
(1998) 04 AHC CK 0047
In the Allahabad High Court
Case No : C.M.W.P. No. 11748 of 1998

Jagbir Singh Rana

APPELLANT

Vs

IVth Additional District Judge, Muzaffarnagar and others

RESPONDENT

Date of Decision : 02-04-1998

Acts Referred:

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

Citation : (1998) 3 AWC 1655

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : R.B. Singhal, for the Appellant; A.K. Srivastava and S.C., for the Respondent

Judgement

J. C. Gupta, J.—Heard petitioner's counsel Sri R. B. Singhal. Sri A. K. Srivastava is present for the caveator landlord.

2. Respondent Nos. 3 and 4 moved an application u/s 21 (1) (a) of the U. P. Act No. XIII of 1972 for the release of the house in question which is admittedly in the tenancy of the petitioner. This application was contested by the petitioner. The application for release has been allowed mainly on the ground that the respondent No. 4 is a Major in Indian Army and, therefore, the case is covered by Explanation (iii) of Section 21 (1) (a) of the Act. The said Explanation is in the nature of an exception which has the effect of lifting the rigour of proving the bona fide need by the landlord, who is a serving or retired Indian Soldier as defined under the Indian Soldiers (Litigation) Act, 1925. The need of the landlord on the existence of the conditions envisaged under such Explanation is to be deemed sufficient by a legal fiction. In the present case, it is not disputed that respondent No. 4 is an Indian Soldier as defined under the Act referred to in the aforesaid Explanation. The finding of fact recorded by both the Courts below further is that the respondent No. 4 is serving outside Muzaffarnagar where the tenanted accommodation is situated. It has been also found as a fact that the

said respondent requires the house in question for keeping his wife and children therein in order to educate his children as he is on a transferable post and gets posted from one station to another. To his case, therefore. Explanation aforesaid is fully attracted and need shall be presumed to be bona fide. With these findings, the release application has been allowed.

3. Like the Explanation (iii) to Section 21 (1), a similar provision exists in Section 13A1 of the Bombay Rents Hotel and Lodging House Rents Control Act, 1947. The Supreme Court while dealing with a case falling under the provisions of Section 13A1 in the case of Shivram Anand Shiroor Vs. Radhabai Shantram Kowshik and Another, , held as under :

"Notwithstanding the expressed legislative bias in farm of the tenant, the Legislature itself made a serious departure from the general rule so as to lean in favour of landlords who are or were members of the armed services, and who because of exigencies of their service were not able to occupy their own premises during the course of their service Section 13A1 was enacted, relaxing the rigour of Section 13 in favour of a landlord who is or was a member of the armed forces."

4. It is very much clear from the scheme of the Act that to a case where Explanation aforesaid is attracted, question of comparative hardship is of no relevance. IVth Proviso to Section 21 (1) (a) states that where a case is covered by the Explanation, the prescribed authority is not bound to 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. In short, it may be concluded that where the Explanation aforesaid is attracted, no comparison of likely hardship of the parties Is required to be made.

5. It is also noteworthy that for the applicability of the Explanation (iii), it is not necessary that the letting must have been done by the Indian Soldier himself. It is sufficient to prove that an Indian Soldier is the present landlord of the building sought to be released. In the present case, the respondent No. 4 claimed himself to be the landlord on the basis of a will dated 3.2.74 executed by his late father Harpal Singh.

6. Learned counsel for the petitioner, however, vehemently argued that admittedly respondent No. 3 who is the widow of the deceased landlord was realising rent from the petitioner and the will alleged to have been executed by the deceased-landlord in favour of respondent No. 4 was a forged and fictitious document. It may be stated that the deceased-landlord had executed another will in the year 1973 and subsequently on 3.2.1974, he made an amendment in the original will by executing a subsequent will whereby the house in question was bequeathed to respondent No. 4. On the basis of this will, name of respondent No. 4 was also mutated against the house in question in Municipal records including assessment. It is further the case of the respondent that respondent No. 3 was realising rent from the petitioner-tenant on behalf of her

son-respondent No. 4. The parties produced evidence including the handwriting experts who had compared signatures of the testator Harpal Singh appearing on the Original will dated 3.2.1974 with his admitted signatures. The lower appellate court examined the entire evidence and on appraisal thereof has recorded a categorical finding that the will is a genuine document and has been executed by late Harpal Singh. It is also well-established law that the opinion of handwriting expert is only corroborative and not conclusive. The respondents produced the attesting witness of will Sri Balbir Singh Pundlr who proved the will in question and was even cross-examined on behalf of the tenant but nothing material could be elicited out in his cross-examination. The Court below believed his statement and in the light of the opinion of the handwriting expert produced on behalf of the respondents and after itself making comparison of the signatures of Late Harpal Singh, has come to a positive and clear finding that the will in question has been signed by Harpal Singh and has been duly executed and attested. The said will has also been acted upon much prior to the filing of release application inasmuch as mutation had been made in the Municipal Assessment Register on the basis of the said will and the name of respondent No. 4 was entered against the house in question.

7. Learned counsel for the petitioner argued that despite a prayer having been made before the Court below to direct the landlord to produce the first will dated 7.12.1973, the Court refused to Issue such a direction and the respondent Nos. 3 and 4 also did not produce the same, therefore, an adverse interference should be drawn against them for not producing the said will. In support of his submissions, learned counsel relied upon the decision of the Apex Court in the case of Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, wherein on page 1416, it was observed, "Even if the burden of proof does not lie on party, the Court may draw an adverse inference if he withholds important documents in its possession which can throw light on the facts at issue." It has rightly been pointed out by the counsel for the caveator that the fact in issue before the Court below was about the genuineness of the will dated 3.2.74 through which the respondent No. 4 claimed rights. The said will was produced according to law. Production of the will dated 7.12.1973 was, therefore, neither necessary nor material having no bearing on the issue in controversy.

8. Since the finding that will has been duly executed and attested is based on appraisal of evidence, this Court will not interfere in the said finding merely on the basis that any other view might be possible on the evidence on record.

9. For the above reasons, this petition has no force and must be dismissed.

10. Learned counsel for the petitioner then made a prayer that since the petitioner belongs to rural area, he may be allowed some reasonable time to make alternative arrangement for shifting there. Learned counsel for the respondents-landlord has no objection to it provided the petitioner is ready to give an undertaking in writing in this regard. Learned counsel for the petitioner states that the petitioner is prepared to furnish any such undertaking as may be

ordered by this Court.

11. In the circumstances, the petitioner is allowed six months time to vacate the house in question subject to the condition of his filing an undertaking in writing on affidavit before the prescribed authority that he shall hand over vacant possession of the house in question to respondent No. 4 on or before 15th of October, 1998 and shall not induct any other person in the said premises and on the further condition of his paying the entire arrears of rent due upto date as per the admitted rate, by 30.4.1998. The required undertaking shall also be filed by the aforesaid date. If no undertaking is filed within the aforesaid period, this stay order shall stand automatically vacated and if the same is filed, the eviction of the petitioner from the house in order of release made against the petitioner shall remain suspended till 15.10.1998.

12. With the above directions and observations, this writ petition is dismissed in limine.