

(2001) 05 AHC CK 0023
In the Allahabad High Court
Case No : C.M.W.P. No. 22477 of 1997

Ram Nath Gupta

APPELLANT

Vs

Special Judge (E.C. Act)/Addl. District Judge, Agra and others

RESPONDENT

Date of Decision : 23-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(3), 21(1), 22

Citation : (2001) 3 AWC 1795

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Prakash Gupta, for the Appellant; Rajesh Tandon, V. Singh and Dinesh Tiwari and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—The premises in dispute is portion of property No. 6/246, Barah Pura, Belanganj, Agra, consisting of two halls one kitchen, one kothri, gaukh, latrine, kitchen bath on the first floor and a small kothri on the second floor. The respondent Nos. 3 and 4 are the landlords of the same and they moved an application for release u/s 21 (1) (a) of U.P. Act No. XIII of 1972 (hereinafter called the Act), Annexure-1 to the petition. The application for release was allowed by the prescribed authority by order, Annexure-4 to the petition on 18.2.1994. Against that order, the petitioner preferred appeal No. 110 of 1994 u/s 22 of the Act. The said appeal has also been dismissed by judgment, Annexure-12 to the petition on July 5. 1997. Aggrieved by it, the petitioner tenant preferred this petition invoking extraordinary Jurisdiction of this Court under Article 226 of the Constitution of India with the request that both the orders be quashed.

2. I have heard Sri Prakash Gupta, learned counsel for the petitioner and Sri Rajesh Tandon, senior advocate, for the respondent No. 3.

3. There are concurrent findings of fact that the need of the respondent No. 3 is bona fide to whom the disputed portion was given in partition. There is also concurrent findings of both the courts below that hardship tilt in favour of respondent No. 3. These concurrent findings of fact cannot be interfered with in this petition as has been held by this Court and the Apex Court in the case of Kamla Sarin v. Shyam Lal and others. 1984 (2) All RC 344 ; Muni Lal and Others Vs. Prescribed Authority and Others, ; Natthu Lal v. Radhey AIR 1974 SC 1696 Babhutmal Raichand v. Laxmibai AIR 1975 SC 1296 Mrs Labhkuwar Bhagwani Shaha and Others Vs. Janardhan Mahadeo Kalan and Another, ; Ram Rakesh Pal and another v. Ist Addl. District Judge and others 1967 UPRCC 376 Jagan Prasad v. District Judge and another, 1976 UPRCC 342 Laxmi Narain v. IInd Addl. District Judge and another, 1977 UPRCC 230 Smt. Nirmala Tandon v. Xth Addl. District Judge, Kanpur Nagar 1996 (2) ARC 409 and in the case of Kamleshwar Prasad v. Praduman Ji Agarwal, 1997 (1) ARC 627.

4. However, learned counsel for the petitioner contended that both the courts below has erred in relying on the Explanation (i) of sub-clause (1) of Section 21 of the Act. It has not been disputed that one son of the petitioner has constructed a house in Kamla Nagar, Agra. However, it is contended that above Explanation (i) does not apply for the reason that there is no evidence that the son was normally residing with the petitioner and is wholly dependent upon him. Learned counsel for the petitioner has referred to the decision of the Apex Court in Harish Tandon v. Addl. District Magistrate, Allahabad, 1995 (1) ARC 220. The following portion of paragraph 19 is relevant :

"So far as sub-section (3) of Section 12 is concerned, it says that in case of residential building, if the tenant or any member of his family builds or otherwise acquires, in a vacant state or gets vacant a residential building in the same city, municipality, notified area or town area, in which the building under tenancy is situate, the tenant "shall be deemed to have ceased to occupy the building under his tenancy". It was submitted that if full effect is given to the deeming clause, then in a house where the tenant was living with his four sons, one of his sons getting any accommodation in the same city or town, the tenant along with his remaining three sons have to be evicted which shall lead to an absurd result. Although we are not concerned in the present case with the scope of sub-section (3) of Section 12, but in order to appreciate the submission made on behalf of the respondents, we may point out that sub-section (3) of Section 12, does not conceive that if one of the sons living with the tenant, who is not wholly dependent on such tenant, acquires any other residential building in the same city or town, then even the original tenant shall be deemed to have ceased to occupy the building in question."

5. From the arguments of learned counsel, therefore, the only question that arise for consideration is whether the courts below has erred In applying the above Explanation in the present case.

6. As already stated, the construction of a house by the son of the petitioner has

not been denied. In paragraph 18 it has been mentioned by the petitioner that he has not constructed any kothi in Kamla Nagar, Agra and that his elder son is living separately from him and he has got his family. The other fact in this regard has been pleaded in paragraph 35 of the written statement by the petitioner, it was pleaded in this paragraph that his family consists of wife and three sons. His one son has constructed a kothi. However, he has not pleaded that prior to the construction of the said kothi, that son was not living with him nor he has alleged that his son who has constructed the kothi, is doing some separate business, profession or trade and was not dependent upon him. Therefore, from the written statement filed by the petitioner, copy of which is Annexure-2 to the petition, the argument cannot be accepted that the above Explanation does not apply.

7. In this connection, the findings recorded by the prescribed authority in the judgment, Annexure-4 to the petition are also material. He has observed that the petitioner had admitted that his two sons had acquired a property and are living in the property with their families. However, his third son Mahendra Kumar Gupta with his wife is living with the petitioner. The petitioner also admitted that due to illness of his wife, he shifted to house No. G-7 Kamla Nagar, Agra, where the wife of the petitioner also died. The petitioner has also admitted that his sons are members of the family and all of them are running a factory with the petitioner which is the source of livelihood of all of them. After this admission of the petitioner, the above Explanation (1) to Section 21 (1) applies to the premises. The contrary argument of the learned counsel for the petitioner cannot be accepted.

8. It may also be added that the above observation of the prescribed authority In the judgment-Annexure-4 to the petition were also not challenged in the appeal, Therefore. It cannot be said that the Explanation (1) to Section 21 (1) does not apply to the present case.

9. In the result, there is no ground to Interfere In the concurrent findings of both the courts below. The petition is without merit and is hereby dismissed.

10. After the petition had been dismissed, Sri Prakash Gupta urged that the petitioner is to be displaced from the premises and would require sometime to shift to another accommodation. It was prayed that six months" time may be allowed to the petitioner to vacate the accommodation.

11. With a view to balance the rights of the parties and to mitigate the hardship which occasions due to the shifting by an order of release, I feel that it would be just and proper to allow reasonable time to vacate the premises to the petitioner. Accordingly, the petitioner is allowed six months time to vacate the premises and the order of release shall be kept in abeyance and shall not be executed for six months provided the petitioner fulfils the following two conditions :

(i) he deposits in advance the amount of rent due and further rent for six months before the prescribed authority within one month from today which shall be paid

to the respondent No. 3.

(ii) he files an undertaking on affidavit within one month from today before the prescribed authority that he shall hand over vacant possession in a peaceful manner to the landlord-respondent on the expiry of six months from today.

12. In case of the failure of the petitioner to abide by any one of the above two conditions within the time specified, the release order may be executed.