
(2006) 08 AHC CK 0181
In the Allahabad High Court

Sarwati Devi and Others

APPELLANT

Vs

Bhagwan Singh Rajput and Others

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (2006) 4 AWC 3962

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the petitioners and perused the record.

2. The case of the petitioners, in brief, is that a release application u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972) was filed by the respondent-landlord on 8.10.2002. In the release application, the landlords pleaded that they are the legal heirs of late Sri Kishan Singh, the original landlord of premises No. 31/273 situate in Mohalla Raoli. Rakabganj Ward, Agra. After the death of Sri Kishan Singh, they have become landlords of the property in dispute.

3. The personal needs set up by the landlords is as under:

Sri Bhagwan Singh is the eldest son of Late Sri Kishan Singh having family of self, wife and two major children. He is a practising advocate since 1982. He alleges to be in occupation of only two rooms, one kitchen and bathroom on the first floor. This portion has been shown by green colour in the map attached to release application. It is also alleged that he, as a practising advocate requires more accommodation and needs drawing room, guest room, dining room and separate study room for children.

Sri Devendra Singh, second son of Late Sri Kishan Singh, i.e., respondent No. 2

Is In possession of another room shown by sky blue colour In the map and his family consists of self, wife and one son. It has further been stated that other son of Late Sri Kishan Singh namely Mohan Singh, i.e., respondent No. 3. Smt. Ramwati wife of Late Sri Kishan Singh, i.e., respondent No. 8, and Km. Yugal daughter of Late Sri Kishan Singh, i.e., respondent No. 11 are in occupation of one shop, one pauli and one store-cum-garage. Their portion is shown on ground floor by sky blue colour in the map attached to the release application. Smt. Rajesh Kumari, respondent No. 4 is widow of late Sri Bharat Singh, brother of Sri Bhagwan Singh. She has a family of self, two daughters and a son. She has the portion in first floor shown in violet colour in the map attached to the release application, which comprises of kitchen and bathroom.

Smt. Parwati, respondent No. 10 daughter of Late Sri Kishan Singh. She is married and is in occupation of the portion in the first floor shown by brown colour in the map attached to the release application. She occupies the room whenever she comes to her mother from her sasural. She has a family of self, husband and two children. Similarly Smt. Gyanwati, respondent No. 9, is another daughter of late Sri Kishan Singh. She has the portion on the ground floor shown by parrot green colour in the map attached to the release application and her family consists of self, husband and four children.

4. In the release application the landlords stated that one Sri Ram Sewak was the tenant of the accommodation on the ground floor on a rent at Rs. 50 per month consisting of one room, kitchen and common Angan as shown by red colour in the map attached to the release application. It is submitted that Sri Ram Sewak died in the year 1995 and the petitioners have become tenants of the residential accommodation; that the landlords have recently come to know that the petitioners had acquired a residential quarter/Flat, F-1038 EWS, Kamla Nagar, Agra, in vacant state within the municipal limits of Agra from Awas Vikas Parishad, Agra, therefore, the release application has also been filed u/s 21(1) Explanation one of fourth proviso. The respondent-landlords claim their bona fide and genuine need of the accommodation In question in the tenancy of the petitioners.

5. It will not be out of place to mention here that in the release application Smt, Ramwati, Mohan Singh and Km. Yugal are alleged to remain always ill. Further, there are total 10 tenants in the house in dispute. The tenant Suraj Pal, Smt. Maya Devi and Narendra Mohan have even built houses of their own in the city, but mala fideh) the landlords are being made victim. The landlords have also a shop in their tenancy. The landlords are not issuing any rent receipt inspite of receiving rent. Actually, the landlords want enhancement of rent of the residential accommodation from Rs. 50 to Rs. 200 and that of the shop from Rs. 50 to Rs. 300 per month.

6. On the same day of filing the release application the respondent-landlords also filed another application to appoint Court Amin to inspect the demised premises and the premises which is in possession of the landlords. The application was

allowed ex parte. The Court Amln inspected the property in question and submitted a detailed report annexing therewith a site plan as requested by the landlords. He inspected even those premises which were not disputed.

7. The tenants filed their written statement and stated that the married daughters of late Sri Kishan Singh do not come within the definition of the "family" as given In Section 3(g) of the Act. Sri Bhagwan Singh concealed the accommodation in his possession. He is in occupation of one room on the ground floor measuring 12.6" ? 6.5" which he is using as his office. This room adjoins the stairs. Sri Bhagwan Singh has wrongly shown this room in occupation of his mother Smt. Ramwati, his brother Mohan Singh and his two unmarried sisters. They actually live in another room measuring 11" ? 7.6" comprising a kitchen which have wrongly been shown as pauly (passage). They have a common latrine with Smt. Gyanwati and her family on the ground floor. Sri Bhagwan Singh has four rooms, first measuring 7" ? 12", second measuring 4.6" ? 18.9", third measuring 9" ? 16" and forth room measuring 9" ? 14.11" on the first floor and has separate kitchen and bathroom in between the two. Sri Bhagwan Singh has his separate stairs.

8. Apart from this, he has open space on the first floor also. The room measuring 7" ? 12" has been shown in possession of Smt. Parwati, the married daughter of late Sri Kishan Singh who actually lives in Orissa where his husband is posted as teacher in a Government school. As the accommodation with the respondent-landlords is surplus, therefore, they have allowed Smt. Gyanwati to occupy the accommodation in this house, though she being married daughter is not Included in the family of the landlords as per the Rent Control Act. According to Sri Bhagwan Singh, he is practising as an advocate since 1982. Earlier he never felt any need for drawing room, guest room, dining room and a separate room for study of his children. This need arose overnight on 8.10.2002 when he filed the release application. He did not give any notice to the tenants. Actually the release application is a counterblast to the F.I.R. dated 23.2.2002 which was lodged by Sri Shiv Kumar, one of the petitioners against Devendra Singh, Mohan Singh, respondent-landlords 2 and 3, Sumeet and Brijendra sons of Smt. Gyanwati, respondent-landlord 9, and one Gaura s/o Sri Ram Chandra u/s 307, I.P.C. as they attempted on the life of Vineet Kumar, petitioner No. 3, on the night of 22.2.2002. Vineet was given 60 stitches. The Court below rejected the bail application of all the accused except Mohan Singh who was given bail by this Court.

9. The plan filed with the release application is incorrect. On objection of the petitioners the court below vide order dated 20.10.2004 passed orders that the report of the Court Amin would be read in respect of disputed property only.

10. In the written statement due to subsequent events the petitioners moved amendment application paper No. 41C dated 20.10.2003 stating that Km. Yugal, sister of the landlords has been married on 12.5.2003 and she is happily living with her in-laws and further on the first floor one tenant who was in occupation

of one room measuring 8.10 ? 12 and another room measuring 7 ? 15.8 has vacated his accommodation and handed over the possession to Sri Bhagwan Singh on 14.4.2003. The landlords in their replication paper No. 45C dated 12.10.2004 replied this amendment in not specific words. They admitted that though their sister has been married, but since she remains ill she lives along with her in-laws in the house in question. As regards Narendra Mohan, it is stated that he has not handed over the accommodation to the landlords, but has locked the same, while Narendra Mohan filed his affidavit paper No. 53C dated 21.2.2004 stating that he has handed over the possession eight months ago, i.e., somewhere in June, 2003. Still the landlords in their rejoinder dated 2.5.2005 falsely accepted that they received possession from Narendra Mohan on 10.3.2004 when as per affidavit of Narendra Mohan he had given the possession of those rooms in June 2003. Thus, for nine months inspite of getting possession from Narendra Mohan, the landlords had been denying this fact.

11. Another subsequent evidence brought on record by the petitioners on 15.3.2004 was that Pushplata daughter of Smt. Gyanwati and sister of Sri Bhagwan Singh has been married on 24.11.2003, secondly the landlords have let out one interconnected shop to one Sahib Singh alias Pappu for storage of Bananas. In the plan this shop has been shown in the possession of Mohan Singh, which was lying closed earlier. The landlords accepted the marriage of Pushplata vide replication dated 31.12.2004 but regarding the shop they falsely stated that the storage of Bananas is being done by Sri Mohan Singh in his part time though he is serving in M/s. K. Export. This reply of landlords is totally false. It is a fact that they let out" this accommodation which if they wanted could be utilized for the alleged need of Sri Bhagwan Singh. The shop can very well be utilized, for office purposes if Sri Bhagwan Singh actually needs further accommodation for office purposes.

12. The learned Counsel for the petitioners submits that the case of the landlords is u/s 21(1)(a) and Explanation I to Section 21(1)(a) and therefore the first question arises whether the Explanation is applicable to the circumstances of the case. According to him the crucial wordings in the Explanation are that "the tenant or any member of his family has otherwise acquired." He submits that the word used in the Explanation I is "has" and not "had" and thus the Explanation will only apply where it is established that the tenant is presently occupying any other accommodation and not if he had acquired an accommodation in the past and then sold it. It is also submitted that in para 14 of the release application the landlords did not state whether the petitioners have acquired or are in possession of any vacant accommodation at present or not.

13. It is then urged that there is similar provisions in Section 12(3) of Act No. 13 of 1972 which reads as under:

In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated residential building in the same city, municipality, notified area or town area in which the building

under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy:

Provided that if the tenant or any member of his family had built any residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.

Explanation. For the purpose of this sub-section:

(a) a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purpose as a tenant, allottee or licensee;

(b) the expression "any member of family" in relation to a tenant, shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant.

14. It is submitted that while considering the provision of Section 12(3) of U.P. Act No. 13 of 1972 in *Raghunath Prasad v. 1st Additional District Judge and Anr.* 1982 ARC 120 this Court has held that it is necessary to see whether the tenant has settled down permanently. Therefore, in the present case also if the landlords were to seek the benefit of the Explanation 1 then it ought to have been proved that the petitioner-tenants have permanently shifted to the house allegedly allotted to their favour and as such the provisions of Explanation were not applicable.

15. Reliance has been placed upon *Sharda Prasad v. Smt. Sampati Devi and Ors.* 1983 ARC 378 *Shiv Charan v. IInd Additional District Judge, Meerut and Ors.* 2000 (2) ARC 11 and *Smt. Kanta Devi Jain v. Additional District Judge, Dehradun and Ors.* 1984 (2) ARC 245 that even in case of Explanation (I) the respondent-landlords have to prove their bonafide need.

16. In *Sharda Prasad (supra)* it has been held that the Prescribed Authority has to first record a preliminary finding that the building was bona fide required by the landlords and that in the absence of such a finding the order could not be legally sustained. Dealing with Explanation (1) to Section 21(1) it was held that the Explanation only dispenses with the requirement which is embodied in the proviso, namely, "taking into account likely hardship of the tenant" as against the likely hardship to the landlord from the refusal of the application and that only this part of the procedure which enjoins a comparison of the respective needs of the landlord and tenant is dispensed with by the explanation but its effect must be circumscribed within this limit. It cannot be projected farther so as to suspend the existence of the preliminary condition enshrined in the substantive part of Section 21(1)(a) which makes a consideration of the bona fide requirement of the landlord imperative."

17. It is stated that even in the release application, there is no averment to the effect that after accommodation was allotted to the father of the petitioners, they

took possession or shifted thereto ; and that as no possession of the Flat No. F-1038 allotted to the father of the petitioner had been taken by him, the provisions of Explanation were not attracted. Besides allotment was made in the year 1979, release application was moved in the year 2002, i.e., after 23 years and as such the landlords were estopped from taking the plea of the Explanation.

18. It is urged that the flat aforesaid allotted to the father of the petitioners by the Awas Vikas Parishad, Agra was sold on 7.12.1995, who died on 14.7.1997, as such the plea, if any, regarding Explanation 1 was available to the landlords only against their father but after his death as the present tenants the petitioners had not acquired any accommodation the benefit of Explanation cannot be granted to the respondent-landlords. The court's, below have erred in giving the benefit of the Explanation to the respondent-landlords.

19. It is further urged by the learned Counsel for the petitioner that the findings of the courts below that the Explanation I was attracted, as such the question of hardships need not be considered whereas on the grounds taken above, the benefit of Explanation I was not available to the respondent-landlords. The findings are illegal and as such the courts below have not considered the question of hardships, hence the release application is liable to be rejected.

20. As regards the bona fide need, the landlords failed to establish their need for Sri Bhagwan Singh and that there is neither anything to show nor there is proof on record that Smt. Parwati, the married sister of Sri Bhagwan Singh, was living with him. It is stated that the landlords have nowhere stated where her husband is posted and have only stated that he has a transferable job. On the contrary the petitioners have stated that she is living in Orissa. It is also stated by the learned Counsel for the petitioners that it has been specifically stated that the alleged accommodation said to be in the occupation of Smt. Parwati is in possession of Sri Bhagwan Singh, hence in view of the law laid down in 1985 (1) ARC 63 married daughters cannot be treated as members of the family of the respondent-landlord and as such Sri Bhagwan Singh has not come with clean hands and his need is not bona fide.

21. The learned Counsel for the petitioners then submits that though all the heirs of late Sri Kishan Singh have joined hands with Sri Bhagwan Singh in moving the release application and in para 18 of the release application it was stated that the same was filed only to the bona fide need of Sri Bhagwan Singh only. Thus, the conclusion is that the entire family gave priority to the need of Sri Bhagwan Singh, but when the accommodation of two rooms on first floor with tenant Narendra Mohan got vacated it was got released from Rent Control and Eviction Officer in the name of Smt. Parwati, Mohan and Yugal showing that this accommodation has been given to them as all of them remain ill. It is also submitted that Sri Bhagwan Singh as per his affidavit is aged about 50 years, and Smt. Ramwati more than 70 years old. In spite of the fact Yugal has married but still the accommodation is got released in her favour. All this shows the mala fide of the landlords and proved that Sri Bhagwan Singh has no need.

22. The learned Counsel for the respondents contends that the portion shown by blue colour comprising one room and a kitchen is in possession of the landlord Devendra Singh with his wife and one son which is admittedly in a very bad condition. The statement of the tenant as quoted in the Judgment of the Prescribed Authority/Judge Small Cause Court is as under:

Devendra Singh Ke Pass Ek Bara Kamra Pratham Tal Par 22 Jeet ? 9.3 feet tatha khula shahan ke saath hai tatha uske pariwar mein patni tatha ek bachcha hai Jo ki khalasi tatha achchnera railway station par karyarat hai.

However, the statement of the tenants to the effect that the portion shown by violet colour admeasuring 6.5 ? 14 which is in possession of Suit. Rajesh Kumari wife of late Bharat Singh and her three children is sufficient is Incorrect.

23. It is vehemently urged that it is wrong to say that Smt. Gyanwati occasionally visits her rooms and does not permanently reside there. In fact the tenant has admitted in his written statement that Gyanwati is in possession of the portion shown by green colour and is residing there with her family. The statement is as under:

Smt. Gyanwati Ke Pati Ram Chandra Mathura Me Adhyapak Hai tatha uske pass Do Kamre 9 feet ? 16.9 feet tatha 16 feet ? 14.11 feet tatha anya suvldha evam Aangan Bhootal Par Sthit Hal Unke Kabje Mein Hai. Choonki Wah Vivahit Putri Hal Atah Uska Is Makan Mein Rahne Ka Koi Adhikar NahIn Hat...Jahan tak Prarthi 9 Smt. Gyanwati Ka Sambandh Hai yah vipakshi ko sweekar hai ki wah sapariwar apne pati ke saath prarthigan dwara pradarshit sthan par rah rahi hai. Prarthi paksha dwara apane kathan kc samarthan mein nazir C. Prasad prati Dasam Upper Zila Judge, Kanpur 1996 (1) ARC Allahabad prastut Kee Gayee Hai Jis par yah kathan karte huye adhar rakha gaya hai ki prastut nazir ko dristigat rakhate huwe vivahit putri ki awasyakata ko dristigat rakha jana chahiye. Atah yah pramanit hai ki prarthi 9 Smt. Gyanwati apne pariwar ke saath prarthigan dwara pradarshit sthan par rah rahi hai.

24. The fact that applicant No. 8 Ramwati, applicant No. 3 Mohan Singh and applicant No. 11 Smt. Yugal are in possession of a small pauly shown by blue colour at ground floor which is also used as a kitchen. This fact is also admitted by the tenants in their statement as under:

Prarthi dwara asmani rang se pradarshit bhaag mein prarthi 3 Mohan Singh Prarthi 8 Ramwati tatha Prarthi 11 Yugal ka nakshe mein rahna dikhaya gaya hai Jabki wastava mein yah kamra Sri Bhagwan Singh Ke Karyalaya Ke Roop Mein Istemaal Hota Hai. Smt. Ramwati Ki Ayu 70 Varsh Hai, Mohan Singh 35 Varsh ki ayu me avivahit hai tatha Km. Yugal 40 varsh ki ayu mein avivahit hai tatha wah is kamre ka prayog kar rahe hain.

25. It is urged that the lower court has given a finding of fact that the shop does not come in the category of residence. The wife of applicant No. 1 is a patient of Arthritis and Cancer. There is categorical finding of fact that she Is a chronic

patient. The finding is quoted as under:

Jahan tak Prarthi 1 Sri Bhagwan Singh ke prasna hai wah adhivakta hai tatha unki patni gambhir bimari se grasta hai. Vipakshi paksha ka kathan hai ki prarthi 1 ke paas ghar par unke muwakkil nahin ate hain tatha kachhari me hi unke sabhi vaadkarigan ate hai tatha dauran bahas yah bhi kaha gaya hai ki prarthi paksh ke paas Jo dukan uplabdh hai unke prarthi 1 apne awasiya karyalaya hetu prayog kar sakte hain. Vipakshi paksha ka yah kathan adhar rakhane योग्या nahin hai. Koi bhi adhivakta aisa nahin hai Jinke muwakkil apne karya hetu adhivakta ke awasiya karyalaya na jayen. Dusri taraf dukan awasiya bhawan ke shreni me nahi ati hai tatha prarthi paksha ko apne anusar apna vyawasay chalana hai unhe wahan apna karyalaya banana hai wah vipakshi ke ankalan ke anusar nahin banana hai balki yah unka apna vivek hai ki wah apna karyalaya kahan banayen. Atah vipakshigan ka yah kathan hai ki wah apna karyalaya dukan me bana saktein hain is par adhar nahin rakhaja sakta atah prarthi 1 ke paas vartaman me jo sthan uplabdh hai wah unke samajik arthik vyavasayik evam unki patni ke gambhir bimari ko dristigat rakhate huwe poorna roop se aparyapt hai tatha prarthi 1 ko atirikta awasiya sthan ke vastavtk evam sadbhavi awasyakta hai.

26. By affidavit 136C the landlords have stated that they need the accommodation in question on the ground floor particularly due to the illness of his wife at this stage. The petitioners by affidavit paper Annexure-7 gave their willingness to shift from ground floor to the accommodation on the first floor vacated by tenant Narendra Mohan. To this the landlords have not agreed vide their last affidavit dated 10.1.2006. There are other tenants as admitted to the landlords as per their site plan but no action has been taken against any one of them. This also proves that the release application has been filed not due to bona fide need but due to enmity for which the poor petitioners are not at all responsible.

27. The tenant is also alleged to have not paid rent of the accommodation as well as of the shop which is in his possession and is situate on M.G. Road, Agra w.e.f. January, 1998. In so far as the vacated portion of Narendra Mohan, ex-tenant, is concerned, it is held by the court below that after taking into consideration the vacated portion also the need of the family of the landlord is not satisfied who are living in unequal proportion. It is urged that the value of the shop in dispute is more than 5000. It is submitted that each daughter of late Kishan Singh after his death became co-landlord, hence separate need of each daughter of late Kishan Singh is to be taken into consideration.

28. It is lastly urged that the tenants have mischievously and mala fide drafted para 11 of the writ petition in which it is incorrectly stated that the house was sold on 7.8.1981 which is apparent from para 14 of the rejoinder-affidavit in which it is admitted that the house was sold on 7.12.1995. It is apparent from the sale deeds filed as paper Nos. 28C and 29C that the Awas Vikas Parishad Flat EWS No. F-1038, Kamla Nagar, Agra was allotted and registered in the name of

the tenants on 16.11.1995 and power of attorney of the flat/house was given on 27.11.1995. It is also apparent that the vacant possession of the accommodation was allotted to the father of the tenants Sri Ram Sewak. The finding of the Court below in this regard is as under:

Vicharniya Prashna 1 Ka Nistaran

Is tathya par prayapta sakshya uplabdh hai ki vipakshigan dwara apne jawab mein sweekar kiya gaya hai ki unke pita Ram Sewak ki sampati avantit huyee thijo ki awas vikas parishad dwara dec gayee thi. Unke naam vikraya vilekh nispadit nahi huwa tha atah unke dwara apne adhikar hasantarit nahi kiyeja sakte the. Sri Ram Sewak ne power of attorney anya vyakti Rochi Ram ke naam likh dee. Rochi Ram unke pariwar ke sadasya nahin the, atah vipakshi paksha ko yah sweekar hai ki unko sampati prapta huyee tatha awas vikas parishad dwara vikraya vilekh nispadit kiya gaya hai yah sakshya se pramanit hai.

M.C. Gupta v. Niyat Pradhikari, Gorakhpur 1993 ARC 961 (All) tatha, Parvinder Singh v. Renu Gautam 2004 ARC 359 se spasta hai ki mool awantee jinke vartman kirayedar vidhik pratinidhi hai unke swargwas ke paschat vidhik pratinidhigan ki sthiti parivartii nahin hoti hai tatha pratyek adhikar evam kartavya ke sambandh mein usi prakar se badhyakari haijis prakar se mool awantee tha. Atah vidhi anusar yah mana jayega ki Jo awantan poorva kirayedar Ram Sewak ke paksha me awas vikas parishad dwara kiya gaya tha wah vartman kirayedar par badhyakari hai, atah unhe hi avantit mana jayega....

29. In support of his case the learned Counsel for the respondents has placed reliance upon Smt. Kanta Devi Jain v. Additional District and Sessions Judge, Dehradun and Ors. 1979 ALJ 1303 Keshri Lal v. Ulrd Additional District Judge 1987 ALJ 922 Rajendra Pratap v. IInd Additional District Judge 1990 ALJ 851 : 1991 AWC 229 Dewan Chand Bhalla Vs. Dr Ashok Kumar Bhoil, Hirdai Narain Misra Vs. Raj Narain Shukla and another, Ranjeet Singh v. Ravi Prakash 2004 (1) ARC 613 : 2004 (2) SCCD 890 : 2004 (2) AWC 1721 (SC) Ashok Kumar v. Sita Ram 2001 (2) ARC 1 : 2001 (3) AWC 1997 (SC) Bansidhar Vs. XIIth Additional District Judge and Others, Om Prakash Vishnoyee Vs. IXth A.D.J. and Others, and Ramesh Chandra (Sri) and Another Vs. Ist Additional District Judge and Others,

Conclusions:

30. From the judgments and orders of the courts below it is apparent that the Prescribed Authority has considered the question of applicability of Explanation 1 to 4th proviso to Section 21(1)(a) of U.P. Act No. 13 of 1972 pertaining to comparative hardship and bona fide need while directing the release of the accommodation directing the tenant to hand over possession to the landlord.

31. The revisional court vide its order dated 2.8.2006 dismissed the Misc. Rent Control Appeal No. 29/2006, Smt. Saraswati Devi and Ors. v. Sri Bhagwan Singh Rajput and Ors. filed by the petitioner-tenants against the order dated 22.2.2006

passed by the Prescribed Authority in Rent Case No. 74/2002, Sri Bhagwan Singh Rajput v. Sri Shiv Kumar and Ors.

32. Both the Courts below have given concurrent findings of fact that the petitioners are in unauthorized possession of the accommodation in dispute since they had acquired in a vacant state the accommodation from the Awas Vikas Parishad which they have sold without permission, hence in view of the Explanation 1 to the 4th proviso Section 21(1)(a) of the Act referred to above no objection by the petitioner-tenants can be made against an application for release under the Act.

33. From the impugned judgments it is also evident that the Courts below have not only considered the applicability of the Explanation 1 to the 4th proviso to Section 21(1)(a) of the Act but also considered the bona fide need and comparative hardship which though was not liable to be considered in view of the Explanation 1 to the 4th proviso to Section 21(1)(a) as under:

21. Proceedings for release of building under occupation of tenant.?(1) The Prescribed Authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely:

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, or calling or where the landlord is the trustee of a public charitable trust, for the objects of the trust;

(b) ...

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

Explanation.?(In the case of a residential building:

(i) where the tenant or any member of his family who has normally been residing with him or is wholly dependant on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area, or town area no objection by the tenant against an application, under this sub-section shall be entertained;

...

34. Under the aforesaid Section 21(1)(a) it is not obligatory to consider the need of the landlords. It has been consistently held that the phrase/expression for occupation by himself or any member of his family includes other persons also of the landlord's family. After the death of the landlord even his daughters are co-

landlords and have a share in the house. The need of each of the adult member of the landlord's family has to be seen.

35. In *Misri Lal v. Special Judge/Additional District Judge* 1988 (2) ARC 340 while interpreting the aforesaid expression "for occupation by himself or any member of his family" occurring in Section 21(1)(a) of the Act it is held that the family of the landlord includes even the servants of the landlord who may be looking after his aged mother and taking care of her though technically they may not be a member of his family as defined in the Act. Thus, the need of such others whose assistance is required in the family of the landlord although they may not be technically a member of the family is liable to be included in the need of the landlord.

36. In view of the above, it cannot be said in the instant case that merely because the daughter of the landlord is married there is no personal need of her for accommodation in the house.

37. Following the decisions rendered in the case of *Smt. Rani Chaturvedi v. Sri Shiv Narain Dass* 1980 ACJ 110 and *Smt. Kamla Ahuja v. VIth Additional District Judge, Meerut* 1981 ACJ 311 : 1981 ARC 371 it has been held that "even if a person may not come within the definition of "family" under the Act but if such relative is staying with the landlord permanently the need of the landlord will be more to accommodate that person and therefore while considering the need of the landlord the need of that relation has also to be considered." Thus, the need of daughters of the deceased landlord Kishan Singh who are living permanently in his house has also to be seen. Since the tenants come within the purview of the Explanation referred to above hence his defence and countermined evidence cannot be considered.

38. There is no prescribed formula by which the finding of bona fide need can be recorded. If from the order it can be construed that it substantially contains any force that the authorities were convinced that the need of the landlords was bona fide then the requirement of law is satisfied in that regard. As regards the case of *Shiv Charan (supra)* is concerned, in that case the tenant raised objection regarding applicability of Explanation 1 and the release application of the landlord was dismissed. The tenant did not file any appeal u/s 22. However, in the appeal the appellate authority did not consider the applicability of Explanation 1 of the Act and as such the High Court following the decision rendered in *Smt. Kanta Devi Jain (supra)* while allowing the petition directed the appellate authority to consider the appeal on merits together with applicability of Explanation 1 and bona fide need. In *Smt. Kanta Devi Jain (supra)* the view taken in *Kailash Chandra and another Vs. IIIrd Additional District Judge, Jalaun and others*, and *Sudha Agarwal v. Xth Additional District Judge, Varanasi* 1999 SC 400 : 1999 (4) AWC 2825 (SC) was approved.

39. Thus the cases cited by the learned Counsel for the petitioners are not applicable, as the bona fide need as well as Explanation 1 has been considered.

40. Moreover, the contention of the learned Counsel for the petitioners regarding similarity of the provisions of Section 12(3) of the Act is also of no help to them for the reason that the object/scope of Section 12 and Section 21 is different. However, in so far as the similarity is concerned in the provisions of the said Sections it may be noted that Section 12(3) provides that if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy. Thus, once the flat was allotted to the father of the petitioners the accommodation under the tenancy of the petitioners came to an end under the aforesaid deeming provision of Section 12(3) and the petitioners would be deemed to have occupied the building/flat allotted to them by the Awas Vikas Parishad, Agra. It is also apparent from the record that the petitioners have devolved upon them the tenancy and hence the argument that after the death of their father it would be deemed that the petitioners have not acquired any accommodation under the benefit of Explanation 1 is untenable. If the rights of tenancy flow from the death of father the liability would also flow. If the petitioners can claim deemed tenancy of the tenanted accommodation after the death of their father the liability of acquisition of the flat under vacant possession will also be equally applicable to them in view of Explanation 1, hence in view of Section 12(3) as well as Explanation 1 to Section 21(1)(a) of the Act, the petitioners cannot claim any benefit of tenancy after acquiring another accommodation.

41. In so far as the landlords are concerned, the rights of ownership have also flowed from the death of their father and as such all of them are landlords in their own rights and entitled to independent accommodation in the building in their own rights. Some of the members of the landlords' family remain ill and therefore they do require separate rooms. Even a married daughter has a right to an accommodation in the house in which the ownership has devolved upon her as landlord even assuming that she resides for some times with her husband. Merely because the place of posting of the husband of the married daughter has not been disclosed will not vitiate her claim for independent portion to live in the house as owner with other members of the family as it is not necessary that the husband of the married daughter may be able to have an independent house to live with her at the transferred place of posting. It may be that the act provides that a married daughter is not a member of the family yet she may be landlord as a member of the family of the landlords in her own right requiring an accommodation. "The other co-landlords have no objection to her being given the portion. Even a daughter in Hindu law has a share in the father's or ancestral property. Thus, she cannot be deprived of the property simply on the fact that she is a married daughter. The daughter who is married and the other daughter who is ill and normally resides with the landlords will have a right to occupy the accommodation. It cannot be said that they would not have any genuine and bona fide need.

42. In view of the aforesaid discussion and taking into consideration the fact that the petitioners had acquired the house in vacant position though thereafter he sold it, the Explanation referred to above will come into play and the act of the petitioners will be treated to be mala fide and after acquisition of the property he will be deemed to be in unauthorized possession thereof.

43. Both the courts below have given concurrent findings of fact against the petitioners. Before this Court also no case for interference with the impugned judgments passed by the courts below has been made out.

44. For the reasons stated above, the petition is dismissed. No order as to costs. The consequence of order of eviction within two months as per trial court's order shall follow.