
(2005) 09 UK CK 0030

In the Uttarakhand High Court

Case No : Writ Petition No. 7330 of 2001 (M/S)

Shri Shankar Pratap Thapa and Others

APPELLANT

Vs

IIIrd Additional District Judge and Others

RESPONDENT

Date of Decision : 15-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(1), 21, 21(1), 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 16, 16(1)

Citation : (2006) 2 UC 890

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Arvind Vashistha, for the Appellant; K.N. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—By means of this petition, moved under Article 226 read with 227 of Constitution of India, the Petitioners/tenants have sought writ in the nature of certiorari quashing the judgment and order dated 15-02-2000 whereby III Additional District Judge, Dehradun (Respondent No. 1) has allowed Rent Control Appeal No. 22 of 1999 and set aside the order dated 09-02-1999 passed by the Prescribed Authority and released the house of the landlord Sri Manohar Singh Basnet (Respondent No. 2).

2. Brief facts of the case, as narrated in the writ petition are that three rooms, with store, bathroom and kitchen bearing municipal No. 7 in Dhamawala, Dehradun, are in the tenancy of the Petitioners on rent at the rate of Rs. 50/-per month and Respondent No. 2 Shri Manohar Singh Basnet is its landlord. The landlord in the year 1997 moved an application (P.A. case No. 75 of 1997) u/s 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, for release of aforesaid house alleging his need to be bonafide and genuine of the accommodation for his own family members. It is alleged in the said

application that originally one Nanda Devi was the tenant and on her death, Petitioners No. 1,2 and 3 alongwith Respondent No. 3 and 4 inherited the tenancy. It is also alleged that earlier, the landlord moved another application (case No. 4 of 1996) u/s 16(1)(b) of aforesaid U.P. Act No. 13 of 1972 for declaration of deemed vacancy of the accommodation in question on the ground that tenants have raised their own house in Dehradun. However, the Rent Control and Eviction Officer, rejected said application on 29-08-1996 for declaration of vacancy and the landlord filed a writ petition No. 30101 of 1996 before Allahabad High Court. The present Petitioners (tenants) have alleged that Respondent No. 3 and 4, have no concern with the property in question and it is only they (Petitioners) who are genuine tenants. In this connection it is further stated that at the time of death of Smt. Nanda Devi (original tenant) only the present Petitioners were residing with her as members of family in the accommodation in question. Challenging alleged need of the landlord it is stated that accommodation already held by him, consists of nine rooms. Landlord's claim of need of drawing room, dining room and separate study rooms for children has been denied, alleging that landlord got himself three rooms in his occupation, converted into shops and let out. The Petitioners (tenants) have claimed greater comparative hardship in their favour as no alternative accommodation is available to them. In the simultaneous proceedings of declaration of vacancy, the Rent Control and Eviction Officer found that it was only Smt. Nanda Devi who was the tenant and Ganpati Thapa (Respondent No. 3) who had constructed his house was not the tenant. Learned Prescribed Authority, after taking evidence, making spot inspection and hearing parties also found the same and further found that neither the need of the landlord is genuine nor greater hardship in his favour. It is alleged by the Petitioners in the writ petition that but the appellate court erred in law ignoring the finding of Rent Control and Eviction Officer. It is further alleged that construction of their houses by Shri Ganpati Thapa and Arun Pratap Thapa, does not attract explanation 1 to the Section 21 of U.P. Act 13 of 1972 as they were not tenants. The Petitioners have challenged the impugned order passed by the appellate court on this ground also. It is further alleged by them that the appellate court has erred in law in not considering comparative hardship of the Petitioners and also in holding that the need of the landlord to be genuine and bonafide. Lastly, it is alleged that the appellate court has not considered provisions contained in Rule 16 of the Rules framed under U.P. Act 13 of 1972.

3. A counter affidavit has been filed by the Respondent No. 2 (landlord) in which it has been admitted that the premises in question were let out to Smt. Nanda Devi but it is stated that after her death, the tenancy was inherited by Shri Ganpati Thapa and Shri Arun Pratap Thapa along with the Petitioners. It is further stated in the counter affidavit that Smt. Nanda Devi was widow of Late Shri T.S. Thapa and Shri Ganpati Thapa and Arun Pratap Thapa are sons of said Shri T.S. Thapa. Alleging that there are three growing children in the family of the landlord apart from his wife, it is stated that need shown by him is not only

bondfide and genuine but there is greater hardship in their favour. In the counter affidavit it is further stated that Sri Ganpati Thapa got constructed his new house in Naya Gaon Cantt. Dehradun and Shri Arun Pratap Thapa has also got constructed his own house. Respondent No. 2 (landlord) has further stated in his counter affidavit that after his retirement from his service in Survey of India, in 1993 and in view of age of children, his need is pressing. It is also stated by him that Sri Ganpati Thapa after his retirement from Airforce and Sri Arun Pratap Thapa, after his retirement from Oil and Natural Gas Commission can comfortably live in their new houses with other members of their family. But this fact has been admitted that both of these sons of Late Shri T.S. Thapa did not contest the release application. Defending the impugned order it has been stated that the writ petition, challenging order passed in proceeding for declaration of vacancy do not come in the way obstructing the present proceedings relating to release of the house.

4. I heard learned Counsel for the contesting parties and perused the record.

5. Admittedly, Shri Manmohan Lal Basnet is the landlord of the house in question. It is also admitted that the Petitioners are the tenants in the accommodation in question. The main dispute relates to the fact whether on death of original tenant (Smt. Nanda Devi), the Respondent No. 3 Shri Ganpati Thapa and Respondent No. 4 Shri Arun Pratap Thapa inherited the tenancy with the present Petitioners or not. From the evidence on record it is amply clear that Smt. Nanda Devi was widow of late Shri T.S. Thapa. It is also established on the record that Shri Ganpati Thapa and Shri Arun Pratap Thapa are sons of Late Shri T.S. Thapa. For inhering the tenancy heirs must have normally resided with the tenant at the time of his death as required in Clause (a) of Section 3 of U.P. Act 13 of 1972. Copies of the affidavits, counter affidavits filed by the parties before authorities below and copy of order dated 29-08-1996 (Annexure-7 to the writ petition) passed by Rent Control and Eviction Officer shows that Shri Ganpati Thapa (Respondent No. 3) was not residing with Smt. Nanda Devi at the time of her death and already shifted to his newly constructed house. It has further come on record that rent receipts were used to be issued to Shri Ganpati Thapa during the period 1953 to 1957 where after it was Smt. Nanda Devi to whom rent receipts were issued by the landlord. It appears that before the commencement of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, Shri Ganpati Thapa shifted from the house in question. As such construction of house by Shri Ganpati Thapa does not attract explanation 1 to Section 21(1)(a) of the aforesaid Act which provides that "where the tenant or any member of his family who has been normally residing with him or wholly dependent on him, has built or 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 tenant against an application under this Sub-section shall be entertained."

6. However, same is not the case with Arun Pratap Thapa (Respondent No. 4).

His name has been found in voter list of year 1995, of the ward relating to house in question. Not only this, the Prescribed Authority at the time of spot inspection, has found him present in one of the rooms in accommodation sought to be released. He preferred to remain silent and did not contest the release application. He failed to deny that he has not constructed house elsewhere in the city. Merely on the allegation of other joint tenants, that they have no concern with Shri Arun Pratap Thapa, they can not be saved from the clutches of explanation 1 to Section 21(1)(a) of U.P. Act 13 of 1972. That being so, what the learned appellate court has held regarding bonafide need and greater comparative hardship in favour of the landlord after examining the evidence on record can not be disturbed by this Court.

7. Learned Counsel for the Petitioners drew my attention to Rule 16(1)(d) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 and argued that in view of the number of members of the family of landlord and number of rooms they are already in occupation, release of even one room can adequately meet the need of the landlord. Had it been a case where Arun Pratap Thapa had not acquired house elsewhere, I would have appreciated the above argument. But since from the discussion as above, in view of the explanation 1 to Section 21(1)(a) of U.P. Act 13 of 1972, the tenant has no right to object to the application moved by the landlord. Finding of the learned appellate court regarding comparative hardship of the landlord needs no interference.

8. In the circumstances, for the reasons as discussed above, the writ petition has no force and is liable to be dismissed. The same is accordingly dismissed. Tenants are allowed two months time from today to vacate the premises in question. No order as to costs.