

(1981) 08 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2547 of 1980

Nathibai and others

APPELLANT

Vs

District Judge, Kanpur and others

RESPONDENT

Date of Decision : 24-08-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (1981) 08 AHC CK 0037

Hon'ble Judges : N.D.Ojha, J

Final Decision : Dismissed

Judgement

N. D. Ojha, J.

Respondent No. 3, Smt. Krishna Devi Santholie is the landlord of a building of which one Ridh Karan Sureka was the tenant.

Ridh Karan Sureka died in the year 1962 leaving the petitioners as his heirs. An application was made by respondent No. 3 under Section 21 (1) (a) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act), on the ground that she needed the said building for her own use. Her case further was that the petitioner had acquired as tenants, house No. 58/42 Birhana Road, Kanpur in the name of Sushil Kumar son of Bhura Mai petitioner No. 3 in the year 1978, 7/131A Swarup Nagar, Kanpur in the name of Ashok Kumar son of Prahlad Rai petitioner No. 5 in April, 1979 and another house being 24/37 Birhana Road, Kanpur, in the name of petitioner No. 4 in July, 1972. According to respondent No. 3 in view of these acquisitions Explanation (i) to Section 21 (1) (a) of the Act was attracted and consequently no objection by the petitioners against the application under Section 21 (1) (a) could be entertained. The application was contested by the petitioners but was allowed by the Prescribed Authority. The order of the Prescribed Authority was challenged by the petitioners in appeal before the District Judge. Their appeal too, however, has

been dismissed and it is these two orders of the Prescribed Authority and the District Judge which are sought to be quashed in the present writ petition.

It was urged by counsel for the petitioners that the need of respondent No. 3 was not bona fide and the findings recorded to the contrary in the impugned orders are erroneous. For the respondents, on the other hand, it has been urged that firstly, in view of the Explanation (i) to Section 21 (1) (a) of the Act, it was not open to the petitioners to raise any objection in regard to the need of the respondent No. 3 being bona fide and secondly the authorities below have, even after giving the petitioners an opportunity of hearing recorded a finding concurrently that the need of respondent No. 3 was bona fide. It was essentially a finding of fact based on appraisal of evidence and cannot be challenged under Article 226 of the Constitution of India. In so far as this point is concerned, I am in agreement with the submission made by counsel for respondent No. 3. In *Kanta Devi Jain v. Additional District and Sessions Judge, Dehradun* 1979 A L.J. 1303 a Division Bench of this Court held that in cases where Explanation (i) to Section 21 (1) (a) was applicable the tenant was precluded from raising any objection to the application of the landlord but nonetheless the latter was bound to establish his bona fide need. In so far as the question whether respondent No. 3 succeeded in establishing her bona fide need is concerned, suffice it to say that on the evidence produced in the case the Prescribed Authority and the District Judge have recorded a concurrent finding that her need was bona fide. The finding that the landlord's need was bona fide based on appraisal of evidence is a finding of fact. If authority were needed, reference may be made to *Mattu Lal v. Radhe Lal* A.I.R. 1974 S.C. 1596, and *India Pipe Fitting Co. v. Fakruddin* A.I.R. 1978 S.C. 45. In my opinion, the concurrent findings recorded by the Prescribed Authority and the District Judge that the need of respondents No. 3 was bona fide does not suffer from any such error which may justify interference under Article 226 of the Constitution.

Before coming to the next submission made by counsel for the petitioners it may be pointed out that during the course of hearing of the writ petition an application has been made on behalf of respondent No. 3 on 21st of August, 1981 supported with an affidavit and attaching thereto copy of a sale deed. Counsel for the petitioners made a statement that no counter affidavit or any document in rebuttal was sought to be filed on behalf of the petitioners. It has been pointed out in the said affidavit that Surendra Kumar Sureka son of Vishwanath Sureka petitioner No. 4 has through a registered sale deed dated 27th June, 1981 purchased another accommodation for a sum of Rs. 2,50,000/ and has obtained vacant possession of the said accommodation. It has further been pointed out in the said affidavit that the petitioners have also constructed a new building on Plot No. 90/72 L. M. Scheme Bagheri, Kanpur which is nearing completion is apparent from a photograph attached to the affidavit. On the basis of these facts it was also sought to be urged on behalf of respondent No. 3 that really the petitioners were in possession of sufficient accommodation and there were no equity either in their favour. For the petitioners it was urged that a writ

of certiorari can be issued only on the basis of the material which was before the authorities whose orders are sought to be quashed and not on the basis of any additional evidence given in the writ petition even if such evidence may have come into existence after the passing of the impugned orders. In my opinion, it is not necessary to record any categorical finding on this point inasmuch as the finding recorded by the authorities below that Explanation (i) to Section 21 (1) (a) of the Act was attracted on the basis of the already existing material i. e. acquisition as tenants of houses No. 58/42 and 7/31A aforesaid is unassailable. It may be pointed out that the acquisition of the third house i.e. house No. 24/27 aforesaid has been excluded from consideration by the District Judge on the ground that it had been acquired prior to the commencement of the Act, on 9/7/1972.

It was then urged by counsel for the petitioners that on the death of the original tenant Ridh Karan Sureka, the petitioners inherited the tenancy rights as tenants in common and even if some of the tenants in common or members of their family who were normally residing with the petitioners or even with late Ridh Karan Sureka have acquired some accommodation as tenants, Explanation (i) to Section 21 (1) (a) was not attracted. According to counsel for the petitioner the view taken by the authorities below to the contrary was manifestly erroneous in law and consequently the impugned orders deserve to be quashed. In this connection it would be seen that the provisions of Section 12(3) and Explanation (i) to Section 21 (1) (a) of the Act are in para material. It is apparent even on a plain reading of these two provisions and it has also been held so by a Full Bench of this Court in *Mangi Lal v. Additional District Judge* 1980 A.R.C. 55. While dealing with Section 12 (3) of the Act a similar submission that if one or some of the tenants in common acquired accommodation subsection (3) of Section 12 would not be attracted, was repelled by another Full Bench in *Ram Devi Shakhya v. 1st Additional District Judge Lucknow* 1981 A.R. C. 305. In view of that decision the impugned orders cannot be said to suffer from any manifest error of law and cannot be quashed.

It was then urged by counsel for the petitioners that the Full Bench decision of this Court in *Smt. Ram Devi Shakhya's* case requires reconsideration. In support of this submission it was urged that the word "acquired" in Section 12 (3) of the Act as well as in Explanation (i) to Section 21 (1) (a) of the Act would not include acquisition as a tenant and that this aspect of the matter seems to have been omitted from consideration in *Smt. Ram Devi Shakhya's* case. I cannot agree with this submission in view of paragraph 2 of the report in *Smt. Ram Devi Shakhya's* case (supra) where it has been held that Explanation (i) to Section 21 (1) (a) of the Act will be attracted even if a house has been acquired as a tenant.

At this place it may further be pointed out that even if there was any substance in the aforesaid submission it is not a fit case for quashing the impugned orders on this ground, keeping in view the nature of the additional evidence produced before this Court on behalf of respondent No. 3 reference to which has already

been made above. The said evidence indicates acquisition of property by the petitioners or members of their family not as tenants but as owners. Even if the said additional evidence is excluded from consideration by this Court in the present writ petition, it can certainly be accepted by the District Judge as an appellate Court, in case the impugned order passed by him is quashed. On the ground that in order to attract Section 12 (3) or Explanation (i) to Section 21 (1) (a) of the Act, acquisition of a building should be as owners and not as tenants, and the District Judge is required to decide the appeal afresh. It will result only in unnecessary multiplicity of proceedings. It is well settled that a writ of certiorari does not issue as a matter of course. In this connection it has to be borne in mind that, as seen above, the facts stated in the affidavit accompanying the application for accepting additional evidence stand admitted by the petitioners, a statement having been made by their counsel that no counteraffidavit was proposed to be filed.

It was then urged that the decision of the Supreme Court in *Badri Narain v. Rameshwar Dayal* A.I.R. 1951 S.C. 186, has been misconstrued in the Full Bench decision in *Smt. Ram Devi Shakhya's* case (supra). According to counsel the result of this misconstruction is that if what has been held by the Full Bench in *Smt. Ram Devi Shakhya's* case is taken to be the law it will create hardship on those tenants in common who have not acquired any other accommodation and such hardship was not contemplated by the Act. Having given my anxious consideration to the matter I find myself unable to agree even with this submission. To me it appears that the decision in *Badri Narain's* case has not been misconstrued in *Smt. Ram Devi Shakhya's* case (supra). On the plea about hardship counsel for the petitioner submitted in that the Act was enacted to protect the interest of the tenants and the interpretation of Section 12 (3) in *Smt. Ram Devi Shakhya's* case militated against that intention of the legislature. In my opinion, the intention of the legislature in enacting U. P. Urban Building (Regulation of Letting, Rent and Eviction) Act 1972 does not seem to be such as has been urged by counsel for the petitioners. Confining the discussion to tenants in common it would be seen that the tenants in common as a whole body are liable to be evicted if their case falls within any of the grounds mentioned in Section 20 (i) of the Act. Clause (b) of Section 20 (2) of the Act refers to a case where the tenant has willfully caused or permitted to be caused substantial damage to the building. Take a case where one of the tenants in common by mutual agreement is independently occupying two of the rooms of the accommodation let out and has willfully caused or permitted to be caused substantial damage to one of those two rooms. If the submission made by counsel for the petitioner is accepted the suit for eviction can be filed only in respect of that particular room to which substantial damage has been caused and only against that tenant in common who has willfully caused or permitted to be caused the substantial damage as aforesaid. This, in my opinion, does not seem to be the law laid down by the Supreme Court in *Badri Narain's* case (supra). The illustrations can be multiplied by referring to clauses (c) (d) (e) and (f) of

Section 20 (2) of the Act. In none of these cases it can be urged by such of the tenants in common who are not guilty of having committed any of the acts mentioned in these subclauses that they are not liable to be evicted simply on the ground that only one of the tenants in common and not they had made a breach of those provisions. In my opinion, just as the various subclauses of Section 20 (2) impose a liability on the tenants in common of being evicted as a whole body even if the breach of any of the aforesaid clauses has been committed not by all of them but by only one or some of them, so also subsection (3) of Section 12 and Explanation (i) to Section 21 (1) (a) of the Act impose a similar liability such, as specified in those provisions. In this view of the matter I am not inclined to accept even this submission made by counsel for the petitioners that the decision of this Court in Smt. Ram Devi Shakhya's case is likely to create hardship not contemplated by the Act.

No other point has been pressed.

In the result, the writ petition fails and is dismissed. There shall, however, be no order as to costs. The petitioners are given one month's time to vacate the building in question. Copy of this order may be supplied to counsel for the parties on payment of usual charges within a week.