
(1982) 01 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4862 of 1980

Kalyan Rai Saxena

APPELLANT

Vs

Second addl.District judge, Bulandshahar and others

RESPONDENT

Date of Decision : 20-01-1982

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1982) 01 AHC CK 0037

Hon'ble Judges : Satish Chandra, CJ and A.N.Varma, J

Final Decision : Dismissed

Judgement

A. N. Verma, J.

This writ petition comes before us upon a reference made by a learned Single Judge in a matter arising out of an application tiled by the respondent landlords for the release of the accommodation in question under the provisions of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act). The learned Single Judge (S. D. Agarwal, J.) noticed a divergence of opinion between two other learned Judges (K. C. Agarwal, J. and Murlidhar, J., on the question of what ought to be the true and proper construction of Section 21 (1A) of the Act.

Before we deal with the interpretation of the aforesaid provisions, we may briefly set out the relevant facts as found by the learned Additional District Judge on appeal. The respondents Nos. 3 to 9 are the landlords of the accommodation in dispute, house No. 199/1 Kayasthawara, Sikandarabad district Bulandshahar, of which the petitioner is the tenant on a monthly rental of Ks. 35/. These landlords filed an application for the release of the aforesaid accommodation on the ground that one of them namely Onkar Swarup Bhatnagar (respondent No 3 herein) was in occupation of an official residence allotted to him at Lucknow by virtue of his being the Additional Director in the Department of Animal Husbandry in the

Government of Uttar Pradesh. On his retirement on 31st of July 1977 he had to vacate the official residence. He had no other accommodation suitable to his needs except the one which was in occupation of the petitioner. The landlords were, however, already in occupation of an adjoining portion of the building under the tenancy of the tenant, but that portion was neither sufficient nor suitable for the needs of the landlord's family. Hence the application.

The application was contested by the petitioner-tenant on the ground that the landlords already had sufficient accommodation in the adjoining portion of the building which was more than sufficient for their needs and that the tenant would suffer far greater hardship, if evicted from the accommodation.

The prescribed Authority held that the landlord's application was liable to be allowed in view of the provisions of Section 21 (1A) of the Act. The landlord's application was liable to be allowed in view of the provisions of Section 21 (1A) of the Act which was clearly attracted to the fact of the present case in view of the fact that Onkar Swarup Bhatnagar was in occupation of an official residence which he had to vacate in consequence of his retirement. The Prescribed Authority further observed that in view of the fact another portion belonging to the landlords which was in occupation of a tenant Kishan Singh in the same building was going to be released in favour of landlords, the best solution would be to direct the release of the accommodation in dispute in favour of the landlords while allowing the tenant to occupy the portion which was in occupation of Kishan Singh. To give effect to the aforesaid arrangement, the Prescribed Authority further directed the landlords to nominate the petitioner for allotment of the accommodation which was in occupation of Kishan Singh so that the petitioner might occupy that portion without any difficulty. So that the said arrangement may be effectively carried out, the Prescribed Authority gave to the tenant six months time for vacating the accommodation.

On appeal the learned Additional District Judge held firstly that the case was covered by Section 21 (1A) and, therefore, the landlords were entitled to the release of the accommodation as a matter of course without having to establish that their need was genuine or that the hardship which they would suffer would be greater than that likely to be suffered by the tenant, and, secondly, that even upon a comparison, the hardship likely to be suffered by the landlords would be greater than that which the tenant would suffer. The appellate Court also took note of the fact that the portion vacated by Kishan Singh would meet the requirements of the tenant, whereas the landlord's needs cannot be adequately satisfied except upon release of the accommodation under tenancy of the petitioner. With these findings the appeal of the petitioner was dismissed.

Learned counsel for the petitioner submitted that in view of the finding that the landlords already have in their occupation the adjoining portion of the building under tenancy, Section 21 (1A) cannot be attracted. He submitted that the said provision comes into play only if the landlord, who in consequence of the cessation of his employment has had to vacate an official residence allotted to

him, is left without any residence whatsoever. In support learned counsel placed reliance on the decision of K. C. Agarwal, J. in the case of J. C. Gupta v. District Judge and others, 1978 A. L. J. 1306.

Counsel for the respondents/landlords, on the other hand submitted that the said provision is not excluded even if the landlord has some accommodation available with him after vacating the official residence allotted to him if the accommodation already available with him or which becomes available to him upon his vacating the official residence, is inadequate or unsuited to the needs of the landlord. For supporting this submission counsel placed reliance on an unreported decision of Murlidhar J. in writ petition No. 4035 of 1978 Hardwari Lal v. The Prescribed Authority and others, decided on 30/11/1979.

Having heard counsel for the parties and given the matter a careful thought, we are clearly of the opinion that Section 21 (1A) of the Act would not be attracted where the landlord already has a vacant accommodation which he can occupy in his own right after vacating the official residence allotted to him. We now proceed to examine the provision under consideration namely Section 21 (1A) of the Act which reads as follows

"(1A) Notwithstanding anything contained in Section 2, the prescribed Authority shall, on the application of a landlord in that behalf, order the eviction of a tenant from any building under tenancy, if it is satisfied that the landlord of such building was in occupation of a public building for residential purposes which he had to vacate on account of the cessation of his employment.

Provided that an application under this subsection may also be given by a landlord in occupation of such public building at any time within a period of one year before the expected date of cessation of his employment, but the order of eviction on such application shall take effect only on the date of his action cessation."

This subsection was inserted by U. P. Amendment Act No. 22 of 1976.

In order to appreciate the true scope and purpose of this provision, it would be necessary to examine the contextual setting in which it appears. Section 20 of the Act lays down specific grounds on which alone a suit for eviction of a tenant can be filed by a landlord. The landlords are not entitled to sue for the eviction of the tenants on any other grounds.

The next important provision is Section 21 subsection (1) of which enables a landlord to make application for the release of a building under tenancy, but only upon proof of two important facts first, that the landlord bonafide requires the accommodation for his own use or that of the members of his family, and, second, that the hardship which the landlord would suffer from the refusal of the application would be greater than the hardship likely to be suffered by the tenant from the grant of the same. For judging these two factors elaborate and stringent rules have been framed under the statute laying down for the guidance of the

authorities various tests which the landlords must pass before release can be ordered. Not only this, the interests of the tenant have been equally safeguarded both under the proviso to subsection (1) of Section 21 as well as under the rules framed there under. He has been invested with the valuable right of establishing that the landlord does not bonafide require the accommodation for his own use, and, that even, if he does so require, the hardship which the tenant is likely to suffer from the grant of the application would far outweigh the inconvenience which the landlord might suffer from the refusal of the application. We have then the provision under examination, viz, subsection (1A) which immediately follows subsection (1) of Section 21. Needless to add that subsection (1A) is an integral part of Section 21 and it must on all authorities, be read along with other subsection of Section 21 Section 21 (1A) engrafts a deviation from the general rule contained in subsection (1) of Section 21.

Under it, upon the proof of the mere fact that the landlord was in occupation of an official residence which he has had to vacate in consequence of the cessation of his employment, the landlord becomes entitled straightway to the release of the accommodation as a matter of course. The authorities are bound to release the accommodation under the provision without any consideration of the hardship which the tenant might suffer by the grant of the application. If the ingredients of Section 21 (1A) are there, the authority cannot so much as even enquire whether the landlord does bonafide require the accommodation in question.

There is, therefore, little doubt that subsection (1A) affects the tenant in a serious way, leaving him entirely defenseless. Such a stringent provision must be subjected to a closer scrutiny with a view to finding out its true purpose in the light not only of this provision but in the context of the other relevant provisions.

In our opinion Section 21 (1A) was enacted for providing an immediate shelter to a landlord who is left without any accommodation in consequence of having to vacate upon cessation of his employment, a public building. The legislature appears to have made this provision to meet the exigency arising out of the landlord being confronted with the serious problem of finding an accommodation for his residence after being deprived of the use of a public building which was allotted to him in consequence of his employment. So that the landlord might rehabilitate himself without going through the rigorous and timeconsuming process envisaged under Section 21 (1) the Legislature thought that such a landlord might be relieved of the obligation of having to establish that he bonafide requires the accommodation belonging to him or that as between him and his tenant, he would suffer greater hardship. It appears that in a contingency covered by Section 21 (1A) the legislature presumed that the need of the landlord would be genuine and that his requirements must necessarily take precedence over those of the tenant.

If, however, the landlord already has in his possession some accommodation which he can occupy or is occupying in his own right after vacating the public

building we cannot see any good reason why the legislature would still confer upon him the preferential right such as is contemplated under Section 21 (1A) of getting the accommodation under tenancy straightaway by the mere fact that the landlord has had to vacate a public building.

From the nonobstante clause used in subsection (1A) it is clear that the application of Section 21 (1) is not excluded even in a contingency covered by subsection (1A). If, therefore, the landlord considers the accommodation already in his occupation or which he occupies after vacating the public building, either inadequate or otherwise inappropriate for his needs, he can apply under Section 21 for the release of the building under tenancy upon proof of those facts. In that case however, he will have to establish further, save in the cases expressly excepted under Section 21, that the hardship which he would suffer by the refusal of the application would be greater than that likely to be suffered by the tenant by the grant of the same. Such letters on the rights of the landlords under subsection (1) are insignificant when compared with the disadvantage that the tenant suffers under subsection (1A). We are, therefore, of the opinion upon a schematic analysis of the relevant provisions of the enactment and its avowed intent that it is implicate in Section 21 (1A) that the landlord can invoke it only, if only he does not already have in his possession an accommodation which he can occupy in his own right after vacating the public building allotted to him in consequence of his employment.

Learned counsel for the landlord, however, contended that Section 21 (1A) does not inhibit its application to the cases where the landlord has in his occupation some accommodation after vacating the public building by any express words, and, that, in the absence of any express words limiting its application, we should not restrict its application only to the contingency where the landlord has no accommodation whatsoever available to him after vacating the public building.

We find no merits in this contention. In our opinion in order to ascertain the true intent and purpose of a statutory provision we should not read the provision completely divorced or detached from the context in which the provision is set or lose sight of the object or purpose of the enactment as manifested by the other related provisions appearing in the same Statute. We should prefer to adopt a contextual construction rather than read the provision in a literal sense or in isolation. In our opinion read in the context of the related provisions, particularly Sections 20 and 21 (1) of the Act, Section 21 (1A) can be construed only in the manner in which we have done.

The learned counsel for the landlords also made an attempt to derive some support from the absence of a proviso similar to that appearing in Section 24B of the Act. He submitted that if the legislative intent had been to restrict the application of Section 21 (1A) as held in J. C. Gupta's case (*supra*), one should have expected a similar proviso in Section 21 (1A) also.

We are not impressed by this submission. In the first place Section 24B appears

in a different Chapter namely Chapter IVA of the Act and it deals with a situation which is materially different from that which is contemplated under Section 21 (1A). Secondly, all that the proviso says is that if the landlord has in the same city two or more dwelling houses he can not recover possession of more than one dwelling house. In our opinion even this proviso points to the same conclusion which we have reached namely that the landlord cannot claim protection under subsection (1A) if he already has in his possession some accommodation.

The construction which has appealed to, us is fully supported by a decision of their Lordships of the Supreme Court in the case of *Busching Schmitz Private Limited v. P. T. Manghani* (2), in which a parallel provision namely Section 14A appearing in the Delhi Rent Control Act was the subject of interpretation. Section 14A of the Delhi Act is an analogous provision dealing with a contingency which is materially identical with that envisaged under Section 21 (1A). There also the question which arose for consideration was whether the right contemplated under that provision was still available to the landlord even if after vacating the official residence allotted to him he has moved into his own house which is vacant. The relevant portion of the judgment appearing at page 1577 may be usefully quoted here:

"Underlying the whole legislative plan provision is the fundamental anxiety to recover, for the officer's occupation, his own premises. Once we grasp this cardinal point, the officer's application for eviction under Section 14A can be entertained only on his averment that he, having been asked to vacate, must get into possession of his own. For instance, if he has a vacant house of his own and, on getting an order to vacate: he moves into his vacant house, he cannot thereafter demand recovery under Section 14A. The cause of action is not only the government order to vacate, but his consequential urgency to recover his own building. That is the *ratione legis*. To interpret otherwise is to vindicate Mr. Bumble we hold that Sri Nariman's apprehension is unfounded and Section 14A is largely a rider to Section 14 and the condition indicated in Section 19 must, *mutatis mutandis*, bind the landlord. Parliament cannot be assumed not to intend the obvious, or to intend the ludicrous. Literalism is not right where absurdity is the result.

The same result is reached by reading into every application for eviction by a landlord a necessarily implied representation to Court that for the reason of his being directed to get out he must be given possession of his own residence for his own occupation which the aid of the judicial process....." (Emphasis added).

The rationale behind the aforesaid decision of the Supreme Court fully supports the view taken by us as regards the true scope and purpose of Section 21 (1A).

To sum up we are of the opinion that if the landlord already has some accommodation in his possession after vacating the official accommodation, but

considers that accommodation inadequate or unsuitable for his occupation his remedy is under Section 21 (J) and not 21 (1A) which, in our considered view, is attracted only where the landlord has had to vacate an official residence allotted to him and he is left with no accommodation whatsoever which he can occupy in his own right. We however, hasten to add that a temporary occupation by a landlord of some accommodation which he cannot use as of right pending the grant of his application under Section 21 (1A) cannot exclude the application of that provision.

The contrary view expressed by Murlidhar, J. in Hardwari Lal's case is founded on the considerations (1). There are no express words excluding the application of Section 21 (1A) to cases where the landlord already has available with him a vacant accommodation and (2) that there is no warrant to construe subsection (1A) so narrowly as to mean that even if a landlord has some accommodation however, small or inadequate, he cannot seek the benefit of subsection (1A).

So far as the first consideration is concerned, we have already dealt with that aspect while considering the argument advanced on behalf of the landlords. As already observed we have to read subsection (1A) in the context of Section 21 and other provisions of the enactment.

As regards the second consideration which appealed to the learned Judge, we have to bear in mind not only the convenience or inconvenience of the landlords but also that of the tenants. We cannot ignore the fact that under subsection (1A) the hardship likely to be suffered by the tenant has all together to be ignored while under subsection (1), the tenant is protected by statutory safeguards. The landlord, on the other hand, where he considers the accommodation available with him inadequate or unfit can still apply under Section 21 (1). It is thus apparent that the view which has appealed to us is more consistent with the object and scheme of the Act than the contrary view expressed in Hardwari Lal's case.

The above conclusion however, does not entitle the petitioner to have the impugned order quashed. For we find that the Appellate Court has, independently of Section 21 (1A) held in favour of the landlords on the ground that the accommodation already in occupation of the landlords is not sufficient or suitable for their needs and that even on a comparison of respective hardship, the landlords have a better claim. These conclusions of the appellate Court are conclusions on question of fact and not being vitiated by any patent error of law cannot be interfered with in a writ petition. The Appellate Court has examined the extent and nature of the accommodation available with the landlord and has observed that the need of the landlord Onkar Swarup Bhatnagar could be satisfied only by the release of the accommodation under the tenancy of the petitioner. So far as the hardship likely to be suffered by the tenant is concerned that aspect has also been considered by the learned Additional District Judge on appeal and was sufficiently safeguard by the prescribed Authority by directing the landlords to nominate the petitioners for the allotment of the portion release

in favour of the landlords which was in occupation of Kishan Singh. Even if, therefore, the application of the landlords is judged in the light of subsection (1) of Section 21, in our opinion, the release was rightly granted by the authorities below.

We are also of the opinion that in view of the facts found by the lower appellate Court it is not a fit case for interference under Article 226 of the Constitution of India in any case.

In the result, the petition fails and is dismissed but we make no orders as to costs.