
(1985) 10 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10472 of 1980

Jang Bahadur Saxena

APPELLANT

Vs

VIII Additional District Judge and Others

RESPONDENT

Date of Decision : 30-10-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 3

Citation : (1985) 10 AHC CK 0005

Hon'ble Judges : R.K. Shukla, J;N.D. Ojha, J

Bench : Division Bench

Advocate : S.N. Agarwal, for the Appellant; D.P. Bahadur and Prakash Kumar,
for the Respondent

Judgement

N.D. Ojha, J.—The Petitioner is the landlord of house No. 129/14-L, Ali Zahir Market, Babu Purwa, Kanpur. In a portion of the said house, the Petitioner has himself been living. Other portions are let out to various tenants. One of the tenants is Sri Ram Adhin Shukla, Respondent No 3. The Petitioner has his wife and 3 daughters. An application was made by the Petitioner u/s 21(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act), against the Respondent No. 3 for release of the accommodation in his tenancy on the ground that he needed it bonafide. The ground on which the application was filed was that 2 of the daughters of the Petitioner had been married and at the time of their marriage, the Petitioner had promised that they would be provided accommodation in premises No. 129/14-L, mentioned above. It appears that the eldest daughter was already occupying a portion of the house aforesaid. The case of the Petitioner was that he wanted the accommodation in the tenancy of Respondent No. 3 to accommodate his second daughter and her husband in pursuance of the promise made by him at the time of the marriage of the said daughter. The application was contested by Respondent No. 3 and was dismissed by the Prescribed Authority. The appeal

filed by the Petitioner was also dismissed by the VIII Additional District Judge, Kanpur Respondent No. 1. Aggrieved by these orders the Petitioner filed this writ petition. It came up for hearing before a learned Single Judge. Before him, reliance was placed for the Petitioner on two decisions of this Court in *Rani Chaturvedi v. Shiv Narain* 1980 ALJ 99 and *Smt. Satya Misra v. II Addl. District Judge* 1979 UP RCC (Supp) 738 in support of his contention that even the requirement of the Petitioner to accommodate his married daughter would constitute bonafide need of the Petitioner. The learned Single Judge found difficulty to agree with the view taken in those two cases in view of the definition of the term "family" contained in Section 3(g) of the Act and accordingly directed the papers of the case to be laid before the Hon'ble the Chief Justice for listing it before a Division Bench. The writ petition has now been listed before us in pursuance of an order passed by the Hon'ble the Chief Justice.

2. It has been urged by the learned Counsel for the Petitioner that since the Petitioner had at the time of marriage of his second daughter made a promise to accommodate her and her husband in the accommodation in question, the need of the Petitioner to accommodate his daughter along with her husband was bonafide and the authorities below have committed a manifest error of law in taking a contrary view. In support of this submission, he placed reliance on the two cases on which reliance was placed before the learned Single Judge and which have already been referred to above. In the case of *Smt. Satya Misra* (supra), it was held:

The expression "for occupation by himself" does not mean that the landlord should live in isolation. If the state of health of a landlord or his age is such that he cannot live alone and would need the company or assistance of any other person, then the need of such other person, whose assistance, he needs, would also be covered by this phrase. Similarly, if the landlord is invalid, an accommodation required for helper may also be considered as a need of the landlord. A distinction has, therefore, to be maintained between two classes of cases where a landlord does not need an assistance of a man but still he wants to keep someone with him, in such a case the need for occupation would not be that of the landlord but of that other person. But whereas here, the landlord keeps his daughter and her son-in-law to look after his business and for his help it will have to be held that requirement of these persons to have an accommodation to live with the landlord is bonafide need of the landlord himself.

In the case of *Rani Chaturvedi* (Supra) on the other hand, it was held that the fact the relations of the landlord who in that case were daughters and daughters' children were residing with him since long was a relevant consideration for the Court to consider when examining the need of the landlord. There is another unreported decision of a Division Bench of this Court in Special Appeal No. 28 of 1974, *Sri Amar Nath v. Addl. District Judge, Kanpur*, decided on 28.02.1974. It was held:

In the next place, it was urged that the need of the landlady was held to be

genuine because the District Judge erred in taking into consideration the needs of the members who were not the members of the family of the landlady as defined by the Act. Clause of Section 3 defines family to mean, spouse, male lineal descendants, parents, grand-parents and any unmarried or widowed or divorced or judicially separated daughter of male lineal descendant. In the present case the landlady is a widow. She is living with her daughter who is married. Her son-in-law also lives with her with his five children. The brother of the landlady's husband also lives with her. In her application for release the landlady stated that the brother of her husband also resides with her and a separate accommodation has to be given to him. It is true that none of the persons, who are in fact living with the landlady, could constitute family as defined by the Act. But nonetheless on the finding of fact it is clear that these persons are normally living with the landlady. The landlady feels the necessity of providing accommodation to these relations of hers. u/s 21(1), one of the grounds of release is that the building is bonafide required by the landlady for herself or any member of her family. In the totality of the facts, the District Judge found that the accommodation in dispute was insufficient for the residential purposes of the landlady, her relations and family members. She was in need of more accommodation. The question is whether the finding that the accommodation is genuinely needed by the landlady for her occupation is vitiated. The necessity of the landlady to have some more accommodation for her occupation because the existing accommodation is hardly sufficient for her other relations is a material and relevant consideration in order to judge the genuineness of the need or the sufficiency of the accommodation. Factually, the residence of the actual relations is relevant. It is not necessary that the fact finding authority is to take into account the needs of only such relations of a landlord who can constitute his family as defined by the Act. The emphasis by Section 21(1) is that extra accommodation is not to be given to the landlady for persons who are not members of the family, but for her own need. The fact that the need of the present accommodation was necessitated because of the residence of her other relations, is not irrelevant. The landlady could in the present circumstances put forward the plea that because of so many other relations living with her she needed extra accommodation for her residence; and that seems to be the finding.

On a conspectus of the decisions referred to above and of the provisions of Section 21 and Section 3 of the Act, it is apparent that an application for release u/s 21(1) can be filed either on the ground that the building is bonafide required by the landlord for occupation by himself or by any member of his family. The term family has been defined in Section 3 of the Act. If, therefore, an application is made u/s 21(1) of the Act on the ground that the building is bonafide required for occupation by any member of the landlords' family, the need has to be of one of those persons who come within the definition of the term family as contained in Section 3 of the Act. The words "for occupation by himself with reference to the landlord have, in our opinion, to be construed in a

manner which is commensurate with the personal requirement of the landlord. There can be cases where the landlord in order to have a reasonably comfortable living, may be in need of company or assistance of a person or persons who may help him for instance as a nurse, cook or domestic servant and for some reason is not in a position to get such company or assistance from a person who is a member of his family as defined in Section 3 of the Act, he will naturally have to fall back upon a person who does not fall within the definition of the term "family" in Section 3. If on evidence it is established that it would not be possible" for the landlord to have company or assistance of such person or persons without providing them residential accommodation and he is not possessed of sufficient accommodation for this purpose, an application u/s 21(1) of the Act may be maintainable to accommodate such person or persons as the case may be inasmuch as in such a case, it would not be the need of such person or persons but the need of the landlord to have additional accommodations so that he may be in a position to have the company or assistance of such person or persons. Such a need would apparently fall within the expression " for occupation by himself " as pointed out in the case of Smt. Satya Misra (Supra) and would apparently be bonafide. If the requirement of the landlord does not fall in the said category and the landlord simply wants to keep someone with him who is not a member of his family it would not be a case where the need of the landlord could be treated as bonafide. We also are in agreement with the view taken by the Division Bench in A mar Nath v. Additional District Judge, Kanpur (Supra) that if some members of the family of the landlord, even if they do not fall strictly within the definition of the term "family", have been residing with the landlord permanently and the accommodation falls short and the landlord needs additional accommodation it would be a case where it is the requirement of the landlord for occupation by himself. In such a case, the landlord cannot be expected to turn out from the house such members of his family who do not strictly fall within the term "family" as contained in Section 3 of the Act. We may however point out that the cases falling in this category also have to be confined strictly to such contingencies where those persons were living permanently from before with the landlord. This category will not include such cases where the landlord wants to accommodate persons who do not fall within the definition of the term "family" and have not already been living with him and whose company or assistance is also not needed by the landlord in the sense already referred to above OH account of which it could be said that accommodating those persons is the need of the landlord himself. Such cases will also not fall in this category where some relations of the landlord not falling in the definition of the term "family" are proved to have been kept in the accommodation in question recently only for the purpose of making out a case for additional requirement. The illustrations, which we have given, are not exhaustive and the question as to whether the need of the landlord is bonafide or not will have to be decided on the facts of each case.

3. Coming to the facts of the instant case we are of the opinion that the need of

the Petitioner of accommodating his daughter or son-in-law on the ground that at the time of marriage a promise was made to that effect would not at all be bonafide. It does not fall in any of the categories enumerated above. *Mattulal Vs. Radhe Lal*, was a case where the landlord wanted a non-residential accommodation in the occupation of the tenant to be released in his favour for the purpose of starting or continuing his own business. While dealing with the question of bonafide requirement of the landlord under the M.P. Accommodation Control Act (41 of 1961), it was held that mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the Court to determine the truth of the assertion and also whether it is bonafide. The test which has to be applied is an objective test and not a subjective one. The word "required" signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show the burden being upon him that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business. The provisions about the bonafide requirement of the landlord under the M.P. Accommodation Control Act being in parimateria with Section 21(1) of the Act, the principle of law laid down in the case of *Mattulal (Supra)* will apply to a case u/s 21(1) of the Act also. Applying the test laid down in the aforesaid case, it is apparent that the instant one is a case where the landlord petitioner merely desires the accommodation in question to be vacated for accommodating his daughter and son-in-law in pursuance of a promise alleged to have been made at the time of marriage of the daughter. In this view of the matter, the impugned orders cannot be said to suffer either from any manifest error of law or error of jurisdiction so as to justify interference Under Article 226 of the Constitution.

4. The writ petition accordingly fails and is dismissed. There shall however be no order as to costs.