

(2011) 12 AHC CK 0064

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 69853 of 2011

Laxmi Narayan

APPELLANT

Vs

Additional District Judge, Court No. 6, Kanpur Nagar and
Others

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 22

Citation : (2012) 2 ADJ 268

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon''ble Dilip Gupta, J.—The tenant has filed this petition for quashing the order dated 29th October, 2005 passed by the Prescribed Authority by which the application filed by the landlord u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act") for release of the house has been allowed. The petitioner has also sought the quashing of the judgment and order dated 6th August, 2011 by which the Appeal filed by the tenant u/s 22 of the Act for setting aside the aforesaid order of the Prescribed Authority has been dismissed.

2. The landlord-Noor Illahi-respondent No. 3 had filed the application dated 21st December, 2001 u/s 21(1)(a) of the Act for release of the room and verandah on the ground-floor in premises No. 14/47, Badlu Prasad Compound, Civil Lines, Kanpur Nagar as it was bona fide required since he was residing in a tenanted house bearing No. 92/137, Hiranman Ka Purwa, Kanpur Nagar while the tenant Shiv Prasad had expired and his family members had vacated the accommodation and were living elsewhere. In the affidavit filed in support of the release application in March, 2002, the landlord also stated that his landlord of House No. 92/137 had filed an application for release of the house which was

allowed and the appeal filed by him had also been dismissed against which he had filed Writ Petition No. 38336 of 1997 in which an interim order was passed and he was continuing to reside in the tenanted house because of the interim order. The petitioner-Laxmi Narayan filed a reply to the aforesaid application stating that the need of the landlord was not bona fide and nor he was likely to suffer greater hardship in comparison to that of the tenant. It was pointed out that the landlord had sufficient accommodation available with him in House No. 92/137 and there was no requirement at all of additional accommodation.

3. The Prescribed Authority by the order dated 27th October, 2010 allowed the release application filed by the landlord. It found that the landlord-Noor Illahi had purchased the property on 30th March, 1999 and had filed the application u/s 21(1)(a) of the Act on 13th December, 2001 after giving six months' notice to the tenant on 15th May, 2001. The Prescribed Authority, therefore, held that there was sufficient compliance of the first proviso to Section 21 of the Act which requires that where the building was in occupation of the tenant since before its purchase by the landlord; no application shall be entertained u/s 21(1)(a) of the Act unless a period of three years has elapsed since the date of such purchase and the landlord has given notice in that behalf to the tenant not less than six months before such application is filed, and such notice can be given even before the expiration of the said property of three years.

4. The Prescribed Authority thereafter considered whether there was a relationship of landlord and tenant and gave a finding in favour of the landlord. The Prescribed Authority also found that the need of the landlord was bona fide as he was residing in a tenanted House No. 92/137, Hiranman Ka Purwa, Kanpur Nagar and the application for eviction filed by his landlord had been allowed against which the appeal was dismissed by the Appellate Court and after the dismissal of the appeal, a writ petition was filed by him in which there was an interim order. The Prescribed Authority also recorded a finding that the landlord was likely to suffer greater hardship than the tenant.

5. The tenant-Laxmi Narayan filed an Appeal u/s 22 of the Act. This Appeal was dismissed by the judgment and order dated 6th August, 2011. The Appellate Court confirmed the findings of the Prescribed Authority that the relationship of landlord and tenant existed and that the tenanted house was bona fide required by the landlord as he did not have any other residence. The Appellate Court also confirmed the finding of comparative hardship.

6. Learned counsel for the petitioner has submitted that the application filed by the landlord was not maintainable as the conditions contained in the proviso to Section 21(1)(a) of the Act had not been complied with. It is also his submission that the Prescribed Authority and the Appellate Court fell in error in coming to the conclusion that there was an order of eviction against the landlord-Noor Illahi inasmuch as in the release application, the landlord had stated that he was residing in House No. 92/137, Hiranman Ka Purwa, Kanpur Nagar as a tenant while in Writ Petition No. 38336 of 1997 filed by the landlord, it was stated by

the landlord that he was residing in House No. 92/137-D, Hiranman Ka Purwa, Kanpur.

7. I have considered the submissions advanced by the learned counsel for the petitioner.

8. The first contention of the learned counsel for the petitioner is that the application filed by the landlord u/s 21(1)(a) of the Act was not maintainable inasmuch as the tenanted property was purchased by the landlord-Noor Illahi on 30th March, 1999 but the release application u/s 21(1)(a) of the Act was filed on 13th December, 2001 before the expiry of three years period prescribed under the proviso to Section 21(1)(a) of the Act.

9. This contention of the learned counsel for the petitioner cannot be accepted.

The first proviso to Section 21(1)(a) of the Act is as follows :

21(1)(a)...

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds mentioned in clause (a), unless a period of three years has elapsed since the date of such acquisition and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years.

10. This proviso has been interpreted by the Courts and it has been held that the application can be filed by the landlord before three years but it should be decided after three years. In the instant case though it is a fact that the release application was filed by the landlord before the expiry of three years from the date of purchase of the property, but as the application was decided after the period of three years. It cannot, therefore, be said that the application was not maintainable.

11. The second contention of the learned counsel for the petitioner that the landlord has available with him two houses namely house bearing No. 92/137, Hiranman Ka Purwa, Kanpur Nagar and House No. 92/137-D, Hiranman Ka Purwa, Kanpur Nagar. It is, therefore, his contention that the Prescribed Authority and the Appellate Court were not justified in holding that there was an order of eviction against the landlord. In support of his contention that the landlord has two houses, learned counsel for the petitioner has placed before the Court the application filed by the landlord u/s 21(1)(a) of the Act in which the house where the landlord was residing has been mentioned as House No. 92/137, Hiranman Ka Purwa, Kanpur Nagar and in Writ Petition No. 38336 of 1997 filed by Noor Illahi, he has mentioned House No. 92/137-D, Hiranman Ka Purwa, Kanpur Nagar. It is only for this reason that the learned counsel for the petitioner has contended that there are two house available with the landlord.

12. This contention of the learned counsel for the petitioner cannot be accepted. Such a plea was not taken by the petitioner before the Prescribed Authority or the Appellate Court and it is for the first time that this plea has been taken in this petition. What needs to be noticed is that even in the grounds of appeal, the petitioner has not taken this ground. No other document or evidence has been filed by the petitioner which may indicate that there are two separate houses.

13. In such circumstances, the finding recorded by the Prescribed Authority as well as the Appellate Court cannot be said to be perverse so as to call for any interference under Article 226 of the Constitution. The writ petition is, therefore, liable to be dismissed.

14. At this stage, learned counsel for the petitioner submitted that some time may be given to the tenant to vacate the premises in dispute.

15. Learned counsel for the landlord has stated that the landlord has no objection to some reasonable time being granted.

16. The tenant is, accordingly, granted time upto 31st March, 2012 to handover the peaceful possession of the house to the landlord subject to the tenant giving an undertaking within two weeks from today before the Prescribed Authority to the following effect:

1. That the tenant shall handover peaceful possession of the house to the landlord on or before the 31st March, 2012.

2. That the tenant shall pay damages at the rate of Rs. 500/- per month up to the date he hands-over the possession of the house to the landlord.

3. That the tenant shall not induct any other person in the house.

17. It is made clear that in the event the tenant fails to give the undertaking within the aforesaid period or fails to comply with any of the terms of the undertaking, it will be open to the landlord to get the decree executed.

18. The writ petition is, accordingly, dismissed with the aforesaid observations.