

(1990) 12 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6232 of 1990

Niranjan Prasad

APPELLANT

Vs

The District Judge and Others

RESPONDENT

Date of Decision : 10-12-1990

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(2), 21
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 16(1)

Citation : (1991) 1 AWC 132

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : M.P. Tandon, for the Appellant; Prakash Krishna, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Misra, J.—This is a tenant's writ petition arising out of a proceeding on an application u/s 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) for release of the accommodation in question filed by the opposite party No. 3. Sri B.P. Nautiyal, who is a practicing Advocate in the Civil Court and is the landlord of the accommodation in question. Both the Courts below on a comparison of the comparative needs of the parties have held that the need of the landlord is bonafide, and genuine and have accordingly allowed the said application for release.

2. Heard learned Counsel for the Petitioner. The first submission made by the learned Counsel for the Petitioner is that the courts below have failed to take into consideration the provisions of Rule 16(1)(d) of the U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Rules (hereinafter referred to as the Rules) in as much as the courts below ought to have considered as to whether in accordance with the said Rule the need of the landlord can be satisfied by

releasing only a part of the premises. Admittedly, no such plea was taken by the tenant in his written statement. Learned Counsel for the Petitioner, however, relied upon a decision of the Hon''ble Supreme Court in the case of Sent. Raj Rani Manrotra v. IInd Addl. District Judge 1980 ARC 311 for the proposition that even if no such plea was raised in written statement, the court was bound to go into that question. This submission need not be gone into because I find that it has been settled by this Court in the case of Varanasi Ramanand Balika Vidyalaya v. The IInd Addl. District and Sessions Judge Varanasi 1981 ARC 364 that Rule 16(1)(d) of the Rules applies only to cases where landlord's need is for residential purposes and it does not apply to the need set up for non-residential purposes. In the present case landlord's need is for non-residential purposes. In this view of the matter the courts below have not committed any error of law in not considering the provisions of Rule 16(1)(d) of the Rules.

3. The second submission made by the learned Counsel for the Petitioner relates to the validity of the notice dated 14-7-1987. Relying on a decision of this Court in the case of Abdul Jabbar v. VIIth Addl. District Judge Gorakhpur 1989 ARC 277 it has been argued that In the impugned notice there is no demand for possession. After going through the judgment in the case of Abdul Jabbar (supra), 1, however, find that in that case the question regarding notice was not raised either before the Prescribed Authority or before the Appellate Authority. Since the notice only stated about the purchase of the accommodation, it was held by this Court that the notice in that case was not a notice as contemplated by law. In the present case, however, it has been stated by the lower appellate court that the impugned notice did satisfy all the requirements of law. In my opinion, therefore, there is no illegality in the said notice.

4. The third submission made by the learned Counsel for the Petitioner is that the provisions of Section 16(2)(a) of the said Rules have not been considered by the courts below and further comparative hardship has also not been examined properly by the courts below. In this connection it is worthwhile to mention the facts and the findings arrived at by the authorities below On a perusal of the facts and evidence of the case both the courts below including the lower appellate court have recorded finding to the effect that the chamber of the landlord Advocate measuring 10" x in which he is using as office is quite small and that the tenant is carrying on dry cleaning business in the adjoining shop which is of the dimensions of 8" x 11". The findings recorded by the lower appellate court are as follows:

In the instant case there is ample material on record to indicate that Sri B. P. Nautiyal, Advocate is a promising lawyer of standing. He is having a growing and flourishing practice in the civil courts at Dehradun. The clients from far off places come to get their cases pursued or contested by Sri Nautiyal. He is an Income Tax payer and reputed persons come to meet him as clients. A number of affidavits have been tiled from the various clients which indicate that certain statutory bodies as well as eminent persons are among the clients of Sri

Nautiyal. A lawyer with zeal and promise always marches ahead. His work seldom becomes stale. In course of time the work of the lawyer multiples and grows in leaps and bound. The fact that Sri Nautiyal is having His juniors as lawyers fortifies the inference that his practice is growing day by day. Undoubtedly Sri Nautiyal is a busy lawyer in the courts, it is almost impossible for him to carry on his legal profession with convenience and reasonable comports in a small room the size of which is less than 11" x 10". His need to have an additional accommodation for the expansion of his office cannot be over emphasized.

...the Appellant does not have sufficient alternative accommodation or the accomodation which is not satisfactory or he sould be required to shift from the present place are of no consequences...

...The Appellant, as said above, is partly carrying on the washing and cleaning of the clothes from his house in Beni bazar...

5. In view of the above findings recorded by the lower appellate court and after going through the impugned orders passed by the courts below 1 also find that the need of the landlord advocate is bonafide and genuine and the findings recorded by the courts below in this regard do not suffer from any error of law. Thus, in my opinion, it cannot be said that the appellate authorities below have failed 10 take into consideration the relevant requirements as contemplated by Section 16(2)(a) of the said Rules.

6. As regards the relative hardships, the same have also been compared by the lower appellate court in the impugned order. It has been held by the lower appellate court that the tenant is having his residence in another place and carries on the work of washing and cleaning the clothes from his house, "the lower appellate court has also held that the tenant does have sufficient alternate accommodation which is satisfactory. It has also found that after making the release application against the landlord the tenant has not made any prayer for alternate accomodation. This weights heavily against the tenant as has been held by this Court in this case of Ram Chandra v. Additional District Judge 1985 (1) ARC 244. The third argument of the learned Counsel for the Petitioner is also, therefore, devoid of any substance.

7. All the contentions raised by the learned Counsel for the Petitioner thus fail. The lower appellate court has, in my opinion, not committed any error of law in regarding its findings in the impugned order.

8. In the result, the writ petition fails and is dismissed with costs. The interim order granted in this case is hereby discharged.