

(1992) 07 AHC CK 0015

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6676 of 1984

Makalu (since deceased) by his L.Rs.

APPELLANT

Vs

IV Addl. District Judge and Others

RESPONDENT

Date of Decision : 08-07-1992

Acts Referred:

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

Citation : (1992) 3 AWC 1444

Hon'ble Judges : S.C. Verma, J

Bench : Single Bench

Advocate : Janardan Sahai, for the Appellant;

Final Decision : Dismissed

Judgement

S.C. Verma, J.—The release application of the landlord u/s 21(1)(a) of U.P. Act XHI of 1972, hereinafter referred to as the Act has been allowed both by the Prescribed Authority and the appellate authority.

2. The brief facts are that the Respondents wanted the release for part of the residential accommodation on the ground floor in occupation of the Petitioner to set up his Chamber for legal profession which was greatly suffering on account of lack of proper accommodation. The landlord stated that he has a genuine and bonafide need to settle in legal profession and the accommodation already at his disposal is not sufficient .to meet the professional needs. It has also been alleged that the tenant has already purchased a house within the Municipal limits at a distance of hardly 100 paces from the disputed accommodation.

3. The tenant contested the release application on the ground that he is a sitting tenant for more than 70 years and the need of the landlord is not genuine as he has already got sufficient accommodation to set up his legal profession.

4. The prescribed Authority allowed the application by Order dated 30-7-1983

and held that the landlord needs the situated accommodation to set up the office, library etc. and as the tenant has already purchased another house, he would not suffer any hardship.

5. The learned IV Additional District Judge, Mirzapur, also by order dated 4-4-1984, dismissed the tenant's appeal and held that the residential accommodation to set up Lawyer's office or library is not such a profession or trade or calling which may change the user of the accommodation. The finding with regard to the bonafide need of the landlord was upheld. The learned Judge also found that the tenant would not be put to any hardship as he has already purchased and accommodation in the same city and he can shift into the same.

6. The learned Counsel for the Petitioner contended that the defence of the tenant was not considered on the ground of application of Explanation (i) to Section 21(1) of the Act, without considering any fact about the bonafide need of landlord the Explanation (i) to Section 21(1) of the Act would have no application. In my opinion, this argument cannot be accepted as the authorities below have considered the defence of the tenant and the relief has not been allowed on the basis of Section 21(1) Explanation (i) of the Act. The need of the landlord on the basis of the material on record has been found to be bonafide and genuine to settle in legal profession and to set up his chamber and library etc.

7. On the comparison of hardship, It has been held that as the tenant has already purchased another residential accommodation in the neighborhood, he would not be put to any hardship and in these circumstances greater hardship has been found to be in favour of the landlord.

8. The other argument that the setting up of Lawyer's Chamber falls within the definition of profession, trade or calling and the residential accommodation can not be used for commercial purposes also does not appear to be correct. The Petitioner had been using the building for residential purposes and using part of the accommodation for the office of a Lawyer does not amount to converting the residential accommodation into commercial accommodation. The use of the accommodation as private Chamber of a Lawyer does not convert or change the user of the accommodation The use of part of the accommodation as a private Chamber or Library for medical profession, although called a profession, yet Is not like other business activity or professional activity in which the user of the building .is changed for business purposes The Lawery's Chamber, Doctor's consultation clinic in a part of the residential accommodation do not change the nature of the accommodation as the dominant use remains for the residential purposes and the professional activity is such which can be easily accommodated along with the use of the house for residential purposes.

9. In my opinion, the tenant san not take shelter behind these technical pleas specially when there is no justification for him to retain the tenanted accommodation after he had already purchased a residential house hardly 100

paces away from the disputed accommodation. The tenant has not denied the availability of the accommodation and there is no material on record to indicate that the finding of availability of alternative accommodation is either arbitrary or is not based on relevant material,

10. The orders of the courts below do not suffer from any illegality or infirmity and the findings of fact recorded by the courts below are fully borne out from the material on record. I am not inclined to interfere in my jurisdiction under Article 226 of the Constitution.

11. The petition has no merit and is accordingly dismissed.

12. The learned Counsel for the Petitioner lastly prayed for grant of suitable time to make arrangement for alternative accommodation. In the interest of justice, allow two months" time to the Petitioner to deliver peaceful and vacant possession to the landlord.