

(1979) 11 AHC CK 0050

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2057 of 1978

Sardar Mahendra Singh

APPELLANT

Vs

Seventh Addl.District Judge, Bareilly and others

RESPONDENT

Date of Decision : 15-11-1979

Acts Referred:

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

Citation : (1979) 11 AHC CK 0050

Hon'ble Judges : B.D.Agarwal, J

Final Decision : Allowed

Judgement

B. D. Agarwal, J.

This is a tenant's petition under Article 226 of the Constitution challenging the order dated March, 30, 1977 of the Prescribed Authority, Bareilly allowing the application filed by Smt. Santosh Kumari under Section 21 of the U. P. Urban Buildings" (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act and also the judgment and order of the VII Additional District Judge, Bareilly dated July 16, 1977 dismissing the appeal filed by the petitioner.

Smt. Santosh Kumari is the owner of Bungalow No. 7, Sepentine Road, Bareilly Cantt. She along with her family is residing in a portion of this bungalow. The petitioner is a tenant of another portion of this bungalow. Smt. Santosh Kumari filed an application under Section 21 of the Act. This application was filed in this month of March, 1976 on the ground that her husband was then posted a Deputy Superintendent of Police and he was to retire from service on August 31, 1976 upon attaining the age of superannuation and, therefore, it was necessary to shift to Bareilly and to live in their own house. It was further asserted that her family consisted of a son whose marriage has been settled and the marriage would be performed upon availability of the disputed accommodation. It was

further asserted that there are two daughters in the family. Other assertions were also made which need not be mentioned herein.

This application was duly contested by the petitioner. The Prescribed Authority allowed the application and directed release of the accommodation in favour of Smt. Santosh Kumari. The petitioner's appeal against this order of the Prescribed Authority was dismissed by the Additional District Judge on July 16, 1977 aggrieved. The petitioner has filed the present petition.

Learned counsel for the petitioner has submitted that both the Prescribed Authority as well as the Learned Additional District Judge have decided the matter, upon an application of the provisions of subsection (1A) of Section 21 of the Act, though this provision had no application to the instant case. It provides that if a landlord of a building was in occupation of a public building for residential purposes which he had to vacate on account of the cessation of his employment then he would be entitled to apply for an order of eviction of any tenant from that building under his tenancy. Clearly the person in occupation of a public building who has been required to vacate on account of cessation of employment must be the same person who is the landlord of the building, before he can take benefit of the provision. This provision applies to landlords in its strict sense. Smt. Santosh Kumari admittedly is the owner and landlady of the premises in question. She was not the person in employment but it was her husband Shri K. B. Mathur who was in Government service and who as now retired. This provision thus had no application to the facts of the instant case. This being so, the order of the Prescribed Authority as well as the Additional District Judge stand vitiated. Upon a persual of both the impugned orders, it is clear that the matter has been decided on the assumption that this provision applied.

The necessary consequence which ensues is that the application which was made under Section 21 of the Act, as is apparent from the true copy thereof filed as Annexure I to the rejoinder affidavit has to be decided on its own merit irrespective of Section 21 (1A) of the Act. In deciding this application, this authorities below will first have to determine as to whether the accommodation in question was bona fide required by the petitioner. As required by 4th proviso to this section, the authorities have to take into consideration the likely hardship to the tenant from the grant of the application as against 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. This has not been done under the impugned orders, obviously for the reason that the application was treated as if it was an application invoking the provision of Section 21 (1A) of the Act.

Sri Sirish Prasad Learned counsel for the landlady drawn my attention to Section 24B of the Act as also Rule 16 (1) (g) of the Rules framed under the Act. Since the matter has necessarily to be remanded it appears unnecessary to dwell upon the applicability of these provisions and I refrain from doing so. It will be open to the landlady to raise necessary pleas and to lead evidence in support thereof, in

case she so desires before the prescribed Authority.

For the aforesaid reasons, this petitioners is liable to success. The writ petition is, accordingly allowed. The judgment and orders dated July 16, 1977 passed by the VII Additional District Judge, Bareilly as also the judgment and order dated March 30, 1977 passed by the Prescribed Authority are quashed. In view of the fact that Shri K. B. Mathur, husband of the landlady has in the meantime actually retired and also since the landlady has relied upon the aforementioned provisions of Section 24B of the Act and Rule 16 (g) of the Rules, it appears necessary that the parties be permitted to make such amendments in their application and written statement as they may desire and to lead such further evidence as may appear necessary for the adjudication of the case. The Prescribed Authority will permit the parties to do so accordingly. Since the application under Section 21 of the Act was filed in the year 1976, it is but proper that this matter be decided by the Prescribed Authority at the earliest.

Under the circumstances, the parties shall bear their own costs.