

(1976) 05 AHC CK 0001
In the Allahabad High Court
Case No : Civil Misc. Writ No. 5603 of 1974

Raj Narain Jain

APPELLANT

Vs

The IV Addl. District Judge and Others

RESPONDENT

Date of Decision : 21-05-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 229
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21

Citation : (1976) AWC 542

Hon'ble Judges : K.N. Singh, J

Bench : Single Bench

Advocate : Bharat Ji Agarwal, for the Appellant; Sudhir Chandra and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.N. Singh, J.—This petition is directed against the order of the Additional District Judge, Allahabad releasing the accommodation in question in favour of Respondent-landlords.

2. The Petitioner is tenant of one-room shop situate on the ground floor of house No. 381 Badshahi Mandi, Allahabad. Subhash Chandra and Prem Chandra, Respondents Nos. 2 and 3, are its landlords, they reside on the first floor of the house. They made 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 the release of the ground floor shop which was in the occupation of the Petitioner. The Prescribed Authority rejected the application by its order dated 5th April, 1974. On appeal by the Respondent-landlords the Additional District Judge, Allahabad, set aside the order of the Prescribed Authority on the finding that since Respondent-landlords were residing in a portion of the building, their bona fide need stood conclusively proved in pursuance of Explanation IV to Section 21 of the Act. The Additional District Judge recorded findings, that the landlords

need was bona fide and genuine even on merits. He, therefore, released the shop in favour of the landlords and awarded two years rent to the Petitioner-tenant as compensation. Aggrieved, the Petitioner-tenant filed this petition challenging validity of the order of the Additional District Judge.

3. Learned Counsel for the Petitioner urged that Explanation IV to Section 21 was not applicable to the instant case. The learned District Judge committed patent error of law in recording a finding that there was conclusive proof about the bona fide need of the Respondent-landlords as they were residing in a portion of the building. On the admitted facts the building consists of three portions. The landlords reside in one portion, while another tenant Sheo Mohan was residing in the second portion, and the Petitioner was carrying on business in one room shop situate on the ground floor. Thus there were two tenants in addition to the landlord residing in the building. There is no dispute that one-room shop which has been in the tenancy of the Petitioner was an independent self-contained unit. There was nothing common between the landlord and the Petitioner tenant and they were not using any common amenities. Section 21 lays down that the Prescribed Authority may, on the application of the landlord, evict a tenant from the building under tenancy or any specified part thereof if it is satisfied that the building is bona fide required by the landlord for his occupation. Explanation IV to Section 21 lays down that if the building under tenancy is a part of the building of which the remaining part is in the occupation of the landlord for residential purposes, then this fact shall be conclusive proof that the building is bona fide required by the landlord. Explanation IV enacts a rule of evidence to the effect that if the landlord is residing in the remaining part of the building, it will be conclusive that his need is bona fide. It is however significant to note that Explanation IV applies only in a case of a residential building. If the building under tenancy is not a residential building, Explanation IV shall not be attracted. In the instant case, admittedly the Petitioner has been carrying on business in the one room-shop situate on the ground floor. Therefore Explanation IV is not attracted, and the landlord's need could not be held to be conclusively proved. The Additional District Judge committed error in placing reliance on Explanation IV.

4. Explanation IV to Section 21 is not applicable to the instant case as the shop in question which is in the Petitioner's tenancy is an independent unit and the landlord was residing in another portion which was self-contained and formed a separate unit. The Petitioner and the landlord did not use any common amenity, therefore the landlords were not residing in a part of the building as contemplated by Explanation IV. Learned Counsel for the Respondents urged that since the landlords were residing in a part of the same building in which the Petitioner was tenant, Explanation IV was attracted. This question was considered at length by brother Shukla, J. in *Abdul Wahab v. District Judge Meerut* Writ Petition No. 2360 of 1974 decided on 13th April, 1976 (Alld.). After considering the matter at length the learned Judge held that if the accommodation in dispute and the one in the occupation of landlords are so

vitality connected with each other that on account of their proximity the tenant and the landlord both share all common amenities then it can be said to be one allotable unit or common accommodation, in that event Explanation IV would be applicable, but in a case where the accommodation in dispute is not vitally connected with the accommodation in the occupation of the landlord and they do not share common amenities and the accommodation in the tenancy of the tenant is an allotable unit, then Explanation IV would not be attracted merely because the landlord is residing in a part of that building which may be independent and self-contained unit. I agree with the view expressed by the learned Judge. Explanation IV in my opinion is not attracted to a case where the tenant is in occupation of self-contained unit, allotable to a tenant without affecting the use of the other part of the building by the landlord. For this reason also the Additional District Judge committed error in placing reliance upon Explanation IV.

5. The Additional District Judge held that the need of the landlord was bonafide and genuine even on merits. In coming to that conclusion he recorded finding that the landlord's family consisted of nine members and the accommodation available to the landlords was hardly sufficient to meet their need. Learned Counsel for the Petitioner urged that the landlords had made application for the eviction of Sheo Mohan, another tenant, who was residing in a part of the building. During the pendency of this petition, Sheo Mohan vacated the accommodation in his tenancy and the landlords occupied the same, which consists of two rooms, a verandah and a courtyard and one room and an open terrace on the first floor. Thus at present the landlords are occupying the entire building except the one room on the ground floor which is in the Petitioner's tenancy. On behalf of the tenant it is urged that the landlord's need if any ceased to exist after they occupied the accommodation which was in the tenancy of Sheo Mohan. Learned Counsel for the Respondent-landlord urged that the subsequent events which took place after the filing of the writ petition cannot legally be taken into account in judging the validity of the order of the Additional District Judge.

6. In *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, the Supreme Court observed that while considering the need of the landlord for the purpose of evicting a tenant it is open to courts to take into account subsequent events which may have material bearing on the continued existence of landlord's need. No doubt these observations were made in a case where revision was maintainable before the High Court u/s 115 of the Code of Civil Procedure, but the principle that subsequent events should be taken into account to do justice between the parties, is fully applicable to a writ petition also. The primary purpose of a writ petition under Article 226 is to do justice between the parties and to ensure that the authorities constituted under the Act, act in accordance with the provisions of the Act, and no injustice is caused to the parties. If during the pendency of the writ petition the landlords occupied additional accommodation which was sufficient to meet their need in that case it would be

unjust to evict the Petitioner-tenant who has been carrying on business in the shop for his livelihood. I am, therefore, of the opinion that it would not be proper or desirable to ignore the subsequent events which took place in the instant case as they have material bearing on the question of bona fide need and requirement of the landlord.

7. Learned Counsel for the Respondent urged that this Court has no power to interfere with the finding of fact recorded by the Additional District Judge. He placed reliance on the Supreme Court decision in AIR 1975 1297 (SC) where the Supreme Court observed that the power of superintendence of High Court under Article 229 cannot be invoked to correct errors of fact which only a superior court can do in exercise of its power as a court of appeal. The question does not arise in the present case. The findings of fact recorded by the Additional District Judge are not being reviewed or set aside on a re-appraisal of the evidence as is normally done in appeal. The subsequent events which have come into existence during the pendency of the writ petition have material bearing on the controversy inasmuch as the Respondent-landlords have occupied the entire accommodation available in the building except one-room shop occupied by the Petitioner. At the time the Additional District Judge considered the bona fide needs of the landlord on merits, the accommodation which was in the tenancy of Sheo Mohan was not in the occupation of the landlords. Therefore this question could not be considered by him. Now since the landlord has got additional accommodation it is necessary in the interest of justice to reconsider the landlord's need. If this is not done great injustice would be caused to the Petitioner-tenant. Section 21 of the Act contemplates eviction of a tenant at the instance of the landlord with a view to provide additional accommodation to the landlord to meet his need. If there are several tenants in the building and the landlord occupies one portion and makes an application for eviction of a tenant from one portion of the building on the ground of his bonafide need and requirement for additional accommodation, the authorities constituted under the Act as well as the courts must consider the question as to whether the landlord's need still continued to be bonafide. The need of the landlord for additional accommodation need not be pressing on the date of making application but it must continue to be so even at the stage of appeal or writ petition. If during the pendency of appeal or writ petition, the landlord occupies additional accommodation vacated by other tenants of the building, the bonafide need of the landlord may cease to exist. In that event it will be unjust to evict a tenant u/s 21 of the Act. The powers of this Court under Article 226 are wide enough and are not circumscribed by any technical rules of procedure. The Court has wide power to issue direction to advance the cause of justice. I am, therefore, of the opinion that subsequent event has a material bearing on the landlord's need and as such it is necessary that the question as to whether the landlord bonafide requires the accommodation which is in the Petitioner's tenancy must be investigated in the light of the changed circumstances.

8. In the result, I allow the petition and quash the order of the Additional District

Judge and direct him to consider the landlord's need in accordance with the observations made in this judgment.