

(1979) 10 AHC CK 0040

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 547 of 1979

Rameshji Nigam and others

APPELLANT

Vs

District Judge, Kanpur and others

RESPONDENT

Date of Decision : 30-10-1979

Acts Referred:

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

Citation : (1979) 10 AHC CK 0040

Hon'ble Judges : Murlidhar, J

Final Decision : Dismissed

Judgement

Murlidhar, J.

This landlord's petition order Article 225 of the Constitution is directed against an appellate order of the District Judge, dated 131078 in proceedings under Section 21, Act 31 of 1972 by which the petitioner's application for release was dismissed.

The brief facts are these: The petitionerlandlords own family consists of eight members and they occupy the whole firstfloor of the building in question. This consists of five rooms, a kitchen, store and Dochhatti with a height of 5' 9" and a garage on the groundfloor. The groundfloor portion of the house is in two parts one part having two rooms, verandah, kitchen and courtyard Jagdish Narain Nigam with a family of five members is residing. He is the maternal uncle of the petitioners and the petitioners" grandmother Smt Shyam Kumari who was the former owner of these premises had got this portion released on the ground that due to her sons brotherin law Jagdish Narain Nigam who was residing as a member of her family and being a Professor of a College required separate place for his own use she needed the additional accommodation. There is another portion occupied by the respondent Raghu Nandan Singh as a tenant at Rs.11/ per month. It is with regard to this portion that the application under Section 21

was initially moved in January 1973 by Smt. Shyam Kumari on the ground of needs of her growing family. This was decided in 1974 but the appellate Court in 1975 remanded the case for rehearing and a fresh decision after considering comparative hardship. Meanwhile the original applicant died and the petitioners who are her legatees were brought on record. The tenant contested the application.

The Prescribed Authority found that the petitioner's need for additional accommodation was genuine. It held that Jagdish Narain was not a tenant of the petitioners but a close relation and licensee but went on to observe that even if he were taken to be a tenant, it will make no difference because the landlord was entitled to choose the tenant whose accommodation he wants to get released for satisfying his need. It further held that after retirement Raghu Nandan Singh seemed to have settled in the village and that only one of his sons with his own family was staying in the disputed premises. The authority observed "the opposite party is the tenant and not the son of the opposite party. The needs of the son are not to be seen." The comparative hardship test was also found to be in the petitioner's favour. On these findings, the application was allowed. In appeal the District Judge has reversed the decision. His findings are (1) Jagdish Narain was a tenant. He had appeared as a witness for petitioners and admitted that his house was under construction and given out that he would shift when it was completed. Since then it had been found by a Commissioner that the house had been completed and let out at a rent of Rs350/ per month and the circumstance showed collusion between the petitioner and Jagdish Narain (2) the petitioners' conduct in leaving Jagdish Narain undisturbed even though he could have got Jagdish Narain's portion easily released shows absence of bona fides in the alleged claim of pressing need for additional space (3) Raghu Nandan Singh as well as his other son employed at Urtnao with his family were also living in the disputed premises and the sons being members of the tenant's family, their need was the tenants' need for the purpose of comparison of hardship, (4) the landlord could also use the Dochhatti having a window for residence and (5) comparative hardship of the tenant would be greater than that of the landlord.

The petitioners have challenged the order of the District Judge mainly on the ground that it was illegal to find that they did not bona fide require the disputed premises on the basis that they could have Jagdish Narain's portion. It was emphasised that it is for the landlord to choose the tenant whose portion he will get released and the authority cannot impose its preference upon him. *P. B. Desai v. C. M. Patel* (1) was cited in this connection. It was urged that the authority should be guided only by considerations of accommodation and need in assessing bona fide requirement and not by the choice of the tenant whose portion is asked to be released. It is, however, contended that in the present case the District Judge had disbelieved the case of need for more accommodation only because Jagdish Narain's portion was not chosen for release. I am unable to accept this contention. The Supreme Court view in *P. B. Desai's* case, as the learned District Judge has also cogently observed, is that the landlord has a

choice between the tenants for purposes of release where the broad picture regarding availability of accommodation is the same. In such a case the tenant was not allowed to urge that as another occupant was a mere licensee, the claim for additional requirement could and should be met by his (licensee's) portion. The Supreme Court has, however, noted that the portion was not available for occupation. It was in this background that the Court observed that it is not the juridical possession of the landlord that is material for judging the sufficiency of accommodation at his disposal and his bona fide requirement of additional area but availability of extra accommodation. Therefore, where it can be found that the accommodation in possession of some tenants or licensees could be available to the landlord without any difficulty and yet he does not obtain occupation of that accommodation and moves under Section 21 against another tenant the conduct can legitimately be taken to throw a doubt on his plea of bona fide requirement of more space at any rate unless some convincing explanation is offered. In the present case irrespective of whether the status of Jagdish Narain be treated to be a licensee or a tenant the portion occupied by him could be easily available to the landlord when Jagdish Narain had constructed his own house. If he was a licensee, the license could be terminated. Infact Jagdish Narain had himself appeared as a witness for the landlord and stated that he would shift when his house was complete but this was not done and the house was let out at Rs.350/ per month. If he be regarded as a tenant (though this was denied by the petitioners and Jagdish Narain) the portion would remain the same for his view of explanation I to Section 21(1) Jagdish Narain after having built his own house would be barred from raising any objection to the release application. Secondly in this case the landlord could also have taken the position that a deemed vacancy had occurred under Section 12(3) of the Act. I am unable to find any infirmity in the view of the District Judge that in these circumstances the landlord's failure to move against Jagdish Narain made their claim of bona fide requirement suspicious. There is then no ground for assailing this finding under Article 226.

If the finding on the question of bona fide requirement is against the landlord the occasion for comparison of hardship likely to be caused to the parties by rejection or allowing of the application does not arise. It is, therefore, not necessary to go into the attack on the District Judge's finding on comparative hardship on the ground of alleged migration of Raghu Nandan Singh to village and allotment subsequently finding this petition of a house at Unnao to the son posted at Unnao. Suffice it to say that even if one son of Raghu is living with his own family in the accommodation and Raghu Nandan Singh himself after retirement mostly lives in the village, it will be a case of Raghu Nandan Singh's need. Merely entry of his name in the electoral roll of the village would not mean that Raghu Nandan Singh had shifted from the accommodation. Indeed if that were the case the petitioners should have applied for release of the accommodation under Section 16 and not for release under Section 21. In these circumstances the District Judge's finding on the question of comparative

hardship also does not show any infirmity that may call for interference under Article 226 of the Constitution.

In the result the writ petition fails and is hereby dismissed. There shall be no order as to costs.