
(2016) 07 AHC CK 0156
In the Allahabad High Court
Case No : Rent Control No. 9159 of 2016

Mohammad Shareef

APPELLANT

Vs

Additional District Judge, Court No.5, Lucknow

RESPONDENT

Date of Decision : 04-07-2016

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 21(4)

Citation : (2017) 120 ALR 103 : (2016) 3 ARC 429

Hon'ble Judges : Devendra Kumar Upadhyaya, J.

Bench : Single Bench

Advocate : Aftab Ahmad, Advocate, for the Petitioner; Munnawar Sultan,
Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Devendra Kumar Upadhyaya, J.—This petition has been filed challenging the judgment and order dated 11.11.2010, passed by the Prescribed Authority/II Additional Judge Small Cause Court, Lucknow in P.A. Case No. 6 of 2008 whereby the application moved by the respondent Nos. 3 and 4 under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act No. 13 of 1972") for release of the premises in question, namely, House No. 252/11/1 situate at Daal Mandi, Raqabganj Qadeem, Police Station Chowk, District Lucknow has been allowed and the petitioners have been directed to hand over the possession of the shop in question to the respondent Nos. 3 and 4.

2. The petitioners also assail the validity of the judgment and order dated 21.03.2016, passed by the learned Additional District Judge, Court No.5, Lucknow, whereby the rent appeal preferred by the petitioners under Section 22 of the U.P. Act No. 13 against the judgment and order of Prescribed Authority dated 11.11.2010 has been dismissed.

3. The necessary facts giving rise to dispute at hand are that the petitioners are

said to have entered into the tenancy of the shop in question which was owned by one Smt. Urmila Nigam in the year 1991 and lease deed was also executed on 14.08.1991. As per the deed the petitioners were to pay a rent of Rs. 600/- per month. The original owner executed a sale deed in favour of mother of respondent Nos. 3 and 4 and thus the petitioners became her tenant. After the death of the mother of respondent Nos. 3 and 4, they became co-owners.

4. Respondent Nos. 3 and 4 filed an application/petition under Section 21(1)(a) of the U.P. Act No. 13 of 1972 of arrears of rent, house tax and water tax and eviction from the premises in question and also claiming damages for use and occupation. As per the case set up by the respondent Nos. 3 and 4 there are three shops in the building, out of which only one was in the tenancy of the petitioners. The dimension of the shop in possession of the petitioners is 7 ft. x 18.4 ft. Further averment made was that there are 12 members in the family and size of the family is increasing day by day and as such it had become difficult for them to earn living for the family members. It was further stated that children of respondent No.3 are grown up and have become major and similarly elder son of respondent No.4 has also become major for whom the respondent Nos. 3 and 4 wanted to start some business but on account of paucity of space they are unable to start business. It was also averred that the petitioners run their business from Fatehganj and they used the shop only for godown.

5. The claim was contested by the petitioners who filed their written statement stating therein that terms of lease dated 14.08.1991 had expired and since the respondent Nos. 3 and 4 have entered into the tenancy of the shop of the erstwhile owner as such they are bound by the terms of the lease dated 14.08.1991 and further that respondent No. 3 is running a shop, namely, Banti Kirana Store and that respondent No.4 is running a business along with his sons in the shop situate at Daal Mandi, Raqabganj. It was also stated in the written statement that respondent Nos. 3 and 4 do not have any requirement/need of the premises in question.

6. Learned Prescribed Authority considered the case of the parties and after analysing the evidence allowed the said application by means of judgment and order dated 11.11.2010.

7. During pendency of the application under Section 21(1)(a) of the U.P. Act No. 13 of 1972, it appears that a notice dated 05.01.2010 was issued by the respondent Nos. 3 and 4 stating that petitioners has not paid rent and are in arrears thereof w.e.f. 01.10.2005 and accordingly terminated the tenancy and the petitioners were asked to vacate the premises in question. The said notice appears to have been refuted by the petitioners mentioning that no rent is due and further that the rent upto the month of March, 2010 has been deposited in Misc. Case No. 115 of 2007. The suit for arrears of rent, damages and ejectment was filed on 21.10.2010 by the respondent Nos. 3 and 4. The said suit was decreed on 12.12.2014 wherein the petitioners were found in default and thus they are liable for eviction and payment of rent and damages against the

judgment and order dated 12.12.2014.

8. The petitioners preferred a SCC Revision No. 16 of 2015 wherein on 24.2.2015, the eviction of the petitioners was stayed with the direction to the petitioners to pay Rs. 2500/- per month against the use and occupation of the shop in question.

9. Submission of learned counsel for the petitioners is that since there is a lease deed between the parties and as such in terms of the provisions contained under Section 21(4) of the U.P. Act No. 13 of 1972 before expiry of the terms of lease, no order could have been passed and thus, the application under Section 21(1)(a) was not maintainable. He has relied upon the Section 21(4) of the U.P. Act No. 13 of 1972 and has submitted that the petitioners are entitled to the said protection. He has also stated that the petition under Section 21(1)(a) is maintainable by the landlord only against his tenant and Section 3 (a) provides that tenant means a person by whom rent is payable and as per Section 3(j) landlord would mean a person to whom rent is payable. It has also been stated that since the basis of relationship of landlord and tenant is the rent and once a notice terminating tenancy is issued, this relationship comes to an end and the continuance of the tenant, in such a situation, becomes that of an occupant who would be liable to pay damages and compensation but not rent. It has also been argued that continuance of statutory tenancy is for other person who may seek allotment etc. but not for the landlord for the purpose of moving application/petition under Section 21(1)(a). Various judgments have been cited by the learned counsel for the petitioners in support of his case, namely, 2004(1) SCC 1, AIR 1981 Allahabad 396, 2002(1) ARC 259 and AIR 1962 SC 554.

10. On the other hand, learned counsel appearing for the respondent Nos. 3 and 4 has vehemently submitted that the judgment and order passed by the Prescribed Authority which has been affirmed by the appellate court need not be interfered with in these proceedings as the same are based on correct analysis of the evidence and the legal position.

11. Having heard the learned counsel for the petitioners as well as learned counsel appearing for the respondent Nos. 3 and 4 and having perused the record, I do not find it a case fit for any interference.

12. Primary submission of learned counsel for the petitioners is that prior to filing of application under Section 21(1)(a), the respondents Nos. 3 and 4 had served the notice whereby tenancy was determined and arrears of rent since 01.10.2005 was claimed and since the petitioners deposited the rent under Section 30 of the U.P. Act No. 13 of 1972 in Misc. Case No. 115 of 2007, hence the application under Section 21(1)(a) filed by the respondent Nos. 3 and 4 was not maintainable for the reason that after determination of tenancy, the relationship of the landlord and tenant has seized and thus, the application could not have been filed by the respondent Nos. 3 and 4 under Section 21(1)(a).

13. Submission of learned counsel for the petitioners does not appear to be

correct. This Court in the case of Jai Prakash v. Chama Srivastava (Smt.), reported in 2008 (3) ARC 104 has categorically held that there is nothing wrong in filing the release application on the ground of bona fide need under Section 21 of the Act after determination of the lease. This Court in the said case has held that statutory tenant means a tenant whose tenancy has been terminated but his possession is protected by Act. It has further been held that for eviction of tenant in case need of landlord is bona fide, the release application under Section 21 of the Act has been prescribed under U.P. Act No. 13 of 1972 and thus, on proof of bona fide need of landlord protection granted to tenant by the Act stands withdrawn. Para 10 of the said judgment is quoted below:-

"10. Even otherwise, acceptance of argument of learned counsel for the petitioner will not make any difference. Statutory tenant means a tenant whose tenancy has been terminated but his possession is protected by the Act. In the instant case the Act prescribes for eviction of the tenant in case need of the landlord is bona fide i.e. through release application under Section 21 of the Act. Accordingly on proof of bona fide need of the landlord protection granted to the tenant by the Act stands withdrawn rather eviction is mandated."

14. Similar view has been expressed by this Court in the case of Peer Gulam v. IIIrd Additional District Judge, Etah and others, reported in 2000 (1) Allahabad Rent Cases, 91. In the said case it has been held that after determination of the tenancy, the tenant cannot be said to be trespasser, rather his status will be that of a statutory tenant and that the application under Section 21(1)(a) will be maintainable in such a situation. Similar view has been expressed by this Court in the case of Ram Chandra Jaiswal v. Prescribed Authority/Civil Judge (J.D), Deoria and others, reported in 1997(2), Allahabad Rent Cases, 686.

15. In view of the aforesaid authorities of this Court, the submission of learned counsel for the petitioners is clearly misconceived in the instant case. I have no hesitation to hold that the application moved by the respondent Nos. 3 and 4 under Section 21(1)(a) of U.P. Act No. 13 of 1972 was maintainable and that even after determination of the tenancy the petitioners continued to be tenant who can be termed as statutory tenant and in such a case the application under Section 21(1)(a) of the U.P. Act No. 13 of 1972 has rightly been held to be maintainable by the courts below.

16. No other issue has either been pressed or arise in this case.

17. In view of the discussions made herein above, I do not find any illegality in the judgment and orders passed by the Prescribed Authority as well as by the Appellate Court.

18. The petition is, thus, dismissed.

19. However, there will be no order as to costs.