
(1996) 12 AHC CK 0049
In the Allahabad High Court
Case No : CMWP No. 21391 of 1990

Ram Narain Bagley

APPELLANT

Vs

District Judge, Saharanpur & Ors.

RESPONDENT

Date of Decision : 11-12-1996

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 3(a)(1)

Citation : (1996) 12 AHC CK 0049

Hon'ble Judges : S.N. Agarwal, J

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of the Prescribed Authority dated 18.9.1985, allowing the application of the landlord respondent filed for release of the disputed accommodation under Section 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (In short "the Act") and the order of respondent No. 1, dated 17.8.1990, rejecting the application of the petitioner for condonation of delay in filing the appeal and dismissing the appeal against the order of the Prescribed Authority.

2. Briefly stated the facts are that respondent No. 3 filed application for release under Section 21(1)(a) of the Act against Ram Narain Bagley and one Brij Mohan Agarwal. He was a medical practitioner and his wife Smt. Usha Kumari was also a doctor. She was in medical service of the State from where she resigned and decided to open a Nursing Home. The landlord was living and carrying on his private practice in a rented building in Rani Bazar, Saharanpur, which was not suitable for his residential purpose and private practice. The landlady of the said house was also pressing him to vacate that building. He genuinely needed the building in question for establishment of his Nursing Home and his wife and for residence of his family. Dr. Ram Narain Bagley and Brij Mohan Agarwal both filed written statement and they denied the need set up by the applicant. The applicant filed affidavit in support of his version. On 16.9.1985 a compromise was filed purported to have been signed by the petitioner and Brij Mohan

Agarwal. In that compromise application the need of the applicantlandlord was accepted. This compromise was verified by one Shiv Nath Sharma, Advocate, representing Dr. Ram Narain Bagley and Brij Mohan Agarwal. The Prescribed Authority passed order on 18.9.1985 on merits recording the finding that the need of the applicantlandlord was bona fide and genuine. He required the accommodation for his clinic and for his wife and his residence. It is alleged that after the said order was passed by the Prescribed Authority Dr. Ram Narain Bagley, the tenant delivered possession of four rooms. The applicantlandlord constructed toilet and bath room and extensively repaired the portion given to him by the tenant and new telephone connection was also taken.

3. After about four years Dr. Ram Narain Bagley filed appeal on 12.4.1989 along with an application under Section 5 of the Limitation Act to condone the delay in filing the appeal alleging that he was never served with any summons or notice by the Prescribed Authority. He had no knowledge of the proceedings and never entered into compromise alleged to have been filed on his behalf on 16.9.1985. This application was opposed by respondent No. 2. He denied the allegations made by Dr. Ram Narain Bagley. Respondent No. 1 prima facie found that the allegations made by Dr. Ram Narain Bagley were incorrect and rejected the application by the impugned order dated 19.12.1989. He filed writ petition against the said order before this Court.

4. Dr. Ram Narain Bagley, the sole petitioner died on 14.3.1995. An application dated 27.3.1995 was filed by one Vikrant Bagley for substitution claiming himself as adopted son of Dr. Ram Narain Bagley. Another application was filed on behalf of Smt. Sushila Kumar claiming substitution that she is real sister of the deceased petitioner and was residing at the time of his death and inherited the tenancy rights. As the question of facts were to be investigated the matter was remitted to the Prescribed Authority to record finding as to whether Vikrant Bagley is adopted son of Dr. Ram Narain Bagley and Smt. Sushila Kumar was his real sister and secondly, whether these persons were residing with Dr. Ram Narain Bagley at the time of his death. The Prescribed Authority has recorded finding that Vikrant Bagley is not adopted son of Dr. Ram Narain Bagley. He was also not residing with him. As regards Smt. Sushila Kumar, it was found that she is real sister of the deceased petitioner but she was not residing at the time of his death. She was residing with her husband at 22, Chandra Nagar, Saharanpur.

5. Sri S.D.N. Singh, learned Counsel for Smt. Sushila Kumar, has assailed the finding recorded by the Prescribed Authority that the accommodation in question was residential one. It is urged that Dr. Ram Narain Bagley was running the clinic and the accommodation should be deemed for nonresidential purpose. The Prescribed Authority has considered in detail the evidence adduced by Smt. Sushila Kumar regarding the nature of the building in question. It was found that Dr. Ram Narain Bagley was residing in the family and in a portion of the building he was carrying on his private practice. There was no evidence that the building was let out to Dr. Ram Narain Bagley only for medical practice. On consideration

of evidence it was found that Dr. Ram Narain Bagley was carrying on private practice in the building where he was residing. The building was for residential purpose. It has been held in various decisions that if the building is used for residential purpose and a portion of it is being used for professional purpose by a lawyer or doctor the nature of the building will continue to be that of a residential building vide Dr. Bashir Uddin v. District Judge, Bulandshahr and others, 1978 A.L.R. 24; Makalu (since deceased) by his heirs and representatives v. IVth Additional District Judge, Mirzapur and others, 1992 (2) A.R.C. 317 and M/s. Talwar Motors v. 1st Additional District Judge, Kanpur Nagar and others, 1994(1) A.R.C. 33. The finding recorded by the Prescribed Authority does not suffer from any manifest error of law.

6. The second submission of learned Counsel for the petitioner is that even if the building is residential building, the heirs of the deceased tenant will inherit the tenancy rights of the deceased. In support of his contention he has placed reliance upon the decision Kr. Jagdish Chandra Sinha and others v. M/s. Eileen K. Patricia D'Rozarie, A.I.R. 1995 S.C. 515. This case was based upon the interpretation of Section 2(h) of the West Bengal Premises Tenancy Act, 1956 (In short Act 1956).

7. The tenancy right is inherited by the heirs in accordance with the provisions of Section 3(a) of the Act. In Jagdish Chandra's case (supra) the Supreme Court was interpreting the definition of "tenant" as provided under Section 2(h) of the 1956 Act. It is relevant to note that the definition of "tenant" in the Act was amended by U.P. Civil Laws (Amendment) Act, 1972. Prior to the amendment, the tenant meant a person by whom the rent was payable and after the death of tenant his heirs were to become the tenants. There was no qualification added with the heirs to become a tenant on the death of the original tenant. By Section 8 of U.P. Civil Laws (Amendment) Act, 1982 the qualifications were added with the heirs and now the definition as exists is as follows:

"tenant", in relation to a building, means a person by whom its rent is payable, and on the tenant's death

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) in the case of a nonresidential building, his heirs."

8. The definition of a tenant in Section 2(h) of the West Bengal Premises Tenancy Act, 1956 reads as under:

"Tenant" means any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and also any person continuing in possession after the termination of the tenancy but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction." (Emphasis supplied)

9. Under Section 2(h) of the West Bengal Premises Tenancy Act, there was no

provision that the heirs will inherit tenancy rights only when they resided with the tenant at the time of the his death, Secondly, the Supreme Court in Jagdish Chandra's case (supra) made a distinction between contractual tenant and statutory tenant and in the context of above noted definition their Lordship of the Supreme Court held that with regard to contractual tenant all the heirs would inherit tenancy rights irrespective of the fact whether they were normally residing or not with the tenant the right was personal and on his death devolves only in the manner provided by the Statute. It was observed:

?10. Undisputably a contractual tenant has an estate or interest in the subject matter of the tenancy and heritability is an incidence of such tenancy. In the subsense of any provision in the Act to the contrary, all the heirs of such a tenant would therefore, on his death step in his shoes. The same could not however be said about the statutory tenant in view of the law laid down in Anand Nivas (P) Ltd. A.I.R. 1965 SC 414 (Supra) as quoted above and the plain and unambiguous language of S. 2(h), as it then stood. In other words, the heirs of a statutory tenant had no right to the tenancy as such a right was personal and the Act did not make any provision regarding the manner in which such right was to devolve.? (Emphasis supplied)

10. So far as provision of Section 3(a)(i) of the Act is concerned, there is specified provision that in case of residential building only such heir will inherit tenancy rights who resided in the building at the time of death of the tenant. Further, under this provision there is no distinction between contractual and statutory tenant. Even otherwise after the death of the tenant if an application is allowed against the tenant under Section 21(1)(a) of the Act his tenancy stands determined after expiry of 30 days and the heirs would be only statutory tenants. It has been held in various decisions of this court that in a case of residential building only such heirs of the deceased tenant would inherit the tenancy rights who were normally residing with him in the building at the time of his death vide Smt. Sarvari Begum v. District Judge, 1981 A.R.C. 22; Suresh Kumar Sharma v. IInd Additional District Judge, Etawah, 1981 A.C.J. 152 Smt. Asha Devi vs. Vth Additional District Judge, Gorakhpur, 1991(2) ARC 172 and Smt. Kamla Devi vs. Rent Control and Eviction officer/ Additional District Magistrate (F & N), Jhansi, 1992 (2) A.R.C. 233. In view of the above specific provision of the Act rights of the deceased tenant who normally resided with him in residential building at the time of his death.

11. Sri N.C. Rajvanshi, learned counsel for Sri Vikrant Bagley has challenged the finding recorded by the Prescribed Authority that Vikrant Bagley is not adopted son of Dr. Ram Narain Bagley and further he normally did not reside with him in the building in question at the time of his death. It is urged that Dr. Ram Narain Bagley had executed a registered adoption deed in favour of Vikrant Bagley on 8.6.1992 and that conclusively proved that he was adopted son of Dr. Ram Narain Bagley. The prescribed authority in his detailed order has given various reasons and found that this adoption deed was not executed in a sound mental

condition. He was only son of his natural father. He never resided with the deceased Dr. Ram Narain Bagley and there were various other circumstances with established that he is not adopted son of Dr. Ram Narain Bagley. Smt. Sushila Kumar also denied that Dr. Ram Narain Bagley had adopted Vikrant Bagley. The finding recorded by the Presctibed authority does not suffer from any manifest error of law.

12. In view of the fact that there is no other heir left by the deceased tenant, the present writ petition does not survive. I, however, permitted the parties to argue the case on merits as well.

13. Learned Counsel for the parties urged that respondent No. 1 acted illegally in rejecting the application filed by the deceased petitioner to condone the delay in filing the appeal. The detailed necessary facts have already been narrated above. The sole contention of the petitioner was that he was not served with any summons or notice by the Prescribed authority. He did not engage Sri Shiv Nath Sharma as his counsel. Neither he filed written statement nor entered into any compromise. The signatures on all those papers are fraudulent. It is, however, not denied that the landlordapplicant from the petitioner. The explanation was offered by him in the rejoinder affidavit that Possession was given to the landlord as early as in the year 1975 but he never said that any rent was redused and did not establish that fact convincingly. It was never shown that Shiv Nath Sharma was not a practicing advocate. It was further found by respondent No. 1 that Brij Mohan Agarwal, who was impleaded as opposite party No. 2 in the application under Section 21(1)(a) of the act, was a cotenant and he never denied that no compromise was entered into by him or his cotenant Dr. Ram Narain Bagley. Considering the prima facie evidence on the record, respondent No. 1 found that the version of the petitioner cannot be accepted. It was made further clear that if any fraud was practiced upon the petitioner it was open for him to file a regular suit.

14. In the circumstances, the application to condone the delay after four years of the passing of the order by the prescribed authority was rightly rejected. There is no merit in this writ petition and it is accordingly dismissed.