

(1984) 11 AHC CK 0041
In the Allahabad High Court

Mulk Raj and Another

APPELLANT

Vs

1st Addl.Distt.Judge, Gonda and others

RESPONDENT

Date of Decision : 30-11-1984

Acts Referred:

Citation : (1984) 11 AHC CK 0041

Hon'ble Judges : S.Saghir Ahmad, J

Final Decision : Disposed Of

Judgement

S. Saghir Ahmad, J.—This petition under Article 226 of the Constitution is directed against the orders of the Prescribed Authority, as also the District Judge, Gonda Passed under the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act).

2. Opposite parties 3 and 4 who are the owners of the disputed premises filed an application under Section 21 of the Act for the release of the accommodation in the tenancy of the petitioner in their favour on the grounds, interalia, that their family which was in occupation of the first floor of the building in question had since grown numerically with the result that the accommodation at their disposal including a portion on the ground floor was not sufficient for their need. It was also pleaded by the opposite parties that the accommodation in occupation of the petitioners on the ground floor was part of the building which was in their occupation and consequently, their need for that accommodation i.e. the accommodation in occupation of the petitioners had to be accepted. It was further pleaded that opposite, party No. 3 who was in government service was to retire soon and since he wanted to settle down in the district of Gonda, the accommodation in question was liable to be released on that ground also. It was also pleaded that another house situate nearby was already in the tenancy of the. petitioners and if the accommodation in question was released in their (landlord's) favour, the petitioners would not be put to any inconvenience as they can easily shift to that house.

3. The case of the opposite party was denied by the petitioners who pleaded

their own need for the accommodation in question and also pleaded that the alternative accommodation pointed out by the opposite parties 3 and 4 was not a residential accommodation but was their godown which Was used purely for commercial purposes.

4. The Prescribed Authority, on a consideration of the various affidavits which were filed before him as also the documents on record, came to the conclusion that the need of the opposite parties for the accommodation in question was genuine and bonafide. He, consequently, by his judgment and order dated 26101978 released the said accommodation in favour of opposite parties 3 and 4. Petitioner then filed an appeal which was dismissed by the Additional District Judge on 8121979, It is in these Circumstances that the petitioners have filed the present petition.

5. I have heard the learned counsel for the parties.

6. A perusal of the judgment passed by the Prescribed Authority shows that the accommodation in occupation of the petitioner on the groundfloor was treated to be part of the building in occupation of the opposite party No. 3 and by applying the provisions of Explanation (iv) to Section 21 of the Act, it was held that the need of opposite parties 3 and 4 was conclusively established. This finding is patently erroneous⁵ and cannot be sustained as Explanation (iv) stood deleted from Section 21 with effect from 571976 by U.P. Act No, 28 of 1976.

7. The judgment of the Prescribed Authority further rests on the impending retirement of the opposite party No. 3. It has been observed by the Prescribed Authority in Paragraph 7 of the judgment as under :

WI hold that the applicants really need the disputed building: for residential purposes. It was let out at a time when the applicants did not require the whole house, Bui now their family members have increased and the applicant No. 1 intends to settle at Gonda after his retirement. Every person, after retirement, needs a house of his own where he can live in peace. On that count also the landlords bona fide require the disputed building? (Emphasis supplied).

8. Section 21 (IA) provides as under :

?Notwithstanding anything contained in Section 2, the Described Authority shall, on the application of a landlord in that behalf, order the eviction of a tenant from any building under tenancy, if it is satisfied that the landlord of such building was in occupation of la public building for residential purposes which he had to vacate on account of the cessation of his employment:

Provided that an application under this subsection may also be given by a landlord in occupation of such public building at any time within a period of one year before the expected date of cessation of his employment, but the order of eviction on such application shall take effect only oh the date of his actual cessation.?

9. Section 21(1A) is in two parts. The first part deals with a situation where a landlord who was in government service has since retired and has vacated the public building. The second part deals with a situation where a landlord is about to retire. An application for release of an accommodation in occupation of a tenant can, therefore, be made not only by a landlord who has since retired from government service but also by a landlord who is about to retire. The Proviso to subsection (1A) of Section 21 has, however, fixed a time limit within which an application for release on the ground of expected retirement of a landlord can be filed. It, is provided that such an application can be filed within one year of the expected date of cessation of the landlord's employment. The time limit has been fixed not without reason. A person who enters into government service has to retire one day on attaining the age of superannuation but on that ground, he cannot seek the eviction of his tenant on the first day of his joining the government service by pleading that he was likely to retire. The case of likely retirement can be pleaded only when one year of the service is left.

10. In the instant case, opposite party No. 3 admittedly was to attain the age of superannuation on 3061983. The Prescribed Authority, therefore, was not legally justified in the year 1978 to take into consideration the expected retirement of opposite party No. 2 who was to attain the age of superannuation in 1983. The Additional District Judge who decided the appeal on 8121979 has observed that the landlord ?has retired from service and has settled at Gonda alongwith his family?. This is a patently erroneous observation as the landlord (opposite party No. 3) was still in service in 1979 when the appeal was decided and was to attain the age of superannuation in 1983.

11. It is also urged that the judgment passed by the Additional District Judge stands vitiated by reason of his having misread an important document.

12. The document which is said to have been misread by the Additional District Judge is a receipt which has been referred to by the Prescribed Authority in his judgment as a receipt for water tax. Copy of this document has not been filed here but opposite parties 3 and 4 in their counteraffidavit (Paragraph 13 on internal Page 8) have admitted that it was a receipt for water tax which was filed. There is a difference between water tax and water charges. But the learned Additional District Judge on a misreading of this document and treating it to be a receipt for water charges held the alternative accommodation which was claimed by the petitioners to be their godown as a residential accommodation.

13. In view of the above, the findings recorded by the Prescribed Authority as also by the Additional District Judge and the judgment passed by them cannot be upheld. I, accordingly, allow the writ petition and quash the" judgment and order dated 26121978 passed by the Prescribed Authority as also the judgment and order dated 8121979 passed by the Additional District Judges and remand the case to the Prescribed Authority to dispose of the release application afresh in accordance with law, in the light of the observations made above. The petitioners will be entitled to their costs.