
(1980) 03 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2822 of 1979

Ram Mohan Bajpai

APPELLANT

Vs

The 5th Additional District Judge and Others

RESPONDENT

Date of Decision : 14-03-1980

Acts Referred:

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

Citation : (1980) AWC 355

Hon'ble Judges : K.C. Agarwal, J

Bench : Single Bench

Advocate : S.N. Agarwal, for the Appellant; S.M. Dayal, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agarwal, J.—This is a tenant's writ petition filed against a judgment of the V Additional District Judge, Kanpur dated 30-4-1979.

2. An application u/s 21(1)(a) of the U.P. Act No. XIII of 1972 was filed by the Respondent No. 3 Sri Ram Laxman Janki and Hanumanji Virajman Mandir for release of a portion of House No. 61/43, Sita Ram. Mohal, Kanpur. The Petitioner was the tenant of the ground floor of the said house. In application filed u/s 21 of the U.P. Act No. XIII of 1972 Respondent No. 3 alleged that the portion let out to the Petitioner was required for the residence of Rameshwar who was Sarvarakar of Respondent No. 3. The said Respondent claimed that the accommodation in possession of Rameshwar was insufficient and that he was not able to discharge his duties as a Sarvarakar properly on account of the insufficiency of accommodation available with him. Another ground set up for the release was the need of Pujari named Narvada Shanker.

3. The application was contested by the Petitioner and the allegation that Sarvarakar Rameshwar did not have sufficient accommodation, was denied as false. The Petitioner also alleged that Pujari lived in a closed verandah and, an

open space outside comfortably. Therefore the requirement set up for the said Pujari could also not be a ground for his eviction. With regard to the second Sarvarakar Ram Ratan Das, the plea was that he was a saint and did not permanently live in the disputed house and as such the need of Ram Ratan Das set up in the application, was not bona fide.

4. Before the Prescribed Authority, the parties filed their evidence. Holding that since the Petitioner's mother had constructed her own house in Krishna Nagar, Kanpur, the Prescribed Authority held that it was precluded from examining the question of bonafide requirement of the premises by Respondent No. 3 and allowed the application. Against the aforesaid judgment, the Petitioner went up in appeal. The appellate authority affirmed the judgment of the Prescribed Authority. It, however, did not confine the consideration of the appeal only to the question decided by the Prescribed Authority, but also found that the need of the Respondent No. 3 was bona fide. Dealing with the question of comparative hardship, the appellate authority held that since the Petitioner's mother, Smt. Ram Devi, had built her own house, the Petitioner should shift to the same. He did not accept the Petitioner's case that the Petitioner was living separately from his mother. The view of the appellate authority was that the plea of separation taken by the Petitioner was dishonest. On these findings the appeal was dismissed.

5. Being aggrieved the Petitioner filed the present writ petition.

6. The main question that was argued before me was about the bonafide requirement of the premises by Respondent No. 3. It is the admitted case of the parties that in the year 1965 the disputed House No. 61/43, Sita Ram Mohal was given to the deities which were installed in a portion of this house. Through this document, the house was endowed in favour of the two idols which were installed in it. The house in dispute was completely dedicated to the idols. The limited right reserved was to manage the Seva Puja of the idols and to realise rent from the tenants living in the said premises. Clause 71 of the deed, however, conferred right on the Sarvarakars to continue residing in the disputed premises.

7. A question that was raised by the learned Counsel for the Petitioner was that, u/s 21(1)(a) of the U.P. Act No. XIII of 1972, an application can be filed for the eviction of a tenant on the ground of bona fide requirement of the landlord for occupation of the building by himself or any other member of the family. Counsel for the Petitioner urged that since Sarvarakars cannot be treated as landlords, the application for occupation of the building by them was not maintainable u/s 21(1)(a).

8. Section 21(1)(a) can be -broadly divided into two portions. First is where the building is required by a landlord for occupation by himself or his family member and the second where the landlord is the trustee of a public charitable trust, for the object of the trust. In the instant case, building does not belong to a public

charitable trust. Therefore, this latter class would not apply. The question only is about previous class being applicable to it. The trust deed produced before me shows that the property in dispute had been dedicated to the idols. The question, therefore, is who are the beneficiaries when a temple is built and idol installed therein. Under the Hindu law, an idol is a juristic person capable of holding the properties and the properties endowed vest in it but that does not lead to the conclusion that the idol is a beneficial owner of the endowment. It can neither make use of the property nor enjoy them. It, therefore, has no beneficial interest in the endowment. In *Deoki Nandan Vs. Murlidhar*, , the Supreme Court was called upon to consider the aforesaid question. It observed:

But it does not follow from this that it is to be "regarded as the beneficial owner of the endowment. Though such an opinion had a vogue at one time and there is an echo of it in these proceedings vide para 15 of the plaint. It is now established beyond all controversy that it is not the true position. It has been repeatedly held that it is only in an ideal sense that the idol is the owner of the endowed properties.....it cannot itself make use of them, it cannot enjoy them or dispose of them, or even protect them. In short, the idol can have no beneficial interest in the endowment. It was clearly laid down in the Sanskrit text.

9. Thus, what follows from the decision of the Supreme Court is that the Code have no beneficial enjoyment and that a gift of the properties to the idol does not confer any benefit on the God. The position, therefore, is that the true beneficiaries are the persons other than the God. In case of a private trust, the beneficiaries are the members of the family or those who are specified in the document itself. If the intention is to confer benefit on specified persons, such a trust would be considered as a private trust not intended to the benefit of the general body of public (See *Deokinandan v. Murlidhar*). In the instant case, the properties had been gifted to the idols installed in a room of the house. The gift deed further showed that the benefit of the dedication had to be confined to the person of the family. It was, thus, a private trust. The beneficiaries were the individuals specified who had the right of worship at the shrine. Some of these members of the family were made Sarvarakars. They had been conferred the rights to manage the properties and to make arrangement for the worship and puja of the God. In this view of the matter, it appears to me that the application u/s 21(1)(a) could be filed by the Sarvarakars. A Sarvarakar has a right of residence in the house dedicated to the deity. Such a provision has been made in the deed of dedication itself. It has been held in *Gyanendra Nath v. Surendra Nath* AIR 1920 PC 27 that the usual practice to provide for a right of residence to the shebait in a deed itself does not detract the transaction from the absoluteness of the dediction.

10. Mukherjee in his book *Hindu Law pf Religious and Charitable Trust II Edn.* page 231 has stated-

Even if there is no provision in the deed of endowment, it means that such right of residence would be implied in law, unless there is any prohibition to that effect

in the deed of endowment. Not only the general feeling of the Hindu community is in favour of the giving the shebait a right of residence in the deities' house but such right is really appurtenant to the duties which the shebait has got to discharge in regard to the spiritual and temporal affairs of the idol.

11. Applying the above law, it appears to me that the application under Clause (a) of Sub-section (1) of Section 21 was maintainable. The appellate authority found that the need of Sarvarakars was bona fide. This is a finding of fact and cannot be disturbed.

12. The need of the Pujari set up in application u/s 21 was for the purpose of enabling him to perform the Seva Puja efficiently. The Pujari was found to have no proper accommodation for his living in the disputed house. Hence the need of the Pujari also does not fall outside the ambit of Section 21(1)(a).

13. The other question is about the comparative hardship. The two courts concurrently held that the mother of the Petitioner had built a house and that she was residing with the Petitioner. The plea taken by the Petitioner was that as his relations with the mother were not cordial, he had separated himself and, accordingly, could not occupy the house built by her. The two courts did not find any substance in the plea of the Petitioner and held that the same had been dishonestly advanced. The position, therefore, appears to be that the mother of the Petitioner built her own house subsequent to the coming in force of U.P. Act No. XIII of 1972. That being so, the Explanation I to Section 21(1) was clearly applicable. As a result of the applicability of the said Explanation, the Petitioner was debarred from challenging the bona fide need of the Respondent No. 3 and from claiming a comparison of, his own need with that of the said Respondent. I have already stated above that since the mother of the Petitioner had built her own house, the Petitioner could occupy the same.

14. In Smt. Kanta Devi Jain v. Additional District Judge 1979 AWC 543 a Division Bench of this Court held that in cases where the Explanation applies, the tenant is debarred from raising any objection to the landlord's application. In such a case the Prescribed Authority is exempt from comparing the hardship of the landlord with that of the tenant. According to the view of the Division Bench, the tenant cannot even challenge that the need of the landlord is not bonafide. Accordingly, the Petitioner is not entitled to any relief in the present case.

15. In the result, the petition fails and is dismissed with cost.