

(1987) 11 AHC CK 0085
In the Allahabad High Court
Case No : Writ Petition No. 5454 of 1986

R.K. Mathur

APPELLANT

Vs

Rajendra Mohan Mathur and Another

RESPONDENT

Date of Decision : 17-11-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 14A, 2, 21, 21(1A), 25B(5)

Citation : (1988) 1 AWC 34

Hon'ble Judges : Kamleshwar Nath, J

Bench : Single Bench

Advocate : S.M.K. Choudhary, for the Appellant; P.K. Khare and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Kamleshwar Nath, J.—This petition, under Article 226 of the Constitution of India, is directed against an order dated 21-7-1986 passed by the First Addl. Civil Judge, Lucknow, and contained in Annexure-5 to the writ petition, setting aside an earlier order dated 27-2-1985 of the Prescribed Authority under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, contained in Annexure-4 to the petition, whereby the application u/s 21 of the Act by opposite party No. 1, was dismissed.

2. House No. 510/133 New-Hyderabad, Lucknow, was held by petitioner R. K. Mathur as a tenant for a very long time, originally let out by Radhey Mohan Mathur the brother of opposite party No. 1 Rajendra Mohan Mathur. In course of time, opposite party No. 1 claimed to be the owner-landlord and filed an application u/s 21(1-A) of the Act for release of the house in his favour on the ground that he had to vacate a public building which he was occupying for residential purposes because he was to retire from service on 31-7-1983. Annexure A-1 is the copy of the application. In para 1 of the application be

described that he is the owner-landlord of the house of which the present petitioner is the tenant, that he was occupying Public Premises No. DG 947, Sarojini Nagar, New Delhi, as Section Officer in the Ministry of Defence, Union of India, New Delhi, but since he retired from that service on 31-7-1983, he was liable to vacate the premises. In para 5 he said that he had no other accommodation except the one in dispute, and, therefore, he was entitled to have it vacated from the petitioner.

3. The application was contested by the petitioner by a written statement, whose copy is Annexure A-2. In this written statement he admitted Para 1 of the application Annexure A-1. In para 5 of the written statement he said that the applicant had at his disposal another accommodation in Haryana Estate opposite Mandi House, Sikandarabad Road, New Delhi, which was allotted in the name of the wife of Rajendra Mohan Mathur opposite party No. 1. He added that the application u/s 21(1-A) of the Act was not maintainable because opposite party No. 1 had not served six months notice upon him before filing it, and after purchasing the house. The petitioner explained that originally he was the tenant of Radhey Mohan Mathur from whom the house was purchased by opposite" party No. 1 in or about the year 1980, and that Radhey Mohan Mathur for himself and for his two brothers, including opposite party No. 1 had applied to the Competent Authority (under Urban Land Ceiling Act) for sale of the house of the petitioner's wife in 1979. The negotiations for the sale, however, fell subsequently.

4. Opposite party No. 1 filed a replication affidavit Annexure-A4, in which he stated that he had not purchased the house of Radhey Mohan Mathur, but had received it by family settlement. He said that Radhey Mohan Mathur, being the eldest amongst the brothers, had been realising rent for the accommodation on behalf of the family members, but since after the family settlement in 1975 the premises fell exclusively into his (opposite party No. 1) share. He explained that his wife was serving the Haryana Estate and was residing in the accommodation of the State at New Delhi, but her post was transferable and that she had already made up her mind to settle down at Lucknow on his retirement, and that he was under no obligation to stay at New Delhi after his own retirement simply because his wife was employed in New Delhi.

5 The learned Prescribed Authority in his judgment dated 27-2-1985, Copy Annexure-4, held that it was not possible to accept the contention of opposite party No. 1 that he had obtained the house by means of a family settlement because there was no document to establish it. He observed that the family settlement, if any, required registration under the Indian Registration Act, and that it was not possible to accept the oral testimony of opposite party No. 1 in this regard. He also found that there was no document of proof of purchase of the house by opposite party No. 1, and that in view of the tenancy by allotment describing Radhey Mohan Mathur to be the landlord, the application u/s 21(1A) of the Act was liable to be dismissed. Alternatively, he held that even if opposite

party No. 1 got the house by family settlement, he was bound to give notice to the petitioner u/s 21 of the Act. He lastly observed that it was futile for opposite party No. 1 to contend that while his wife would remain in employment at Delhi, he would live all alone in Lucknow and, therefore, so long as his wife has residential accommodation in Delhi by virtue of her employment, opposite party No. 1 has no necessity for the disputed house. On this ground the learned Prescribed Authority dismissed the application.

6. The learned appellate court did not agree with the findings of the Prescribed Authority. He noticed that the petitioner had admitted in his own written statement that the opposite party No. 1 was his landlord, and that the money order of rent was received by opposite party No. 1 at Delhi. Proceeding on that basis, he observed that the points, which arose for consideration in the case, were whether the present opposite party No. 1 was in occupation of the public building for residential purpose, and whether he had to vacate the same on account of the cessation of his employment. He remarked that if those points were answered in affirmative, the application of opposite party No. 1, the landlord, must be allowed.

7. Learned appellate court considered the evidence on those points and held that not only opposite party No. 1, according to documents and affidavit filed by him, was not entitled to retain the public premises occupied by him as an employee of the Defence Ministry, but the allotment in his favour had actually been cancelled with effect from 30-9-1983.

8. Examining the question of opposite party No. 1 getting the property exclusively by means of a family settlement in 1975, he observed that the Prescribed Authority erroneously held that the theory of family settlement could not be accepted because the settlement was not registered and was not in writing, he held that neither writing nor registration was required under law as it was not a transfer. For the same reason he held that no notice was required to be given by opposite party No. 1 to the petitioner in respect of the family settlement. He, therefore, allowed the appeal and directed the present petitioner to vacate the house within one month.

9. Learned Counsel for the petitioner has contended that the learned appellate court did not examine the question of relationship of landlord and tenant which he was bound to do in view of the parties' pleadings. It is not quite correct to contend that the appellate court did not examine the question of relationship of landlord and tenant. The appellate court referred to the affidavit dated 11-11-83 of opposite party No. 1 mentioning that a family settlement had taken place in the year 1975 whereby the property fell in the exclusive share of opposite party No. 1 of course the appellate court did not discuss the point in a little more detail, apparently because the Prescribed Authority rejected the theory of family settlement only on the ground that there was no documentary evidence and proof thereof. Indeed, the Prescribed Authority also considered the alternative angle of the validity of the family settlement assuming that it had taken place. The

appellate court was perfectly justified in its view that a family settlement, among the members of a Joint Hindu Family, did not require to be reduced into writing, and since that was so there was no question of any requirement of its being registered. It" is not the law, therefore, that the theory of family settlement could not be accepted in the absence of documentary evidence. Further, in para 2 of the written statement of the petitioner, he admitted that he had despatched money orders to opposite party No. 1 at another address in New Delhi, which were received by opposite party No. 1. The purpose of that pleading basically was to show that opposite party No. 1 had given the address (525/C Sec. 3, R. K. Puram, New Delhi), other than the address of his official house (DO 947, Sarojini Nagar, New Delhi), to make out that perhaps he was not living in his official residence, but elsewhere. Nevertheless, the statement set out is an admission of the fact that he had sent money order, obviously for rent, to opposite party No. 1, and the latter had received it. Even the Prescribed Authority (sic) this situation at page 26 of the Paper Book.

10. Learned Counsel for the petitioner said that there were some water bills and House tax bills for , the years 1980-81 and 1981-82 in the name of Radhey Mohan Mathur, but all those papers cannot be taken note of at this stage because they were not filed before the Prescribed Authority. Particularly having regard to the specific pleading of opposite party No. 1 that Radhey Mohan Mathur had been dealing with the property as the eldest member of the family on behalf of the brothers including opposite party No. 1.

11. In view of the above features of the material on record before the Prescribed Authority, it is futile for the learned Counsel for the petitioner to contend that the appellate court erred in not deciding the question of relationship of landlord and tenant between the parties. The question was decided even though, so to say, summarily in the face of the admissions in the pleadings and the attending circumstances indicated above

12. Learned Counsel for the petitioner then contended that the Prescribed Authority had also recorded a finding that so long as the wife of opposite party No. 1 would continue to be posted in New Delhi, opposite party no 1 would not need the house in Lucknow, and there was no meaning in his contention that he would be better living alone rather than with his wife. The argument is that that was a finding recorded by the Prescribed Authority in respect of which the appellate court has not recorded any finding. Relying upon the cases of Mahavir Jain v. Addl. District Judge 1985 (1) ARC 368 and Jagdish Sahai v. H.M. Ahmad 1968 ALJ 899 he urged that since the appellate court had not specifically recorded a finding contrary to the finding of the Prescribed Authority, the decision of the appellate court cannot be sustained. In my opinion, the contention is mis-placed. The observation of the Prescribed Authority that opposite party No. 1 would in the natural course of human conduct reside with his wife at New Delhi, so long as the wife continued to be employed in New Delhi, is not enough. Section 21(1-A) confers an absolute right upon the landlord to get

back his property in the event of his retirement. The right is absolute in terms and is set out in the statute in the following words:

(1-A) Notwithstanding anything contained in Section 2, the Prescribed Authority shall, on the application of " a landlord in that behalf, order the eviction of a tenant from any building under tenancy, if it is satisfied that the landlord of such building was in occupation of a public building for residential purposes which he had to vacate on account of the cessation of his employment:

Proviso....

It will be seen that there is a statutory mandate on the Prescribed Authority to direct eviction of the tenant, and that the only condition requisite for doing so was to arrive at a satisfaction whether the landlord was in occupation of a public building for residential purposes which he had to vacate on account of cessation of employment.

13. Learned Counsel for the petitioner said that Sub-section (1-A) of Section 21 is an integral part of Section 21 of the Act as held in the case of Kalyan Rai Saxena v. II Addl. District Judge, Bulandshahr 1982 (1) ARC 363 : 1982 AWC 100 and, therefore, the bona fides and genuineness of the need of the landlord must be considered under Clause (1-A) as well. The decision relied upon does not say so widely. He has also referred to the case of Busching Schmitz Private Limited Vs. P.T. Menghani and Another, in support of his contention to show that not merely the order of the government to vacate the public premises is material, but also the consequential urgency to recover the own building of the landlord has to be considered. In my opinion, the decision does not lead to the inference to which the learned Counsel for the petitioner wants to arrive.

14. Nevertheless, on a consideration of the object of the Statute, an interpretation has been arrived at by this Court to signify that the necessity of the landlord to occupy the tenanted accommodation must also be considered. Learned ; counsel for the petitioner has correctly relied upon the case of Kalyan Rai Saxena (Supra) insofar as it has been held that Section 21(1-A) will not be attracted where the landlord already has a vacant accommodation which he can occupy in his own right after vacating the official accommodation allotted to him (Vide Para 8) ; the decision went on to lay down that if the landlord has already some accommodation in his possession, after vacating the official accommodation, but he considers that accommodation to be inadequate or unsuitable for his occupation, his remedy is u/s 21(1-A) which is attracted only where the landlord had to vacate an official accommodation allotted to him, and he is left with no accommodation whatsoever which he can occupy in his own right. The court went on to clarify that a temporary occupation by a landlord of some accommodation which he cannot use as of right pending the grant of his application u/s 21(1-A) cannot exclude the application of that provision. (Vide Para 23). The important angle of the decision to be taken note of is that the court has emphasised more than once that the accommodation which is or may

be in the occupation of the landjor, who is required to vacate the official accommodation, must be possessed by him in his own right the court made it clear that where the accommodation cannot be used by the landlord as of right, his remedy u/s 21(1-A) of the Act is preserved It is clear, therefore, that not every kind of accommodation, which the landlord is using for the time being, can deprive him of the right to have his own accommodation vacated from a tenant,,the deprivation is limited only to those cases where the accommodation, in the use and possession of the landlord, is so held by him in his own right. The use of a government building by the wife of the landlord, as an employee of the State of Haryana, is not in the landlord's use in his own right, it is at the lease and license of the wife. It cannot be held, therefore, that the landlord-opposite party No. 1 has no right to get the accommodation vacated from the petitioner simply because he can or does live with his wife in the house occupied by the latter in her capacity as a government employee of another State.

15. The case of *Busching Schmitz Private Ltd. (supra)* has already been considered by the Division Bench of our court in the case of *Kalyan Rai Saxena (supra)*. That was a case under the Delhi Rent Control Act, 1958. The question there was whether having regard to the provisions of Section 25B(5) of that Act in the landlord's application for release u/s 14-A, the Controller of Rent can justly refuse leave to the tenant to contest the application on the facts set out in the case. It (sic) could be entertained on the landlord's averment that he having been asked to vacate, must get into the possession of his own. The Supreme Court then set out an instance of a matter where the landlord has a vacant house of his own and on getting an order to vacate he moves into his vacant house, it was observed that the landlord could not thereafter demand recovery u/s 14A of the Act. Here also the noticeable feature is that the possession of the accommodation, which could disentitle the landlord to a remedy of summary eviction of the tenant, should have referred to the " house of his own ". That is why our Division Bench in the case of *Kalyan Rai Saxena (supra)* has laid down that the landlord should have a vacant accommodation which he can occupy in his own right.

16. Incidentally, it may be mentioned that on the facts of both these rulings, the claim of the landlord was upheld and that of the tenant was rejected by the courts. In the facts and circumstances of the present case, I am satisfied that opposite party No. 1 landlord is definitely entitled to have the disputed accommodation vacated by the petitioner. It is also noticeable that the landlord had retired on 31-7-83, and several years have passed since then ; it is not known how long the landlord's wife could also continue in her service further under the State of Haryana. It is high time, therefore, that the accommodation should be restored to the opposite party No. 1 landlord.

17. Learned Counsel for the petitioner lastly urged that the case may be remanded to enable the Prescribed Authority to record a clean finding on the questions of family settlement. He referred to the case of *Potti Lakshmi*

Perumallu Vs. Potti Krishnavenamma, to show that a family settlement in order to confer rights must be proved to have been acted upon. The decision is not material for the purposes of this case. The Prescribed Authority had considered the question of family settlement, and only stated that the oral evidence of family settlement could not be accepted in the absence of any document. He, therefore, clearly erred.

18. No other point has been urged in this petition.

19. The petition fails and is rejected, the petitioner is allowed one month's time to vacate the premises.