

(1980) 02 AHC CK 0050

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8752 of 1978

Munshi Lal Varma

APPELLANT

Vs

Addl. District Judge, Dehradun and others

RESPONDENT

Date of Decision : 28-02-1980

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1980) 02 AHC CK 0050

Hon'ble Judges : A.N.Varma, J

Final Decision : Allowed

Judgement

A. N. Varma, J.

This is a tenant's petition directed against an order passed by the learned Additional District Judge, Dehradun dated 1281978 allowing an appeal filed by the landlords of the accommodation in dispute arrayed as respondents No. 3 to 11 and dismissing an appeal filed by the petitioner under the provisions of U. P. Act No. XIII of 1972.

These are the relevant facts. The accommodation in dispute is a residential house bearing municipal house No. J/286 Chukhuwala, Dehradun. Half of this portion is stated to have been in possession of Sri Ratan Lal Varma, predecessor in interest of the petitioner and the present landlords and the other disputed half portion consisting of a big room, two small rooms, half verandah in front and half verandah in the back, a kitchen, a store and a bathroom. After Ratan Lal Varma, the house devolved on the present landlords who are his sons, daughters and widow. Some of his sons are posted outside Dehradun. The daughters are married.

The landlords filed an application under Section 21 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U. P. Act No. XIII of 1972, hereinafter referred to as the Act) for the release of the accommodation under

the tenancy of the petitioner on the ground that having regard to the number of members of the family of the landlord, they are finding it difficult to manage with the accommodation which was in their occupation. They, therefore, required the additional accommodation and hence the application.

The application was contested by the petitioner on a variety of grounds. He is asserted that many of the sons of the landlords are permanently posted outside Dehradun and their need, therefore, cannot be taken into account. The tenant also asserted that the need of the married daughters could not be taken into account as they were living with their husbands. In any case, the tenant asserted that he would suffer much greater hardship than the landlords.

The Prescribed Authority held that the need of the landlords for additional accommodation was genuine. However, he struck a balance. He directed that if only big room in possession of the tenant was released in favour of the landlords, their needs would be sufficiently satisfied and at the same time the tenant would also have shelter. The Prescribed Authority disbelieved the case of the landlords that the tenant was not residing at Dehradun, but at Jhansi with his daughter.

Both sides felt aggrieved by the order passed by the Prescribed Authority and filed appeals there from. The appeal of the petitioner was numbered as Rent Control Appeal No. 185 of 1977 and that filed by the landlords was numbered as Rent Control Appeal No. 197 of 1977. The learned District Judge allowed the appeal of the landlord and dismissed that of the tenant. The result was that the entire accommodation under the tenancy of the petitions was directed to be released in favour of the landlords.

Aggrieved by the orders passed by Respondents Nos. 1 and 2, the tenant has filed this petition.

Learned counsel for the petitioner has contended that the learned District Judge has fallen into a patent error of law in taking into account the needs of the landlords, who are not permanently residing at Dehradun and who came to Dehradun only on casual visits. He placed reliance on a decision of this Court in the case of *Brijendra Nath Saxena v. Illrd Additional District Judge and another*, 1979 (5) A.L.R. 52 (Summary) = 1979 U. P. R.C.C. 12. Learned Counsel for the respondent No. 3 on the other hand urged that the order spaced by Respondents Nos. 1 and 2 are correct and just and call for no interference by this Court. He submitted that even for the requirements of the landlords son who are permanently residing at Dehradun the accommodation at present in their occupation is not adequate for their needs, and that even these landlords themselves require additional accommodation.

Having heard learned counsel for the parties, I am clearly of the view that the contention of the counsel for the petitioner is well founded and is supported by a decisions of this Court. In the case of: *Brijendra Nath Saxena v. IIIrd Additional District Judge and another (supra)*, the learned Judge deciding the case observed thus:

"7. The above observation would indicate that the learned Additional District Judge thought that as Brijesh Chand has 1/2 share in the property his requirement in the premises in question has to be released in his favour. What is required to be seen in proceedings under Section 21 (1) (a) is whether a landlord filing an application requires the premises for his occupation. Merely because Brijesh Chand had a share in the property that could not be a ground for holding that he required the premises for his occupation. Brijesh Chand was posted outside Augarh, accordingly, the" Court below committed an error in taking into account the need of Brijesh Chand and in holding on its basis that the premises in question was required by the heirs and the legal representatives of Anand Bihari Lal. It may be true that Brijesh Chand might have been visiting his father's place but that would be only of a casual nature and that could not be sole basis for holding that the need of the landlord was bona fide. For meeting the need of such a casual nature, the consideration would be different than one which is required to be taken into account when a premises is needed by a landlord for his permanent residence. The learned Additional District Judge should have maintained a distinction between the two types of user. That having not been done, the judgment of the District Judge is vitiated."

I am, in respectful agreement with the above dictum. The conclusion which the learned Judge deciding the case of Brijendra Nath Saxena (supra) has reached is supported by the plain language of Section 21 (1) of U. P. Act No, XIII of 1972 namely that the building must be bona fide required by the land lord for occupation by himself either for residential purpose or purposes of any profession, trade or calling. The building must, therefore, be required for residential purposes. The purpose of casual visits cannot be equated with residence purposes as held by the learned Judge deciding the case of Brijendra Nath Saxena. The learned District Judge, therefore, fell into a manifest error of law in taking into consideration the needs of those landlords who are residing permanently outside Dehradun and who may be coming only on casual visits to Dehradun. The question of bona fide requirement of the landlord has, therefore, to be reconsidered in the light of the observations made in this judgment. The learned District Judge should, therefore, consider the question afresh, namely whether the landlords who are permanently residing at Dehradun do or do not require additional accommodation, and if so how much additional accommodation is needed for them.

As regards the appeal of the petitioner, I agree with the conclusions of the learned District Judge. The same was therefore, rightly dismissed by him.

The result of the aforesaid discussion is that this petition succeeds and is allowed. The order passed by the learned District Judge in Rent Control Appeal No. 197 of 1977 filed by the landlord is quashed. The order passed by the learned District Judge in Rent Appeal No. 185 of 1977 is affirmed. The learned District Judge will reconsider the case and dispose it of according to law having regard to the observations made by me in this judgment. The parties will bear

their own costs of this writ petition.