
(1980) 01 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.80, 80-A of 1978

Rajendra Kumar Garg

APPELLANT

Vs

Fourth addl.District Judge, Bulandshahar and others

RESPONDENT

Date of Decision : 30-01-1980

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1980) 01 AHC CK 0049

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

Final Decision : Allowed

Judgement

A.N. Varma, J.

This is a landlord's petition under article 226 of the Constitution which is directed against an order passed by the learned District Judge dated 24/7/1978 allowing an appeal filed by the petitioner 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), and remanding the case to the prescribed authority for decision of the case according to law.

Briefly stated, the relevant facts are these. The petitioner is the owner and landlord of the house situate in Civil Lines, Bulandshahar. He was in Government Service and was at the relevant time Additional Commissioner, Agra Division. He was due to retire from service in July, 1977. The accommodation in dispute was a residential house belonging to the petitioner and respondent No. 3 was its tenant.

The petitioner moved an application under Section 21(1A) of the aforesaid U. P. Act No. XIII of 1972 for the release of building on the ground that he was due to retire, and was at the time of making the application occupying a public building premise No. B9 collect orate compound, Agra, which he had to vacate on account of cessation of his employment.

The petitioner further asserted that he wanted to settle down at Bulandshahar in his house with a view to the starting legal practice in the District Courts at Bulandshahar. The building in question was nearest to the Civil Courts. The petitioner's father was also stated to be a leading lawyer of Bulandshahr. Hence the application for release of the accommodation.

The respondent No. 3 contested the application and denied that the petitioner needed the accommodation bona fide or that he seriously considered setting up practice at Bulandshahar. It was further asserted that the house was in a dilapidated condition and that Section 21(1A) of the aforesaid U. P. Act No. XIII of 1972 was not applicable to the facts of the case.

The Prescribed Authority allowed the petitioner's application but imposed a condition that respondent No. 3 should be given the building which was in occupation of the Assistant Engineer (Hydel), which building also belonged to the landlord. It has been asserted on behalf of the tenant that the Assistant Engineer who was in occupation of that building had been transferred to Gorakhpur.

Aggrieved by that part of the order of the Prescribed Authority by which the aforesaid condition had been imposed, the petitioner filed an appeal. In the appeal, the learned District Judge has held that the provisions of Section 21(1A) of the aforesaid Act No. XIII of 1972 were not applicable to facts of the present case, inasmuch as the accommodation in dispute had not been constructed within ten years of the making of the application. Having held that Section 21(1A) of the Act did not apply to the facts of the present case, the learned District Judge went into the question of comparative hardship and bona fide requirement of the landlord, He came to the conclusion that the Prescribed Authority had not properly considered those questions. Consequently, while allowing the appeal, the learned District Judge sent back the case to the Prescribed Authority for a fresh decision in the light of the observations made by the learned District Judge. The learned District Judge directed the Prescribed Authority to ascertain from the petitioner as to whether he desire to have his application treated under Section 21(1) (a) of Section 21(1) (b) of the aforesaid Act.

Learned counsel for the petitioner has contended that the view of law taken by the learned District Judge that Section 21 (1A) of the Act is applicable only to the building constructed within ten years of the Act is exfacie unsustainable in law. The learned District Judge has wrongly held that provisions of Section 21(1A) the Act were not applicable.

Having heard learned counsel for the petitioner, I agree with him that the learned District Judge is not right in holding that Section 21 (1A) of the aforesaid Act was not applicable to the facts of the present case, Under Section 2 of the aforesaid act, various types of buildings have been specified as being exempt from operation of the Act. Under Section 2 (2) of the aforesaid Act, it is provided that this Act shall not apply to buildings constructed during the period of ten years

from the date on which its construction is completed. Section 21(1A). however, engrafts an exception to Section 2(2) of the Act. Under Section 21 (1A) the landlord can make an application if the other conditions laid down therein are satisfied even if the building in question has been constructed within ten years of the commencement of the Act. However, the learned District Judge appears to have completely misconceived this provision and has wrongly held that Section 21 (1A) applies only to buildings, the construction of which has been completed within ten years of the commencement of the Act. There is no warrant for such an interpretation. The learned District Judge has thus committed a patent error of law in holding that Section 21(1A) was not attracted to the facts of the present case. The rest of the judgment of the learned District Judge proceeds on the assumption that Section 21 (1A) is not applicable to the facts of the present case, and consequently, in view of my finding given above, that part of the judgment also deserves to be quashed. In my view, all that the learned District Judge was required to consider in the appeal filed by the petitioner was whether the condition imposed by the Prescribed Authority was proper or not, in view of the facts that the tenant had preferred no appeal against the order passed by the Prescribed Authority.

The result of the aforesaid discussion is that this petition succeeds and is allowed. The impugned judgment and order passed by the learned District Judge dated 24/7/1978 are quashed. The case is remanded to respondent No. 1 for being disposed of according to law having regard to the observations made in this judgment. There will be no order as to costs.