

(1979) 11 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2056 of 1978

Kanhaiya Lal

APPELLANT

Vs

Prescribed Authority, Bulandshahar and others

RESPONDENT

Date of Decision : 22-11-1979

Acts Referred:

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

Citation : (1979) 11 AHC CK 0046

Hon'ble Judges : Murlidhar, J

Final Decision : Allowed

Judgement

Murlidhar, J.

This landlord's petition under Article 226 of the Constitution arising out of proceedings under Section 21 of U. P. Act 13 of 1972 (hereinafter called the Act) raises an interesting point about the interpretation of Section 21 (1) (a) of the Act.

The brief facts are that the petitioner landlords made a row of shops in the front part of a plot of land leaving vacant land in the back to be constructed later on. The finding is that a gallery in the middle of this set of shops was left as a passage for the back portion but was later enclosed and let out as a shop because construction over the back portion was not intended immediately. The landlord applied under Section 21 (1) (a) for eviction of the tenant occupying this gallery shop with the allegation that he now intended to make constructions in the land at the back and required the premises of the said shop for use as a passage to the back portion for which there was no other passage. In his application he gave no particulars of the nature of the building that he intended to construct in the back portion. He also did not state whether it; was to be used for residential purposes or for purposes of any business, profession, trade or calling nor whether it would be occupied by the landlord himself or by others,

namely, his tenants, licensees etc. The Prescribed Authority granted the permission but the District Judge on appeal reversed the order holding that on the allegations Section 21 (I) (a) of the Act was not applicable for the shop in question was not required for occupation for any of the purposes mentioned in that provision. In this view of the matter he did not go into the questions of bonafide requirement and comparative hardship.

The question that arises for determination in this petition, therefore, is whether the requirement for the purpose of a passage for the land at the back to construct a building there is covered by Section 21 (1) (a) which runs as follows:

"21. Proceedings for release of building under occupation of tenant (1). The Prescribed Authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely

(a) that the building is bonafide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, or calling or where the landlord is the trustee of a public charitable trust for the objects of the trust"

Having heard learned counsel for the parties I have come to the conclusion that the application of the landlord could not be rejected on this preliminary ground. Irrespective of the purpose for which the building to be constructed would be used, the bare construction of the building itself can be regarded as for the time being a calling of the landlord. In that case if he requires a passage for the construction it is literally required for his own occupation for purposes of his calling of construction of the building at the back and as such covered by Section 21 (I)(a) The word "calling" has been shown in the Shorter Oxford English Dictionary, 1936 Edition, to mean, inter alia, "Summons, vocation, Station in life. Hence ordinary occupation, business. In *Dr. Bashir Uddin v. District Judge*, 1978 (4) A.L.R. 24 = 1978 A. W.C. 105 the word "business" in the third proviso to Section 21 (ii) of the Act was held to have been compendiously used in place of the words "profession, trade or calling" and the words business purposes to cover within its range purposes for any profession, trade or calling. In this case the meaning of the word "business" was considered at length and it was held that in the larger sense it was broad enough to embrace any employment or occupation and in fact all occupations or duties in which men engage. Reference was made to an English case in which running of a philanthropic hospital was held to be a business. In another Indian case cited, the purpose of running a Pathshala for imparting religious instruction by the Digambar Jain Panchayat was held to be a business. In a Pull Bench decision of the Punjab and Haryana High Court *The Model Town Welfare Council v. Bhupinder Pal Singh*, A.I.R. 1978 Punj. & Haryana 76 the purpose of construction of a library building by the Government was held to be a business purpose. In certain taxation statutes the word "business" is used in a narrower commercial and mercantile sense but the

Division Bench held that this was not the sense in which it was used in U. P. Act 13 of 1972. It is, therefore, clear that the mere purpose of construction, irrespective of the nature of the building to be constructed and the purpose for which it would be used, can be regarded as the purpose of a business or calling of the landlord and the requirement of a passage for this purpose is a requirement for his own occupation for purposes of a business or calling. The petition in the form in which it stands was thus covered by Section 21 (1) (a) of the Act and could not be rejected in limine as not maintainable under that provision.

The matter may also be looked at from another angle. In the first place, occupation for residential purposes or for the purpose of any profession, trade or calling includes not only occupation of the main premises actually used for the purpose but also the ancillary premises like passage, garage etc. used for incidental purposes. Therefore, occupation for such incidental purposes is like occupation for the main purpose for applying Section 21 (1) (a). Thus in *Sudarshan Lal Agarwal v. Girdhari Lal Jain* A.I.R. 1971 Delhi 272 the requirement for a garage was held covered by the requirement for occupation as residence even though garage itself is not used for residence. Similarly in *Harish Chandra v. District Judge*, 1977 All. Rent Cases 279 the requirement of a strip from the show occupied by the tenant for purpose of constructing a latrine and a staircase for the more beneficial and convenient use of the residential accommodation was held covered by Section 21 (1) (a) as requirement for residential purposes. I am also of the opinion that incidental premises like a passage for construction of a building to be used for a particular purpose stand on the same footing as incidental premises of an existing building used for that purpose from the point of view of purpose of occupation. Therefore, whether the passage is desired for a building to be constructed or a building already in existence can make no difference in law to the maintainability of the application under Section 21 (1) (a) provided the building is to be or is occupied by the landlord for residential purposes or for purposes of a profession, trade or calling. If a passage can be said to be occupied for the same purpose for which the constructed building is occupied then, it can in the construction stage also be said to be occupied for the same purpose for which the building intended to be constructed is to be occupied in future. It was, however, urged that as there is no allegation about the intended user of the building it is impossible to say that the building would be occupied by the landlord himself for any purpose as required by Section 21 (1) (a) of the Act. The learned counsel emphasised the distinction between possession and occupation in this connection. This may be accepted. However, to my mind, this makes no difference. The building after construction whether used for residential or nonresidential purpose even if not occupied by the landlord personally will be in his possession as landlord for the purpose of a calling or business. The position of an outer passage like the one in this case is somewhat unique, for deciding as to who is in occupation. Whereas the other premises including the incidental premises cannot be said to be in occupation of a landlord

who is not in physical occupation of the main premises, an outer passage can be treated to be in his occupation also for it is necessary for his access to the building for the exercise of his right of management as a landlord. Such a passage can, therefore, be properly said to be in occupation of the occupants of the building as well as the landlord. Looked at in this way even a nonoccupant landlord of a building may be regarded as to joint occupation of the outer passage for the nonresidential purpose of managing the building at the back. In other words I see no difficulty in a landlord being competent under Section 21 (1) (a) to seek release of a tenanted room to provide passage for his building in which he occupies no portion for himself.

The order rejecting the appeal on the preliminary ground of nonmaintainability is therefore, unsustainable. The appellate authority has to consider it on merits and decide according to law. In the circumstances of this case it may, if it thinks fit, also permit a suitable amendment of the pleadings.

In the result, the petition succeeds and is allowed. The order of the District Judge dated 30th November, 1977 is quashed and he is directed to decide the appeal afresh in accordance with law in the light of observation made in this order. There shall be no order as to costs.