in dispute on a meagre rent of Rs. 25 per month only. The property situates in posh locality of the Lucknow, i.e., at Latoosh Road. Considering the family members of the tenant and also considering the circumstances of the case, it will be proper that three months time should be allowed to the Petitioners to vacate the premise subject to this condition that they submits an undertaking before the prescribed authority concerned within ten days from the date of judgment to the effect that they will hand over the vacant possession of the property in dispute within three months. If they do not submit such explanation within the time prescribed above, landlord will free to take steps for taking possession of the premise in dispute in accordance with law.

With the above findings, the writ petition is hereby dismissed.