
(1977) 08 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3841 of 1974

Jia Lal

APPELLANT

Vs

Addl. District Judge, kanpur and others

RESPONDENT

Date of Decision : 22-08-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 — Rule 16(f)

Citation : (1977) 08 AHC CK 0031

Hon'ble Judges : M.P.Saxena, J

Final Decision : Disposed Of

Judgement

M.P. Saxena, J.

This is tenant's petition arising out of proceedings under Section 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

Briefly stated the facts are that Harish Chander Misra, opposite party No. 3 is the owner and landlord of house No. 104A/2648, situated in Ram Bagh, Kanpur. He had purchased it in 1967 and at that time there was only one room in the front portion by the side of the road which was occupied by one Jia Lal as a tenant. The petitioners are the sons and widow of Jia Lal. There was some open land and two Khaprailas on the back side. The landlord got its possession and constructed two small rooms one varandah, a store, a kitchen and a latrine and started residing therein. In one other Khaprailshed one Chunni Lal was living as tenant. The landlord applied for release of the portions in possession of Jia Lal and Chunni Lal. Since the Prescribed Authority was of the view that one application for release could not be moved against two tenants, the landlord got the name of Chunni Lal struck off and pressed his application for release against Jia Lal alone. It was alleged by him that his family consisted of seven members, viz., " himself his mother, wife, two sons, one daughter and his brotherinlaw whom he had

brought up after the death of letter's parents.

He also gave out that the accommodation in his possession was not sufficient to meet his requirements as he also wanted to do coaching of boys.

Jia Lal contested that application inter alia on the grounds that the landlord has no bona fide need and that, he was not entitled to convert the residential portion into business purposes like coaching. The learned Prescribed Authority negated both the contention of the tenant and allowed the release application. Jia Lal filed an appeal and the learned Additional District Judge rejected it by holding that the landlord has bona fide need for the disputed premises and that the rejection of his application will cause greater hardship to him than will be caused to the tenant if the application is allowed. It may also be stated here that the landlord is a tenant in house No. 105/42 Premnagar, Kanpur and he offered to give it to Jia Lal if he agreed to vacate his house. In this manner he claimed the benefit of rule 16 (f). The Prescribed Authority observed in this connection that the tenant will suffer no hardship as the landlord is prepared to place house No. 105/42 at his disposal. In the concluding portion of his order the Prescribed Authority has stated that the tenant (Jia Lal) can very well apply for allotment of that house and it will be allotted to him so that he may not experience any hardship. This part of the order has not been disturbed by the learned District Judge, who has dismissed the appeal. Jia Lal filed this writ petition but died during its pendency and his sons and widow have been substituted in his place.

The primary question obviously for consideration is whether the landlord opposite party has bona fide need for the disputed building. As is evident from the material on the record the whole house is very small and the landlord has only two small rooms, one kitchen one store room and one latrine in his possession. His family consists of six members. He is a teacher by profession and carries on some tuition work at his house. Accommodation is needed for this purpose also. The portion in his possession is much too small to meet his requirements. Therefore there can be no manner of doubt that he bona fide requires the disputed building for his own use.

There is not much force in the petitioners contention that the landlord wants to convert the residential building into nonresidential or business premises. The landlord wants the premises primarily for residential purposes. Since he is a teacher by profession he carried on some tuition work also at his house. The dominant purpose, however, is residential. Therefore it cannot be said that the landlord wants it for nonresidential purposes.

So far as the comparative hardship of the landlord and the tenant is concerned the landlord is prepared to place house No. 105/42 situate in Prem Nagar at the disposal, of the petitioners. He is no doubt a tenant of this house but in its order the Prescribed Authority has observed that the tenants may apply for its allotment and it will be given to them. This is sufficient guarantee that the tenants will not remain without a house if they are required to vacate the house

in dispute. There is nothing to show that house No. 105|42 is not sufficient to meet the requirement of the petitioners. Therefore when alternative accommodation as offered to them the claim go the landlord for release deserved to be construed liberally. (Vide rule 16(f)). The learned Additional District Judge has considered the bono fide need of the landlord and has also compared the relative hardship of the landlord and tenants and on manifest error of law has been pointed out in his judgment. Hence, there is no ground for interference by this Court.

In the result, the writ petition is dismissed with costs to the opposite party No. 3. The petitioner undertakes to vacate the disputed house within three months hereof. They will not be dispossessed during this period.