

(1982) 03 AHC CK 0033
In the Allahabad High Court
Case No : Writ Petition No. 221 of 1978

Mohan Singh Bedi

APPELLANT

Vs

Phool Chand and Others

RESPONDENT

Date of Decision : 22-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 16(4), 21, 21(7), 34

Citation : AIR 1982 All 465

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

Bench : Single Bench

Advocate : S.K. Mehrotra and Mohd. Illyas, for the Appellant; Kailash Nath and P.K. Khare, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mathur, J.—This is landlord's petition arising from proceedings for release" and allotment of residential accommodation u/s 16 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act No. 13 of 1972, hereinafter referred to as the Act. The Additional District Magistrate, Rent Control, Lucknow rejected the landlady's application for release and allotted the premises in dispute to Phool Chand, opposite party No. 1. His order has been confirmed by the learned District Judge. The landlady Smt. Leela Devi therefore preferred writ petition in this Court. During the pendency of the writ petition she sold the building to Mohan Singh Bedi who applied for substitution and was brought on record in place of the original petitioner vide Court's order, dated 4-8-1980.

2. For the purpose of deciding this petition it is not necessary to state in detail the case set up by the respective parties before the authorities below. Suffice it to say that the case of Leela Devi was that she bona fide required the premises in dispute for occupation by herself and by members of her family as the rented accommodation in her occupation was insufficient for her requirements and

further the landlord of the said accommodation was pressing her to vacate the same. Opposite Party No. 1 claimed allotment in his favour on the ground that the accommodation at his disposal was insufficient for his requirements. Thus both the parties pressed their claim on the basis of bona fide personal need. It may be mentioned, that after, allotment had been made in favour of opposite party No. 1, no application had been preferred u/s 16(4) for enforcement of the order. Admittedly the room in dispute was vacant. Both the authorities below negated the claim of Leela Devi and upheld the claim of opposite party No. 1.

3. At the time of the hearing of the writ petition preliminary objection was raised by Sri Kailash Nath, learned counsel for the opposite party No. 1 regarding the right of Mohan Singh Bedi to get himself substituted in place of Leela Devi and to continue the writ petition. According to the learned counsel the right of release claimed u/s 16 is a personal right and, therefore, the transferee from the previous landlord cannot claim substitution and is also not entitled to continue the petition. The learned counsel invited my attention to Section 34 (4) of the Act and argued that under this provision substitution could be claimed only in case of death and only in respect of proceedings for determination of standard rent or for eviction from a building. According to the learned counsel since the ingredients for the applicability of Sub-section (4) of Section 34 are wanting in the present case, Mohan Singh Bedi could not claim substitution.

4. The preliminary objection has been contested on behalf of Mohan Singh Bedi, the substituted petitioner. According to the petitioner's learned counsel Section 34 (4) is inapplicable to proceedings under Article 226 of the Constitution. According to the learned counsel substitution in proceeding under Article 226 is to be made with reference to the principles contained in Order XXII of the Civil P. C. and on general principles of law. It was also argued on behalf of the petitioner that a person who could be said to be an aggrieved person, was entitled to get himself substituted and since Mohan Singh Bedi was also an aggrieved person, he was entitled to be substituted and to continue the petition. In support of his contention that Order XXII of the Civil P. C. is applicable to proceedings under Article 226, the learned counsel placed reliance upon several decisions of this Court as well as of other High Courts.

5. The preliminary objection raised before me on behalf of opposite party No. 1 was raised before Hon'ble K. N. Goyal, J. also when Bedi's application for impleadment came up before him. Goyal, J. did not go into the question at that stage and reserved right to opposite party No. 1 to raise the plea at the time of the hearing of the writ petition. He thus allowed impleadment of Bedi without prejudice to the respective contentions and rights of the parties arising from the preliminary objection of opposite party No. 1. This is how in spite of Bedi having been impleaded in place of Smt. Leela Devi, the question of impleadment is still open.

6. In this petition it is not necessary to decide the question of the applicability of Order XXII to proceedings under Article 226 of the Constitution because even

under Order XXII substitution can be claimed only if the right to sue survives. The material question, therefore, to be decided in the present case is whether in spite of the sale deed executed by Smt. Leela Devi in favour of Mohan Singh Bedi the right to sue survives. This question has to be decided with reference to the provisions of the Act.

7. Broadly speaking, the Act contemplates 4 types of proceedings, viz., (i) for release or allotment of vacant building and enforcement of release or allotment order; this is dealt with under Chap III; (ii) for release of building occupied by a tenant and eviction of the tenant therefrom; this is dealt with under Chap. IV; (iii) for determination of standard rent; this is covered under Chapter II; and, (iv) for restoration of amenities withdrawn by the landlord, this is covered by Chap V.

8. There is no provision in Chaps. III, II and V regarding substitution of a party in a pending proceeding on account of death of party or transfer of the property. Out of 4 Chaps, mentioned above there is provision for substitution under Chap. IV only. Section 21 falling under this Chapter deals with the release of a building occupied by a tenant when the same is required by the landlord for one or more of the purposes mentioned in Clauses (a) and (b) of Sub-section (1) of the section. Under Clause (a) the building is released if it is bona fide required by the landlord for occupation by himself or by any member of his family or by persons for whose benefit it is held by him. Under Clause (b) the building is released if it is in a dilapidated condition and is required for purposes of demolition and new construction. Under this clause mere dilapidated condition of the building is not enough to claim release the landlord should further intend to demolish it and to construct a new. Subsection (7) provides as follows :--

"Where during the pendency of an application under Clause (a) of Sub-section (1), the landlord dies, his legal representatives shall be entitled to prosecute such application further on the basis of their own need in substitution of the deceased."

The above provision contemplates substitution in one event only and that is the death of the landlord. It does not speak of transfer by sale or gift. There is a further restriction on the right of the legal representative to prosecute the application and this restriction is that the legal representative must require the building for his own needs. A legal representative cannot prosecute the application on the basis of the need set-up by the deceased landlord. This is apparent from the use of the words "on the basis of their own need in substitution of the deceased". This provision applies only to an application under Clause (a); this has no application when release is claimed under Clause (b). This sub-section is not exhaustive of the right of substitution in a proceeding u/s 21. It has to be read along with Section 34 (4) which provides as follows:--

"Where any party to any proceeding for the determination of standard rent or for eviction from a building dies during the pendency of the proceeding, such

proceeding may be continued after bringing on the record--

- (a) in case of the landlord or tenant, his heirs or legal representatives;
- (b) in the case of unauthorised occupant, any person claiming under him or found in occupation of the building."

Section 34 finds place under Chap. VI which deals with penalties and procedure. Subsection (4) makes a general provision regarding substitution. This also speaks of death only, further it restricts the rights of substitution to specified types of proceedings. These proceedings are Nos. (i) for determination of standard rent, and (ii) for eviction from a building. Proceedings under Chapter III may have two stages, the first stage dealing only with the passing of an order of allotment or release, and the second dealing with enforcement of the order. Subsections (1) to (3) cover proceedings for passing of an order of allotment or release. Normally in proceedings for release or allotment the question of eviction should not arise because the order of release or allotment is made in respect of a vacant building. However, if somebody unauthorisedly takes possession of the building, the District Magistrate is authorised under Sub-section (4) to evict such an unauthorised occupant. Thus, a proceeding u/s 16 becomes a proceeding for eviction within the meaning of Sub-section (4) of Section 34 only when proceeding is taken under Sub-section (4) of Section 16. Prior to this it is not a proceeding for eviction and Sub-section (4) of Section 34 shall not apply.

9. Sub-section (2) of Section 16 provides that an order of release shall not be passed in favour of the landlord unless the District Magistrate is satisfied that the building or any part thereof is bona fide required by the landlord for occupation by himself or any member of his family or any person for whose benefit it is held by him. Another provision for release in favour of landlord in Section 21. Clause (a) of Sub-section (1) of this section also speaks of bona fide requirement of the landlord for occupation by himself or any member of his family or any person for whose benefit it is held. Now a landlord may bona fide require a building for the purposes mentioned herein but his heirs or transferees may not have any such requirement. It is for this reason that it has been specifically provided under Sub-section (7) of Section 21 that on the death of the landlord his legal representatives can prosecute further the application u/s 21 (1) (a) on the basis of his own need in substitution of the need of the deceased. The legal representative cannot, therefore, claim further prosecution of the application on the basis of the need set up by his predecessor. These provisions make it abundantly clear that an application for release whether made u/s 16 or u/s 21 has to be decided on the basis of the need of the applicant himself, the right of release is therefore, a personal right. Consequently there cannot be a general right of substitution on the death of the applicant or on transfer of the property by the applicant. Only the limited right of substitution provided u/s 34 (4) and Section 21 (7) is available. Since Bedi's case does not fall under either of the two provisions, he is not entitled either to be substituted in place of his transferor or to prosecute further the present writ petition. On the transfer of the

property by Leela Devi the present writ petition has abated.

10. There is another aspect of the matter. If the writ petition is allowed and the judgment of the learned Dist. Judge is set aside, the revision filed by Leela Devi before the learned Dist. Judge will revive and will require fresh determination. When the matter again becomes pending before the learned Dist. Judge, the question of substitution and right to continue the revision will have to be decided with reference to the provisions of the Act. u/s 34 (4) substitution can be claimed only in the event of death and not in the event of transfer of property by sale or gift. Further the present proceeding being neither for determination of standard rent nor for eviction Section 34(4) will have no application and, therefore, it will not be possible for Mohan Singh Bedi to pursue the revision before the learned District Judge. In these circumstances the writ that may be issued by this Court, would be an infructuous one. This Court does not issue infructuous writs. In view of this also no relief should be granted to the substituted petitioner.

11. In view of the above, the preliminary objection raised on behalf of opposite party No. 1 has to be sustained. The writ petition is accordingly, dismissed as abated. Costs of this petition shall be easy. Stay order, if any, shall stand discharged.