
(1979) 09 AHC CK 0018
In the Allahabad High Court
Case No : Civil Misc. Writ No. 1894 of 1977

Kailash Chandra

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 17-09-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 22

Citation : (1980) AWC 19

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : S.K. Subedar, for the Appellant; B.D. Mandhyan, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India arising out of proceedings for the release u/s 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act XIII of 1972).

2. The house in dispute is a portion of building No. 1/141 Bari Gali, Nagla Peepal Mandi, Agra. The Petitioner is tenant and Shanti Devi is the landlady. The application for release was rejected by the Prescribed Authority by his order dated 6-8-1973. Aggrieved, the landlady filed an appeal u/s 22 of the Act which was allowed by the IV Additional District Judge, Agra by order dated 31-8-1977. This order dated 31-8-1977 is being impugned in the present petition.

3. The learned Counsel for the Petitioner has made two submissions before me. His first submission is that the Commissioner's report dated 5-10-1975 has not been considered by the appellate Court and as such the finding is vitiated in law. The second submission is that under the Fourth proviso to Section 21 which relate to consideration of respective hardships of the landlord and tenant, the mental hardship of the landlord is not to be considered at all and such a consideration would be beyond the scope of such proviso.

4. I have heard the learned Counsel for the parties.

5. In regard to the first submission it is no doubt true that in the appellate order the fact of the Commissioner's report has not been stated but the appellate Court has recorded the facts which were found by the Commissioner in his report and it is only on that basis the appellate Court has considered the need of the landlady keeping in mind the members of the family of the landlady and the accommodation available and then recorded a finding of fact that the need of the landlady was genuine. This is a finding of fact. The mere non-mention in the order of the Commissioner's report though facts in relation to the report have been considered by the appellate Court does not vitiate the finding and no prejudice has been caused to the tenant-Petitioner. In this view of the matter the first submission made on behalf of the Petitioner does not have substance.

6. In regard to the second submission the finding of the appellate Court is that the Petitioner and his sons had been ill-treating the husband and sons of the landlady, they had caused injuries to them and as such it resulted in mental hardship to the landlady. The fourth proviso to Section 21 of the Act is very widely worded. Mental hardship is a relevant consideration.

7. Besides the appellate Court has not only considered the mental hardship but has also considered physical hardship the Court came to the conclusion that greater hardship would be caused to the landlady, this finding of fact is also not therefore vitiated in law.

8. In the result the petition fails and is accordingly dismissed. Parties are, however, directed to bear their own costs. Counsel for the Petitioner has requested that three months' time be granted to vacate the premises in question and he has further given an undertaking that the Petitioner shall vacate the premises immediately after the expiry of three months. I, therefore, direct that no proceedings shall be initiated for the eviction of the Petitioner for a period of three months. The Petitioner shall hand over vacant possession of the premises immediately after the expiry of three months.