
(1995) 01 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13044 of 1984

Kripa Shankar Sinha

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 13-01-1995

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Amendment Act, 1984 — Section 5
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21, 21(1)

Citation : AIR 1995 All 303

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Advocate : M/s. Yatindra Singh and V.K.S. Chaudhary, for the Appellant; Sudhakar Pandey, S.C., M/s. Vivek Verma and Bharatji Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner Prabha Shanker Sinha, since deceased, represented by legal representatives and heirs, filed the writ petition for a declaration that Section 5 of Ordinance No. 8 of 1984 which substituted new Explanation III to Section 21 of U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 is ultra vires of the Constitution and also challenged the judgment and orders dated 5-3-1979, and 15-9-1984 passed by the Prescribed Authority (Munsif), Ballia and the District Judge, Ballia, respectively.

2. Premisess No. D/113 Mohalla Midhi, Ballia is owned by the respondent No. 4 as owner and landlord and the petitioner was a tenant. An application was filed on 27-3-1978 by the respondent No. 4 that he is a Warrant Officer in Air Force posted at Delhi and his son is studying at Ballia. He required the premises in dispute for residence of his son and wife. The respondent had said that the

accommodation in question fell in his share in the family partition. He needed the house in question for residence of his family members, wife and son who lived at Ballia. The respondent stated that he being a Warrant Officer, cannot keep his family along with him at all places. He has no other place for residence of his son and wife. The respondent pleaded that the tenant-petitioner are resident of Suremanpur where he has a house and his sons lived there, engaged in agricultural and cultivation. The petitioner was said to have retired from service and there was no necessity for him to stay in the City of Ballia. The landlord's application for release was contested by the petitioner. He had denied that there was any partition between the landlord and his brother. He also said that the accommodation in tenance of the petitioner had not come in the share of the respondent's landlord. As such, he was not the landlord, in the eye of law. The house in question was a property of opposite party No. 4's father Sri Brij Nath Sahai, who used to realise the rent from the petitioner. The petitioner also stated that the landlord's wife does not stay with her son at Ballia but she lives with the respondent No. 4 at Delhi. It was also said that the respondent's son lives as a member of the joint family with his father. The need for release of the house was incorrect. The landlord has no genuine need for the accommodation in question. The petitioner also said that his ancestral house at Suremanpur fell down in the floods of 1955 and he has no other place to live. The Prescribed Authority after examining the oral evidence and affidavit of Sri Brij Nath Sahai, father of the respondent No. 4 recorded a finding to the effect that he is the landlord of the said accommodation qua petitioner. The Prescribed Authority relied on Section 21(1) of Explanation III of the U.P. Act No. 13 of 1972 and held that the respondent No. 4's son was studying at Ballia, and respondent No. 4's wife also lived at Ballia. He found that the need of the landlord was bona fide and genuine. The respondent No. 4 in his affidavit at para 9 stated that the tenant has built a house at Adarsh Nagar Mauja Gangapur. The details of the boundary of the said house was also stated in the affidavit. The petitioner had not denied the said fact. In para 11 of his affidavit, Sri Kripa Shanker Sinha petitioner had only said that he was not living at Suremanpur. He has not denied that he has not built a house at Gangapur. Admittedly, the tenant-petitioner has retired from the service. There was no necessity of his living in the City at Ballia.

3. The Prescribed Authority found that the need of the landlord was genuine and bona fide and unless the release application was allowed, the landlord shall suffer irreparably and there would be greater hardship to him in that event. The release application was allowed by the Prescribed Authority against which an appeal was filed by the petitioner before the District Judge.

4. It has to be noted that earlier the appeal was decided by the then District Judge, against which a writ petition was filed in the High Court. The High Court by its judgment dated 6-4-1993 directed the District Judge to decide the appeal afresh regarding the findings on three points namely (i) whether the allegation of the petitioner landlord that he requires the accommodation in dispute for the residence of his wife and son is factually correct, (ii) whether the alternative

accommodation alleged to be available to the tenant in Suremanpur is actually available to him or not and whether it is fit for habitation and (iii) whether on a comparison of the needs of both parties which of them, namely the landlord or the tenant would suffer greater hardship if the release application is allowed. The appellate Court decided by the impugned judgment in the light of the directions of the High Court's judgment dated 6-4-1983.

5. After the judgment dated 4, 6-4-1983 by the High Court, an Ordinance had been promulgated by the State Govt. (i) U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Amendment (ii) Ordinance No. 1983. By this amendment clause (iii) in the Explanation to sub-section (1) of Section 21 of the Act has been substituted. The substituted Explanation reads as under:

"6. Amendment of Section 21: In Section 21 of the principal Act, in sub-section (1) in the Explanation, thereto, for clause (iii), the following clause shall be substituted, namely:--

"(iii) where the landlord of any building is-

(1) a serving or retired Indian Soldier as defined in the Indian Soldiers (Litigation) Act, 1925 (IV of 1925), and such building was let out at any time before his retirement, or;

(2) a widow of such a soldier and such building was let out at any time before the retirement or death of her husband whichever, occurred earlier, .

and such landlord needs such building for occupation by himself or the members of his family for residential purposes, then his representation that he needs the building for residential purposes for himself or the members of his family shall be deemed sufficient for the purposes of clause (a), and where such landlord owns more than one building this provision shall apply in respect of one building only."

The Ordinance has been made U.P. Act No. 17 of 1980.

6. The learned counsel for the petitioner submitted that the Ordinance introducing the Amendment in Explanation (III) of Section 21 of the Act is prospective and not retrospective.

7. The learned counsel for the petitioner placed reliance on (1984) 1 All RC 642 : (1984 All LJ 455) (Rang Nath v. State of U.P.). The learned counsel for the petitioner on the analogy of the said decision submitted that Explanation (III) to Section 21(1)(a) shall not be available to the landlord-respondent. He submitted that prior to coming into force of Act No. 13 of 1972, an application u/s 3 of U.P. Temporary Control of Rent and Eviction Act, 1947 was moved on 19-12-1969, which was dismissed. A revision was filed by the landlord that too was dismissed on 22-3-1973. The landlord filed a suit for partition as the properties amongst themselves on 25-3-1977 and a compromise decree was passed in the said suit giving the accommodation in question to the present landlord-respondent.

8. The learned counsel for the petitioner submitted that in the proceedings u/s

21(1)(a) of U.P. Act No. 13 of 1972, hereinafter referred to as the Act the case set up by the landlord-respondent was that his son was a student at Ballia. The landlord's wife was to stay with her son at Ballia. The landlord had also set up a case that he was employed in Indian Air Force who needed the accommodation in question for residence of his family members. The Prescribed Authority by his order dated 5-3-1979 allowed the application for release moved by the landlord. An appeal was filed by the tenant which was allowed by the District Judge vide judgment dated 22nd August, 1979. A writ petition was filed by the respondent-landlord before the High Court being W.P. No. 8999 of 1979. The writ petition was allowed and the judgment of the appellate Court was set aside. The case was remanded to the appellate Court for rehearing of the appeal. The High Court, while remanding the case to the appellate court, was pleased to observe that the appellate court shall decide the appeal afresh after hearing the parties on evidence already on record and recording of fresh findings on three points, already mentioned at page 3 of this judgment:

9. The appellate Court after remand while considering the three points," indicated above, took into the consideration the provision of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment II) (Ordinance 1983). The provision of the Ordinance and the Act subsequently was made the Act as already been quoted above.

10. In the lower appellate court, it was argued before him that the Ordinance came after the judgment of the High Court which was dated 13th August, 1983 as shown in the Annexure 4 with the writ petition, the petitioner had disputed the applicability of Clause (3) of Section 21 of the Act to the present case. The learned District Judge while deciding the appeal observed that the landlord-respondents owns only one house in the State of U.P. The argument on behalf of the petitioner that the partition decree obtained by the landlord giving house in question in favour of the respondent-landlord was collusive and a sham transaction. The appellate court repelled the arguments of the petitioner that the petition was a sham transaction just to get the petitioner evicted. There was no evidence or circumstances to show that the partition in favour of the respondent landlord was in any way sham or collusive. The appellate court in accordance with Explanation (III) of Section 21 held that the need of the landlord respondent was bona fide and his case that he needed the accommodation in question for the residence of his son and wife stood proved in view of Explanation (III).

The appellate court in pursuance of the direction of the High Court also recorded findings that the tenant petitioner does possess some rooms in the village Sureman-pur. It was also held by the appellate court that the tenant-petitioner has seven sons and his sons have made some construction in Lucknow, some of his sons resides in other district in the rental house. In the situation like this, the tenant can very well accommodate himself and his wife and son. The finding of the appellate court was, thus, an unequivocal that the tenant has some rooms in village Suremanpur, where he can live.

11. The appellate court also held that if the tenant is evicted he will not suffer greater hardship in comparison to the need of the landlord. The court also observed that the sons of the tenant are engaged in their occupations. He can be accommodated with his sons, who are employed in other districts. The appeal of the tenant-petitioner was rejected by the appellate court impugned in the present writ petition.

12. The petitioner placed paragraph 9(b) of the writ petition. He stated in the said paragraph that the respondent-landlord's family consists of his wife and his one son. It was also stated that the landlord's son is not studying at Ballia, he had shifted to Delhi in 1979 and is studying there in Atma Ram Sanatam Dharam Degree College Delhi. His wife and son are no longer residing at Ballia. Alleged need of the landlord's family has finished. The respondent has no need for the premises in dispute. In the counter affidavit at para No. 26, the landlord denied the allegations of the petitioner and stated that at Ballia, there was no facility of the higher education and hence the son of the landlord had gone temporarily for higher studies but the wife of the respondent was always and is still living in Ballia.

13. The learned counsel for the petitioner firstly submitted that Explanation (III) of Section 21 was added by Ordinance in 1983 after passing of the judgment by the Hon'ble High Court in Writ Petition No. 8999 of 1979, thus he submitted that the landlord would not be entitled to take any advantage of the said Explanation. He submitted that the provisions of the Explanation (III) are prospective and not retrospective.

14. The learned counsel for the petitioner referred to (1984) 1 All Rent Cas 642 : (1984 All LJ 455) and he relied on paras 45 and 46 of the said judgment. He submitted that as observed by the learned single Judge in the decision (supra) that an amendment of law is presumed to be prospective and not retrospective. He also placed paragraph No. 10 of Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others, . He quoted the observations of the Hon'ble Supreme Court as under (at pp 93, 94 of AIR):

"All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity, if they affect vested rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospectivity live operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear then the court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it or not."

Paragraph 46 of the judgment quotes that;

"Ordinance No. 43 of 1983 has by Section 1(2), provided that it shall come into force on 18-5-1983. Retrospectively has been given to the Ordinance No. 43 of 1983 but it does not go beyond 18-5-1983."

The argument of learned counsel for the petitioner loses all its force that provision of Explanation (III) shall be deemed to be prospective and not retrospective. In the present case, the appeal itself was decided on 15th Sept. 1984 and the Ordinance had come into force prior to the date of the judgment. The judgment of the learned single Judge shows that the provision of the Act amended by Ordinance No. 43 of 1983 would apply to the suits filed on or after 18-5-1983. Thus, on the date of hearing of the appeal before the District Judge, the provision of the Ordinance and the Act were available to be employed in favour of the landlord. This is settled law that appeal is continuance of the suit. When the appeal was pending, the law enforced by the Amendment in the Ordinance was available. The judgment of the appellate court on the aspect that provision of Explanation (III) of Section 21(1) need it no proof or further evidence to prove the bona fide and genuine need of the landlord when it was proved that the landlord is a serving or retired Soldier as defined in Indian Soldier (Litigation) Act, 1925 (IV of 1925), and such building was let out at any time before his retirement. It is not disputed that the respondent-landlord on the date of hearing of the appeal, was in active service as Warrant Officer in the Air Force. The learned counsel for the petitioner challenged the provisions of Explanation (III) of Section 21(1)" as ultra vires, discriminatory liable to be quashed.

15. It would be relevant to refer to the decision reported in Shivram Anand Shiroor Vs. Radhabai Shantram Kowshik and Another, , where the Supreme Court was interpreted the provision of Section 13(A) of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The provision added by Amendment in 1971, the said Act and introduction of Section 13(1) special provision aimed at enabling a member of the Armed Forces of the Union or a retired member of the said Armed Forces to recover possession of premises bona fide required by him for his occupation or the occupation of members of his family on the production of a certificate from the head of the Service or the Commanding Officer. The certificate was to specify that the individual concerned was presently as member of the armed forces of the Union or that he was such a member and was now a retired ex-serviceman and that he did not possess any other suitable residence in the local area where he or any member of his family could reside. It was further provided that the certificate was to be conclusive evidence of the facts stated therein. An important distinction between the general provision contained in Section 13(1)(g) and the special provision Section 13A(1) is that under the special provision a tenant is disabled from taking advantage of Section 13(2) which provides that no decree for eviction shall be passed on the ground specified in Section 13(1)(g) if the court is satisfied that having regard to all the circumstances of the case, greater hardship would be caused by passing the decree than by refusing to pass it.

16. Thus, the observations of the Supreme Court in the judgment *Shivram Anand Shiroor Vs. Radhabai Shantram Kowshik and Another*, fully supports the case of the landlord-respondent. It was proved that the landlord was Warrant Officer in Indian Air Force and at the time when the appeal was decided, he was in service later retired. The fact that the accommodation was let out to the petitioner prior to the retirement of the landlord is not disputed.

17. The Supreme Court was considering the validity of Section 13A(1) of the Bombay Act and the Supreme Court was pleased to observe that the said provision was enacted for relaxation the rigor on Section 13 in favour of the landlord who is or was a member of the Armed Force. The Supreme Court in *Shivram Anand Shiroor Vs. Radhabai Shantram Kowshik and Another*, referred to another decision on the point *Mrs Winifred Ross and Another Vs. Mrs Ivy Fonseca and Others*, . The Supreme Court referred to the statement of objects and reasons for the legislation (at pp. 789, 790 of AIR):

"Defence Services Personnel are liable to transfers and to be stationed in different parts of the country. They are often posted at non-family Stations. Some of these personnel, who possess their own premises either in their home towns or elsewhere have necessarily to hire them out to other persons temporarily while they are away on duty. It has been represented to the State Government by the military authorities that on their retirement or transfer to non-family stations the serving and ex-service personnel find it extremely difficult to regain possession of their premises which they badly require for personal occupation permanently or for housing their families for the duration of their posting at non-family stations. In case of death of a service personnel while in service or death of ex-service personnel shortly after the retirement, the widow also finds it extremely difficult to regain possession of their premises for her personal occupation, or occupation of her family. The cases of Defence Services personnel due to their special obligations and disabilities do need different treatment from that accorded to other landlords and in fact special provisions have been made for them in some of the States, whereby processes for each personnel to regain possession of their premises have been simplified and made more effective. It is considered necessary to make a special provision in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 to enable a member or retired member of the armed forces of the Union or a widow of such a member who dies while in service, or who dies within five years of his retirement, to regain possession of their premises, when bona fide required for occupation by them or members of their families and to provide that the Court shall be bound to pass a decree for eviction on such ground if such member or widow, as landlord, produces, at the hearing of the suit, the necessary certificate signed by the Head of his Service or His Commanding Officer or the Area or Sub-Area Commander within whose jurisdiction the premises are situated. The Bill is intended to achieve these objects."

Thus, the arguments of the learned counsel for the petitioner that provisions of

the Ordinance and Amended Act adding Explanation (iii) u/s 21(1)(A) is prospective and is not available to the landlord is unfounded and without any basis which I totally refused to accept.

18. The submission of the learned counsel for the petitioner that the amended provisions adding Explanation (iii) to Section 21(1) of the Act violated Article 14 of the Constitution. The learned counsel for the petitioner has not been able to point out that any such fact which may show that the amended provision hits Art. 14. Reasonable classification is not prohibited by Art. 14 of the Constitution. A serving or retired Indian Soldier as defined in Indian Soldier Litigation Act 1925 and such building was let out at any time before his retirement; a widow of such soldier and such building was let out any time before the date of his retirement whichever is earlier and such landlord needed such building for occupation by himself or members of his family for residential purposes, then his representation that he need the residential building for residential purposes for the members of his family, shall be deemed sufficient for the purpose of clause (a) and where such landlord has more than one building, this provision shall apply only in respect of one building only. This is clear that the said provision was made to enable the Soldier and Army man to get their residential house for use and occupation by him and his family members, if it was shown that the accommodation was let out prior to his retirement. The Explanation has been added to provide procedural relaxation, so that such Soldier, defence personnel need not be put to rigors of proving genuine and bona fide need and ordeal of proving comparative hardship, than the tenant. It cannot be said that the provision is in any way arbitrary or violative Art. 14.

19. The learned counsel for the petitioner submitted that the need of the landlord since now vanished, as the son of the landlord-respondent left Ballia and by now after lapse of ten years, must have come in some service of vocation, he is not likely to come and stay at Ballia. This submission is wholly misconceived. The landlord in the counter affidavit reiterated that the landlord's wife is still living at Ballia and understands to live at Ballia. Thus, the submission of the learned counsel for the petitioner that the need of the landlord vanished, cannot be accepted. It was the petitioner, who filed the writ petition in 1984 September and the matter remained pending for ten years. Now in suit, the landlord only on the ground that the petitioner remained in the occupation in possession and the landlord was deprived to use and occupy the own house is sufficient to dislodge him would be doing great injustice to the landlord. The landlord admittedly has retired from his service and his wife live at Ballia. The landlord wants to settle at Ballia. He cannot be asked and compelled to go elsewhere so that the tenant may continue occupying the accommodation as tenant. The fact that the tenant-petitioner has seven sons, some of his sons had built houses at Lucknow and some are employed in other districts, living in the rental accommodation. The tenant has number of rooms at Suremanpur where also he can live. Thus, the submission of the learned counsel for the petitioner that the need of the landlord vanished, is wholly misconceived and cannot be accepted.

20. After considering the facts and circumstances, stated above, I do not consider that any relief may be given to the petitioner in this writ petition. The judgment of the court below suffers with no error of law and jurisdiction.

21. The writ petition is dismissed with costs.

22. Petition dismissed.