
(2004) 12 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 51840 of 2004

Ravindra Kumar

APPELLANT

Vs

Kamlesh Chand Dixit and Others

RESPONDENT

Date of Decision : 21-12-2004

Acts Referred:

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

Citation : (2005) 1 ARC 226 : (2005) 3 AWC 2308

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : G.S.D. Mishra and Ramesh Upadhyaya, for the Appellant; Madhav Jain, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—Heard Counsel for the parties.

2. The petitioner, by means of this writ petition, has challenged the order passed by the prescribed authority which has been affirmed by the appellate authority under the provisions of Act No. 13 of 1972 (hereinafter referred to as the Act).

3. Brief facts of the case are that respondent-landlord filed an application u/s 21 (1) (a) of the Act for release of the accommodation in question in his favour on the ground that he is employed in defence force and he is retired or likely to be retired at the time the application was filed. He decided to settle down in Agra after his retirement. The application was, therefore, filed for the release of residential accommodation of the landlord. The petitioner contested the application on the ground that he is tenant of only two rooms and the accommodation in question is a big accommodation. In these circumstances the landlord, in fact, does not require the accommodation bona fide. In fact his intention is to sell out the property after getting it released.

4. The prescribed authority arrived at the conclusion that the landlord bona fide need the accommodation for his residential purposes. So far as question of selling it out after getting released is concerned the prescribed authority has stated that in case the property is sold out as alleged by the petitioner he will have a right of re-entry. In these circumstances the prescribed authority arrived at a conclusion that the need of the landlord is bona fide. On the question of comparative hardship the landlord was given benefit of provisions of Explanation (iii) of Section 21 which reads as under:-

"(iii). Where the landlord of any building is-

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

(2) 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 purposes of Clause (a), and where such landlord owns more than one building this provision shall apply in respect of one building only."

5. In view of the aforesaid provision once the prescribed authority comes to the conclusion that the need of the landlord is bona fide the comparative hardship need not be gone into. In these circumstances the prescribed authority allowed the application filed by the landlord and directed release of the accommodation in question.

6. Aggrieved thereby the tenant preferred appeal before the appellate authority u/s 22 of the Act. The appellate authority, after considering the material on the record, has affirmed the finding recorded by the prescribed authority with regard to bona fide need of the landlord. The appellate authority, therefore, dismissed the appeal. Thus this writ petition.

7. Learned Counsel for the petitioner assails the findings recorded by the prescribed authority and affirmed by the appellate authority regarding bona fide need on the ground that he is tenant of only two rooms whereas the accommodation in question is a large residential accommodation. Therefore, he prayed that the tenant may not be subjected to eviction considering the tenant has passed about 40 years in the accommodation in question.

8. The aforesaid argument advanced on behalf of the tenant can be consider only with regard to comparative hardship but since in view of statutory provision referred to above in case of landlord being a member of defence force, the question of comparative hardship need not be considered and this argument is not open to the tenant. So far as bona fide need is considered the finding arrived at by the prescribed authority and affirmed by the appellate authority does not

suffer from any error much less an error of law so as to warrant interference by this Court under Article 226 of the Constitution of India in view of the law laid down by the Apex Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others,

9. No case for interference by this Court under Article 226 of the Constitution of India is made out. This writ petition has no force and is liable to be dismissed.

10. Lastly it is submitted by the learned Counsel for the petitioner that the tenant may be granted some reasonable time to vacate the accommodation as his children are studying. Considering the facts and circumstances of the case and in the interest of justice the order of eviction of the petitioner shall not be executed till 30th June 2005 provided the petitioner gives an undertaking within one month from today before the Prescribed authority that he will hand over peaceful vacant possession of the accommodation in question to the landlord on or before 30th June 2005, provided also that the tenant deposits within the same one month the entire arrears of rent and damages at the rate of rent, if not already paid to the landlord and continue to deposit the same month-wise, as and when the same falls due, by 1st weeks of succeeding month till he remains in possession of the accommodation in question or till 30th June 2005 whichever is earlier. In the event of default of any of the above conditions the order of eviction shall be executed.

11. With the aforesaid observation this petition has no force and is accordingly dismissed.