
(2005) 09 UK CK 0043

In the Uttarakhand High Court

Case No : Writ Petition No. 380 of 2004 (M/S)

Matloob and Others

APPELLANT

Vs

1st F.T.C./Additional District Judge and Others

RESPONDENT

Date of Decision : 22-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (2006) 2 UC 992

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Alok Singh, assisted by, M.S. Bisht, for the Appellant; Lok Pal Singh, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—By means of this petition, moved under Article 226 read with 227 of Constitution of India, the Petitioners (tenants) have sought writ in the nature of certiorari quashing order dated 24-01-1995, passed by Prescribed Authority and order dated 05-05-2004, passed by the Respondent No. 1, whereby the application of the landlord (Respondent No. 3) for release of accommodation in question was allowed by the Prescribed Authority and appeal arising thereof is dismissed by the appellate court.

2. Brief facts of the case, as narrated in the writ petition are that originally one Tehsin Ali Khan was owner and landlord of House No. 12, Mohalla Mahigiran, Roorkee. In 1978, the Respondent No. 3 purchased said property which was already in occupation of the tenants. Initially, the Respondent No. 3 (landlady) got vacated part of first and second floor of the house and one shop in the ground floor from the other tenants in said portion of the house and got physically occupied herself in that part of the property. The Respondent No. 3 thereafter moved application for release of the remaining part of the house in

occupation of present tenants (Petitioners and Respondent No. 4) on the ground that the accommodation in her possession is insufficient for her family also that she has to establish her son in business for which she needs also the shop in the ground floor. The tenants contested the petition before the Prescribed Authority and filed their written statement in which they denied the bonafide need of the landlady and claimed greater comparative hardship in their favour. The Prescribed Authority after considering evidence adduced by the parties and hearing them allowed the release application (P.A. case No. 01 of 1993) on 24-01-1995. Aggrieved by which the tenants preferred Rent Control Appeal No. 10 of 1995 which was dismissed by the Respondent No. 1. Hence this petition on the ground that the authorities below have erred in law in allowing the application for release of house in question. It is also alleged in the writ petition that the landlord has not proved bonafide need of the accommodation in question. It is further alleged that even if explanation I to Section 21(1) of U.P. Act 13 of 1972 is treated to have been attracted the Respondent No. 3 was required to prove bonafide need as well as comparative hardship in his favour.

3. Respondent No. 3 (landlady) has filed her counter affidavit wherein it is admitted that she purchased the house in the year 1978 and the Petitioners and Respondent No. 4 are her tenants. It has been stated in the counter affidavit that family of landlady consists of six members including her husband and four children. The Respondent No. 4 who is brother of Petitioners constructed his own house in the city which is admitted to the Petitioners. It is further stated that Petitioner No. 1 Matloob too has constructed house No. 27/1 (New Number 34) in Mohalla Purani Tehsil Roorkee and his name is also recorded in Municipal record (copy of Municipal assessment Annexure-C.A II). Answering Respondent has stated that she not only proved her bonafide need of accommodation in question but also established greater comparative hardship before authorities below. It is also stated in the counter affidavit that both the sons of Respondent No. 3 are unemployed and are of marriageable age due to which her need of the accommodation in question is genuine. Lastly, it is stated that the High Court in its exercise of power under Article 226 of Constitution of India cannot upset the findings of courts below unless the same are perverse. In parawise reply it has also been stated that the alleged shop which was earlier got vacated is in fact a cowshed and is being used for that purpose. Defending the impugned orders, it is stated that the findings of the Prescribed Authority and appellate court are correct and application for spot inspection by Commissioner, moved by the Petitioners was also rightly rejected.

4. I heard counsel for the parties and perused the record.

5. Admittedly, Petitioners are tenants with Respondent No. 4 and the Respondent No. 3 is their landlady. It is also true that the Prescribed Authority found bonafide need of the landlady and also greater hardship in her favour and directed release of accommodation in question. It is also admitted that Petitioners appeal is also dismissed. This Court has to examine if there is illegality in the impugned orders

or any perversity in findings contained therein.

6. Learned Counsel for the Petitioners submitted that learned lower appellate court has erred in law by holding that once the explanation I to Section 21(1) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972, gets attracted there is no need to see the bonafide need of the landlord. I agree that said part of observation in the impugned order of the appellate court, is against the law (reliance placed in Kanta v. Addl. District Judge 1979 All. L.J. 1303) but that by itself is not sufficient to quash the impugned orders for the reason that from the evidence on record, bonafide need of the landlord is clearly established. Though the learned appellate court has observed at one place of its judgment as above, but in para 16 of the judgment, the said court has discussed how it found need of the landlord as genuine and bonafide. Both the courts found that the family members of the Petitioners including Petitioner No. 1, have constructed their houses in the city as such, their objections cannot be heard in view of the Explanation I to Section 21(1) of aforesaid Act. (It is pertinent to mention here that under Explanation I of Section 21(1), where in a residential building, one of the members of the family living together, gets constructed his house in the city or acquires it, objections of the tenants cannot be entertained).

7. Second contention of learned Counsel for the Petitioners is that Explanation I to Section 21(1) of U.P. Act 13 of 1972 is not applicable to the building for the reason that the accommodation includes a shop in the ground floor also and cannot be said to be residential. Assuming for a moment that the Explanation I of the aforesaid Section does not apply even then bonafide need and comparative hardship are concurrently found in favour of the Respondent No. 3 landlady as is clear from the findings recorded by the authorities below. The learned appellate court has also discussed the comparative hardship in para 18 and 26 of its judgment. Prescribed Authority has also discussed the evidence on both the points and given categorical findings in favour of the landlady (Respondent No. 3). The findings of the authorities below, in the facts and circumstances, cannot be said to be perverse. (Reliance placed on Ashok Kumar v. Sita Ram 2001 S.C, and F.B. Rent Cases 256).

8. Lastly, it is argued that the application of the tenants (Petitioners) for spot inspection by the Commissioner should have been allowed by the courts below but in the opinion of this Court it was factual satisfaction of the authorities below and there is no error of law committed by them in this regard. In this connection, it is suggested on behalf of Petitioners that case should be remanded to the courts below. In the opinion of this Court, cases should be remanded back only in exceptional cases. Where there is concurrent finding of fact with no material illegality, the case do not fall in that category. Remanding of cases causes enormous injustice to the parties as they are put back to their initial point of litigation with fresh round of litigation and by doing so the litigants may ultimately lose faith in the judiciary. Our judicial system should remove the doubts from the minds of the people as to delay in the disposal of cases and that

they may not hesitate to take their disputes to the courts.

9 In view of the above discussion and reasons as above, the writ petition is liable to be dismissed and is dismissed. However, in the interest of justice, the tenants (Petitioners and Respondent No. 4) are allowed to vacate premises in question within three months from today.