

(1994) 04 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 7850 of 1989

Shri Ram Nath Yadav

APPELLANT

Vs

Rent Control and Eviction Officer, Allahabad and others

RESPONDENT

Date of Decision : 06-04-1994

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 19
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(1)(b), 12(2), 12(3), 12(4)

Citation : AIR 1994 All 398 : (1994) AWC 1419

Hon'ble Judges : V.K. Khanna, J; O.P. Mathur, J

Bench : Division Bench

Advocate : M.M. Dayal, Atul Dayal and P.K. Jain, for the Appellant; S.K. Mehrotra, A. Kumar and S.C., for the Respondent

Judgement

V. K. Khanna, J.—A learned single Judge while hearing the present writ petition has referred the following question for consideration by a larger Bench:

"Whether the word "family" used in S. 12(1)(b) and 12(2) of U.P. Act No. 13 of 1972 should be interpreted with regard to its general meaning as it is understood commonly so as to include daughter-in-law or other female relations who are normally members of the family or it should be given the restricted meaning as defined in S. 3(g) of the Act.?"

2. For the purposes of answering the question which has been referred to us by the learned single Judge, it will be useful to have the relevant facts involved in the present writ petition out of which the reference arises.

3. The petitioner in the present writ petition is admittedly the landlord of a shop situated in the city of Allahabad and had moved an application for its release u/s 16(1)(b) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 (hereinafter described as the "Act") on the ground that the same is bona fide required for carrying on the business by his two sons and that the shop will be deemed to be vacant in view of the provisions of Section 12(2) of the Act.

4. One Ram Din Gupta was the original tenant who was carrying on business in the name and style of M/s. Har Vilas Prabhu Dayal. In the year 1939 when the tenancy commenced only Prabhu Dayal and Ram Din were joint tenants of the premises. Prabhu Dayal died on 26th June, 1967 without leaving any heir resulting in dissolution of the partnership. The partnership was again reconstituted and Surendra Kumar Gupta and Narendra Kumar Gupta both minor sons of Ram Din Gupta became partners. The Act came into force on 15th July, 1972 and on that date Ram Din Gupta, the original tenant was neither in possession nor the partner in the partnership firm of M/s. Har Vilas Prabhu Dayal. After the coming into force of the Act, the partnership was again dissolved. Ramesh Chandra, Brijendra Kumar Gupta, Surendra Kumar Gupta and Shrimati Manju w/o Ashok Kumar became the new partners of the firm M/s. Har Vilas Prabhu Dayal. In the year 1978-79 the firm was again reconstituted. This time Surendra Kumar Gupta, Ramesh Kumar, Ashok Kumar Gupta and Brijendra Kumar Gupta became partners. It is not in dispute that at no point of time the landlord consented to the induction of the new partners as tenants of the premises in dispute.

5. The landlord had raised the controversy mainly on the ground that Shrimati Manju Gupta was not a member of the family as defined u/s 3(g) of the Act and thus her induction as a partner in the partnership firm M/s. Har Vilas Prabhu Dayal would amount to admitting a person who is not a member of the family of the tenant as a partner and thus the tenant shall be deemed to have ceased to occupy the building in view of the specific provision of Section 12(2) of the Act.

6. The aforesaid application was contested by the respondent on the ground that though the partners changed from time to time they were all members of the Joint Hindu Family and an outsider was not inducted at that point of time; the provisions of Section 12(2) of the Act were not attracted to the case. It was also pleaded that the tenancy stood regularised u/s 14 of the Act and, as such, there could be no vacancy.

7. The Rent Control and Eviction Officer by his order dated 4-5-1987 held that Shrimati Manju Gupta was inducted as a partner after 1st April, 1976 and the Act was amended in 1976. In view of the amended provisions of Section 14 of the Act the tenancy stood regularised and there was no vacancy. A revision was filed by the petitioner which too was dismissed on 27-3-1987. The revisional court held that the business of the Firm continued within the members of the Joint Hindu Family and no outsider was inducted as a partner of the firm. It was specifically held that Shrimati Manju Gupta was the member of the family.

8. A learned single Judge while hearing the writ petition came to the conclusion that for deciding the controversy raised in the writ petition, the important question which had to be considered was as to whether word "family" used in Section 12(1)(b) of the Act or 12(2) of the Act will have the meaning as has been given in the Act in Section 3(g) of the word "family" has been used in different contexts and will have different meaning than what has been given in Section 3

(g). Learned single Judge was of the opinion that the Legislature could never intended to exclude close relations like daughter-in-law, grand-daughter-in-law and any like relations who are close members of the family. It has been observed that if restricted meaning of the word "family" as defined in Section 3(g) is allowed to be applied it shall cause serious prejudice to the female relations of family which cannot be justified in any manner. It has also been observed by the learned single Judge that such an interpretation of word "family" would also be violative of Arts. 14 and 15 of the Constitution which provide to rule out any kind of inequality on the ground only of religion, race, caste, sex, place of birth or any of them. Reference by the learned single Judge has been made in the decision of this Court in the case of M/s. Ratan Lal Jagdish Prasad Kanpur v. District Judge, Kanpur, 1980 ARC 292 and several other cases in which a view has been taken that the definition of the word "family" occurring in Section 12 of the Act will have the meaning as has been defined in 3(g) of the Act.

9. The important question which arises for determination in this case is as to whether the word "family" which has been used in Section 12 of the Act will have a different meaning than what had been given to the word "family" in Section 3(g) of the Act. The Supreme Court in the case of Mohd. Azeem Vs. District Judge, Aligarh and Others, has held in paragraph 9 of the aforesaid report that in definition of the word "family" reference to personal law is irrelevant. In paragraph 11 of the aforesaid report the Supreme Court has taken the statutory definition of "family". The definition of family has been given in the Act itself. The same has to be treated as exhaustive and in our opinion it is not open to the Court to bring any person other than those not mentioned in the definition. In this connection a reference to Rule 10(6) will also be useful:--

,"(6) A person who is deemed to have ceased to occupy a building within the meaning of Section 12(1) (b), or who is evicted under Section 21 by virtue of being a tenant referred to in Explanation (1) of Section 21(1) shall not be allotted that or any other residential building and a person who is deemed to have ceased to occupy a building within the meaning of Section 12(2), shall not be allotted that or any other non-residential building for a period of two years from the date of such eviction or deemed cessation as the case may be Provided that--

(a) If the District Magistrate is satisfied in a case referred to in Section 12(2) that the admission of partner or new partner is bona fide transaction and not a mere cover for subletting he shall, if any application had been made in that behalf before the admission of such partner or new partner, allot the non-residential building in question afresh to the newly constituted or re-constituted firm.

(b) in the case of a residential building under the tenancy of a person who shall be deemed by virtue of Section 12(3) to have ceased to occupy it by reason of his or any member of his family building or otherwise acquiring in a vacant state or getting vacated another residential building in the same local area, whether that Other building is built or acquired or got vacated, before or after the date of

commencement of the Act, if the District Magistrate is satisfied that the two buildings are occupied by the tenant and a member of his family separately, and that they are separate in messing, the District Magistrate may reallocate the residential building deemed to be vacant u/s 12(4) to the said tenant or to the said member of his family, as the case may be:

(c) In the case of residential building under the tenancy of a person who shall be deemed by virtue of the proviso to Section 12(3) to have ceased to occupy it upon the expiration of a period of one year from the date of commencement of the Act by reason of his or any member of his family having built another residential building in the same local area, where that other building was let out at the commencement of the Act and the tenant or the member of his family, as the case may be, has been unsuccessful in spite of his best efforts in securing vacant possession thereof the District Magistrate may postpone the making of allotment order in respect of the building deemed to be vacant u/s 12(4).

From the aforesaid Rule 10(6) (a) it is clear that in case the admission of a partner or a new partner is a bona fide transaction and not a mere cover for sub-letting, the District Magistrate if any application had been made in that behalf before the admission of such partner or new partner, allot the non-residential building in question afresh to the newly constituted or reconstituted firm. The District Magistrate will exercise the power conferred on him u/s 10(6) (a) of the Act keeping in view the guiding principle given in this provision.

10. If one looks to the definition of the "family" as given in Section 3(g) it will be clear that in relation or to a landlord or tenant of a building, spouse, male lineal descendants, such parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her and includes in relation to a landlord any female having a legal right of residence in that building. The right to the widowed daughter-in-law has been given only in respect of residential building as she will have a legal right of residence u/s 19 of the Hindu Adoptions and Maintenance Act, 1956, as under that section she is entitled to be maintained by the father-in-law and u/s 3 of the said Act "maintained" shall include the right of residence. It cannot thus be said that the definition adopted by the Legislature was absolutely arbitrary definition. In respect of a residential building she having a legal right of residence has been included in the definition of the "family" in relation to the landlord. In so far as non-residential buildings are concerned, she can have no legal right as her right was only limited to maintenance by the father-in-law and this while defining "family" in so far as non-residential buildings are concerned, she has not been rightly included. The definition by no stretch of imagination can be said to be either arbitrary or hit by Arts. 14 and 15 of the Constitution

11. Our answer to the question referred, therefore, is that the word "family" used in Section 12(1)(b) and 12(2) of U.P. Act No. 13 of 1972 should be given the meaning as defined in Section 3(g) of the Act.

12. The papers of the case will now be placed before the learned single Judge for final decision of the writ petition.
13. Order accordingly.