
(2006) 05 AHC CK 0006
In the Allahabad High Court
Case No : C.M.W.P. No. 30338 of 2006

Ramji Das and Another

APPELLANT

Vs

Rajendra Mohan Mathur and Another

RESPONDENT

Date of Decision : 26-05-2006

Acts Referred:

Air Force Act, 1950 — Section 2
Army Act, 1950 — Section 2(1)

Citation : (2006) 3 AWC 2596

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Advocate : Rajiv Joshi, for the Appellant; P.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Krishna Murari, J.—Heard Sri Rajiv Joshi, learned Counsel for the petitioners and Sri P.K. Jain, learned Counsel for the respondents.

2. This is tenant's petition challenging the order dated 28.4.2006, passed by the Additional District Judge, Muzaffarnagar, rejecting the application for amendment of the written statement.

3. The facts are that respondent No. 1 is a retired Colonel of Indian Army and respondent No. 2 is Wing Commander in Indian Air Force and thus are the soldiers within the meaning of the phrase comprised in Section 21(1) Explanation (iii) of U.P. Act No. XIII of 1972 (for short "the Act"). An application u/s 21(1)(2) of the Act was filed by them for release of the disputed accommodation which is in the tenancy of the petitioners. The release was sought on the ground that respondent No. 1 has retired from the Army and respondent No. 2 is going to retire on 30.9.2006 and the disputed accommodation was required by them for residential purposes. The prescribed authority vide order dated 18.5.2005, allowed the release application. Against the order of the prescribed authority the petitioner-tenants went up in revision. During the pendency of the appeal an

application was filed seeking amendment in the written statement. By means of the proposed amendment it was sought to be added in the written statement that respondents-landlords were having sufficient residential accommodation at Delhi and Gurgaon respectively and during the pendency of the appeal it came to the knowledge that respondent No. 2 is having a huge bungalow at A-A-3/110, Janakpuri, Delhi, which was in the name of Smt. Minaxi Mathur wife of respondent No. 2 and they were residing in the said bungalow. It was also sought to be added in the written statement that respondent No. 1 was also having a huge bungalow known as "Mathurs" at F-42, Tulip Garden, Gurgaon, Haryana where he was residing along with his family. The respondents-landlords contested the amendment application. The appellate authority vide order dated 28.4.2006, rejected the amendment application. Feeling aggrieved the tenants-petitioners have approached this Court by means of instant petition.

4. The appellate authority rejected the amendment on the ground that the facts sought to be pleaded by way of amendment have no relevance at all to the controversy and the amendment application has been filed to delay the disposal of the proceedings.

5. It has been urged by learned Counsel for the petitioners that amendment sought by the petitioners was necessary for determining the real controversy in between the parties and went to the root of the matter and the appellate authority has wrongly rejected the same.

6. In reply it has been urged by learned Counsel for the respondents that the facts sought to be brought on record by way of proposed amendment were not at all relevant for the purpose of determining the controversy between the parties as in case of an application moved by an Indian Soldier for release of the accommodation in view of Explanation (iii) and the fourth proviso neither bona fide need is required to be proved nor comparative hardship is to be taken into consideration,

7. I have considered the argument advanced by learned Counsel for the parties and perused the records.

8. Explanation (iii) to Section 21 reads as under:

(iii) Where the landlord of any building is:

(i) a serving or retired Indian soldier as defined in the Indian Soldiers (Litigation) Act, 1923 (IV of 1925), and such building was let out at any time before his retirement, or

(ii) a widow of such a soldier and such building was let out at any time before the retirement or death of her husband, whichever occurred earlier, and such landlord needs such building for occupation by himself or the members of his family for residential purposes, then his representation that he needs the building for residential purposes for himself or the members of his family shall be deemed sufficient for the purpose of Clause (a), and where such landlord owns

more than one building this provision shall apply in respect of one building only.

9. Fourth proviso relevant for purpose is as under:

Provided also that the prescribed authority, shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.

10. Under the Indian Soldiers (Litigation) Act, 1925, the words "Indian Soldier" has been defined as any person subject to the Army Act, 1950 or the Indian Air Force Act, 1950. u/s 2(1)(a) of the Army Act as well as 2 (a) of the Air Force Act, all the officers, Junior commissioned officers and warrant officers of the Indian Army and officers and warrant officers of the Indian Air Force are subject to the said two Acts respectively.

11. It is undisputed that respondents-landlords are covered under the definition of Indian soldier as defined in Indian Soldiers (Litigation) Act, 1925 and as such Explanation (Hi) is fully attracted in the case.

12. From a bare reading of Explanation (iii) it becomes clear that in cases covered in the said Explanation a mere representation by the landlord that he needs the building for residential purposes for himself or the members of his family shall be sufficient for the purpose of Clause (a). Thus, Explanation (iii) is a deeming proviso and is in the nature of an exception which has the effect of lifting rigour of proving the bona fide need by the landlord. In view of legal friction created by Explanation (iii) the need of landlord is to be deemed sufficient on the existence of the condition envisaged by the said Explanation.

13. In view of the fourth proviso to Section 21(1) in cases covered under the Explanation the comparative hardship has not been taken into consideration. From a perusal of the aforesaid provision it is clear that in cases covered by Explanation (iii) the landlords do not have to prove either their bona fide need nor the issue of comparative hardship is required to be considered while deciding the release application.

14. In view of the aforesaid, facts sought to be added by the tenants-petitioners in their written statement by way of amendment have no relevance or significance at all. These facts would have had some relevance or bearing in case the question of bona fide need and comparative hardship were to be considered. However, since the case of respondents-landlords is clearly covered by Explanation (iii) and they were not required to prove their bona fide need or comparative hardship, the amendments are totally irrelevant. I find no illegality in the order impugned in the writ petition rejecting the amendment application.

15. The writ petition accordingly, fails and is dismissed in limine.