

(1980) 01 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 7794 of 1978

Nonidhi Ram Anand

APPELLANT

Vs

Addl. District and Sessions Judge and Others

RESPONDENT

Date of Decision : 30-01-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1), 24, 31, 34
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 22

Citation : (1980) AWC 141

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

Bench : Single Bench

Advocate : K.L. Grover, for the Appellant; R. Bharti and S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.N. Verma, J.—This is a petition under Article 226 of the Constitution of India. It is directed against orders dated 21-9-1976 and 17-7-1978 passed respectively by Respondents Nos. 2 and 1 dismissing the Petitioner's application u/s 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. XIII of 1972) for the release of a residential accommodation.

2. These are the relevant facts. The Petitioner is the owner and landlord of a house No. 9, Nemi Road, Dehradun. The Respondent No. 3 is the Petitioner's tenant in a portion of the said house. The Petitioner filed an application dated 28-5-1976 u/s 21 of the aforesaid Act for the release of the accommodation in the tenancy of Respondent No. 3 on the ground that he was engaged in the business of taking forests at auctions and selling forest produce at Rourkela, Orissa, from which business he retired in the year 1970. After his retirement, the Petitioner came down to Dehradun and put up with his brother Sri G. R. Anand, who was residing at Bungalow No. 64-A Lytton Road, Dehradun. Since then, the

Petitioner had been staying with his brother whenever he was at Dehradun. The Petitioner has two married sons and two married daughters, who visited the Petitioner at Dehradun from time to time. The Petitioner now desires to lead a retired life at Dehradun, and, therefore, he required a residence of his own at Dehradun. He could not stay permanently with his brother Sri G. R. Anand. The tenant's family was small consisting of only six members. The tenant owns a residential house of his own at No. 18 Patel Road, Dehradun, and he could easily shift there. Hence the application for the release of the accommodation in dispute.

3. The above application was contested by Respondent No. 3, who asserted that the Petitioner hardly stayed at Dehradun. He had no business commitments there. He came there only on short visits. House No. 64-A Lytton Road, Dehradun was a joint family property belonging to Anand family, of which the Petitioner was a member. The Petitioner stayed permanently at Rourkela. He was actively engaged in various business activities connected with forests at Rourkela. House No. 18 Patel Road was still in occupation of some tenants against whom litigation was going on. It was, besides, in a dilapidated state, and was unfit for human habitation. The landlord's need was not genuine at all. At any rate, the landlord has recently got the remaining portion of 9, Nemi Road, vacated by its erstwhile tenants. Instead of occupying it himself, the landlord allowed a part of it to be allotted to Sri M. A. Beg. In any case, a substantial portion of the said house released in favour of the landlord is vacant and available for occupation. It consists of four main halls, a room, two big verandahs, a kitchen and a bath etc. with plenty of vacant land around it. The supposed need of the landlord is thus neither genuine nor pressing.

4. The Prescribed Authority came to the conclusion that the landlord did not bona fide require the accommodation in dispute for occupation by himself or any member of his family. Indeed, it held that the Petitioner was not residing at Dehradun at all, but was residing at Rourkela, where he was doing extensive business in forests. It disbelieved the Petitioner's case that he was residing at 64-A Lytton Road, Dehradun through the courtesy of his brother. It held that bungalow no 64-A Lytton Road, belonged to the Petitioner as well, and he stayed there whenever he came to Dehradun in his own right.

5. As regards House No. 18, Patel Road, the Prescribed Authority held that part of it (the ground floor portion) was still in occupation of the tenants while the remaining part of it was not fit for human habitation and was dangerously delapidated. The application of the landlord was accordingly dismissed.

6. On appeal by the landlord, the learned District Judge concurred with the Prescribed Authority and held that the need of the landlord was not genuine. The appellate court found that the portion of House No. 9 Nemi Road (other than the one in dispute) already released in favour of the landlord was sufficient to meet his alleged requirements. As regards the accommodation at No. 18, Patel Road, the learned District Judge has held, in agreement with the Prescribed Authority,

that the same was in occupation of some persons against whom litigation was still going on. The first Explanation to Section 21(1) of U.P. Act No. XIII of 1972 which bars the right of the tenant to object to the application of the landlord to apply for release was, therefore, not available to the landlord in the view of the learned District Judge. On these findings, the appeal of the landlord was dismissed.

7. Learned Counsel for the Petitioner assailed the findings of the courts below on both the issues, namely, the bona fide requirements of the landlord and the applicability of the first Explanation to Section 21(1) of the Act.

8. Having heard learned Counsel for the parties, I am clearly of the view that there are no merits in this petition.

9. Before I proceed to deal with the submissions of the learned Counsel for the Petitioner, I may mention that the learned Counsel for the Petitioner did not dispute that according to the settled view of this Court, even if the first Explanation to Section 21(1) of the Act is held to be applicable to the present case, the landlord is not relieved of the burden of establishing that the building in question was bona fide required by him for occupation by himself. The question, therefore, whether the concurrent finding of the courts below that the landlord does not bonafide require the accommodation in dispute is correct or not assumes pivotal importance. If it is held that the finding of the court below on the question whether the landlord required the accommodation in dispute bonafide is correct, it is obvious that the petition is bound to fail irrespective of whether the first Explanation to Section 21 of the Act applies or not.

10. Having heard counsel for the parties at some length, I am clearly of the view that the finding of the courts below that the landlord does not bona fide require the accommodation in dispute is correct and justified by the material on the record. It certainly does not suffer from any such error as may justify issuance of a writ of certiorari.

11. The Prescribed Authority held that the need of the Petitioner was not genuine on the finding that the Petitioner was residing permanently at Rourkela, Orissa, where he was engaged in the business of forest contracts and that he was not at all residing at Dehradun. It further found that if and when the Petitioner came to Dehradun, he stayed at 64-A Lytton Road, in his own right and not as a guest of his brother. The learned District Judge on the other hand, without disagreeing with the Prescribed Authority that the Petitioner was residing at Rourkela and not at Dehradun, held that the accommodation already released in his favour at No. 9 Nemi Road, was sufficient to meet the alleged requirements of the landlord. I do not agree with counsel for the Petitioner that the District Judge has not affirmed the finding of the Prescribed Authority that the Petitioner does not reside at Dehradun but at Rourkela. The learned District Judge has affirmed the order of the Prescribed Authority. There is no reason to think that the District Judge was disposed to take a different view on this aspect. What the District

Judge has said is that even if it be assumed that the Petitioner does require a permanent residence of his own, the portion of No. 9 Nemi Road, already released in his favour ought sufficiently to satisfy his requirements.

12. Counsel for the Petitioner, however, urged that the above finding of the learned District Judge is founded upon material which was brought on the record by the tenant and inasmuch as Explanation (I), according to the submission of the Petitioner's counsel was applicable to the facts of the present case, the District Judge was not entitled to take into consideration that material. He urged that inasmuch as the tenant was, by virtue of Explanation I debarred from objecting to the application of the Petitioner u/s 21 of the aforesaid U.P. Act No. XIII of 1972, any evidence adduced by him must, by necessary implication, be held to be inadmissible. I do not agree with this submission both as regards the broad legal proposition canvassed by the learned Counsel for the Petitioner as well as on account of the factual position existing on the record.

13. The material to which the learned Counsel for the Petitioner took exception, consisted of two documents filed at the appellate stage as per list (paper No. 14 c). These documents consisted of the release application of the landlord in respect of a portion of No. 9 Nemi Road, other than the accommodation in dispute, and the order of release passed by the Prescribed Authority on 19-10-1977 releasing that portion in favour of the Petitioner. In rebuttal of these documents, the landlord himself filed certain affidavits being papers Nos. 18 c2 and 20 c2. These affidavits were filed to show that the portion released in favour of the landlord was not fit for being occupied. It is significant that the landlord did not controvert the fact that the said portion No. 9, Nemi Road, had been, in point of fact, released in his favour. What was, however, attempted to be proved by the landlord through these documents was that the portion released was in a bad shape and was not fit for being used as residence. Assuming, therefore, that the documents filed by the tenant could not, for the reasons mentioned by the counsel for the Petitioner, be looked into, the fact which was sought to be established through the said documents not having been disputed by the landlord through the papers filed by him in rebuttal, the finding of the learned District Judge based on the consideration that a portion of house No. 9 Nemi Road, Dehradun was in point of fact released, could be sustained independently of the material placed by the tenant on the record. The fact of release of a portion of House No. 9 Nemi Road being admitted to the Petitioner, both before the courts below as well as here (see paragraph 8 of the writ petition), the only question which remained for consideration before the learned District Judge was whether that portion was fit for the limited requirements of the landlord. The learned District Judge disbelieved the version of the landlord that the said portion was not fit for being used and held that the children of the landlord being ail posted outside Dehradun, the house already released in his favour at 9 Nemi Road was more than sufficient for his requirements. This finding of the learned District Judge is based on the material supplied by the landlord himself.

14. It is, therefore, not correct to say that the finding of the learned District Judge is vitiated being based upon any inadmissible material.

15. I also do not agree with the broad proposition canvassed by counsel, namely, that the District Judge was debarred from looking into the material supplied by the tenant. u/s 21(1) of the Act, the Prescribed Authority has to make an enquiry whether the building in question is bona fide required by the landlord. This enquiry has to be based on material which is relevant to the enquiry. The source from which the material comes has not been circumscribed. The material upon which the Prescribed Authority may act is not limited to the evidence which may be adduced to the landlord himself. Of course, the material which the Prescribed Authority may choose to act upon has to be brought on the record according to law, and the landlord has to be apprised of it together with an opportunity to rebut or meet such material.

16. Section 34 of the Act lays down that the Prescribed Authority shall for the purpose of holding an enquiry under this Act have the same power as are vested in civil courts under the CPC in respect of various matters mentioned therein. Rule 22 (f) of the Rules framed under the aforesaid Act confer upon the Prescribed Authority powers analogous to those mentioned in Section 151 of the CPC to make any order for the ends of justice. These provisions clearly suggest that the Prescribed Authority for the purpose of holding an enquiry u/s 21 of the Act, is empowered to act even on the affidavits which may be filed by the tenants, for the ends of justice, even in a case which is covered by Explanation I, with a view to ascertaining whether the landlord does bona fide require the accommodation. In my view, a distinction must be drawn between the right of the tenant to object against an application u/s 21 and the power of the Court to collect material to decide objectively whether the need of the landlord is genuine. This Court, therefore, holds that the learned District Judge was not debarred from acting on the material supplied by the tenant even assuming the first Explanation was applicable to the present case.

17. The above discussion disposes of the only objection which was raised against the finding of the learned District Judge on the question of bona fide requirement.

18. I may now deal with the argument relating to the applicability of the first Explanation. The submission was that only the first floor accommodation at No. 18 Patel Road was in a dilapidated condition. The ground floor was still fit for residence, and the whole building having been released in favour of tenant, the Explanation must be held to be attracted to the facts of the present case. The submission is misconceived. Both the courts below have held that the ground floor portion is still in occupation of some persons against whom litigation launched by the tenant is still pending. The upshot is that the tenant cannot, therefore, be said so have acquired "in vacant state" any residential accommodation yet. Furthermore, the building having been released expressly for being demolished and reconstructed, the tenant is debarred from putting it to any other use in view of Sections 24 and 31 of the Act. Explanation I, therefore,

does not apply in any view of the matter. However, Shri R. Bharti, counsel for the tenant offered that the tenant undertook to vacate the accommodation in dispute as soon as he reconstructed his own house at No. 18, Patel Road. The Petitioner would, therefore, be at liberty to approach the Prescribed Authority for appropriate orders immediately after the tenant has reconstructed his house.

19. Subject to the observations made above, this petition fails and is dismissed. There will be no order as to costs.