
(1976) 07 AHC CK 0064
In the Allahabad High Court
Case No : Civil Misc. Writ No. 4821 of 1974

Shyam Dass

APPELLANT

Vs

III Addl. District and Sessions Judge and Others

RESPONDENT

Date of Decision : 23-07-1976

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(1), 12(2), 12(3), 12(4)

Citation : (1976) AWC 766

Hon'ble Judges : K.C. Agarwal, J

Bench : Single Bench

Advocate : V.N. Khare and S.C. Khare, for the Appellant; Shanti Bhushan and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.C. Agarwal, J.—Ram Din, the Respondent No. 3, is the owner of the shop in dispute situated in Mohalla Poorani Sabji Mandi, Kachla Road, Budaun. An application u/s 21 of U.P. Act No. 13 of 1972 was filed by him against the Petitioner for the release of the aforesaid shop with the allegation that he had no son of his own and had daughter's sons who were living with him. These grandsons were in fact, members of his family and were being treated as such. Since they had come up of age, he intended to provide them some business. For that purpose, he required the shop in question. He asserted that the need of making provision for the daughter's son, being his own, he was entitled to the release of this shop u/s 21(1)(a) of the Act.

2. The application was contested by the Petitioner. He denied that the shop was required by the Respondent No. 3 for his use and occupation. It was alleged by him that as the daughter's sons are not "family members" within the meaning of Section 3(g) of U.P. Act No. 13 of 1972, the application filed by the Respondent no, 3 for the release of the premises was not maintainable. The Petitioner also alleged that the firm which was constituted in 1966 did not include any person

who was not a member of his family and that he would suffer greater hardship if the application filed by the Respondent No. 3 for the release of the premises was allowed.

3. After perusal Of the needs of the Petitioner and that of the Respondent No. 3, the Prescribed Authority held that as the sons of the daughters of the Respondent No. 3 were not included in the definition of the word "family members" the application made by the Respondent No. 3 for their need was not maintainable. He also held that the Petitioner was likely to suffer greater hardship from the acceptance of the application than what would be suffered by the landlord by its rejection. On these findings the application was rejected. The Respondent No. 3 preferred an appeal before the District Judge. The same was allowed by Sri V.S. Agarwal, III Addl. District Judge, Budaun by his judgment dated 13-8-1974. Feeling aggrieved, Shyam Das, the tenant, has come to this Court by means of the present writ petition.

4. The submission made by the learned Counsel for the Petitioner was that the application filed by Respondent No. 3 was one u/s 21 of U.P. Act No. 13 of 1972, therefore, the learned District Judge could not treat the said application as one u/s 16 of the said Act. The submission made by the learned Counsel for the Petitioner is well founded. Admittedly the application was filed by the Respondent No. 3 u/s 21(1)(a) for the release of the accommodation on the ground that the premises was required by him. This was contested by the Petitioner on the ground that the need of the Respondent No. 3 was not bonafide and genuine. Taking the application as one u/s 21 of the said Act, the parties led evidence in support of their respective versions. The Prescribed Authority also proceeded to decide it as one u/s 21. It was not open to the District Judge to create a new case for the Respondent No. 3 and to treat the application filed u/s 21 as one u/s 16. It appears from paragraph 26 of the writ, petition that the power to decide an application filed u/s 16 of the Act had been conferred in Budaun by the Rent Control and Eviction Officer, whereas the power to decide the applications u/s 21 was on a different authority. Hence the application filed by the Respondent No. 3 could not be treated as one u/s 16 on this ground as well.

5. It is possible, as urged by Sri Shanti Bhushan, counsel for the Respondent No. 3 that some of the considerations for deciding an application u/s 21 and one filed u/s 16(2) are overlapping but this did not entitle the District Judge to treat the application filed u/s 21 as one u/s 16. The Petitioner's cause has definitely been prejudiced by the creation of a new case by the Additional District Judge, which has not been taken by the Respondent No. 3. One can legitimately presume that the Petitioner would have filed different evidence, had he known that the Respondent No. 3 wanted his eviction u/s 16 of the Act by taking help of Section 12 of the same. In my view therefore, the Addl. District Judge had no authority to treat the appeal, filed before him as one arising out of application u/s 16. He ought to have treated it as an appeal against the order passed u/s 21.

6. Assuming that the application filed by the Respondent No. 3 could be treated

as one filed u/s 16 of the Act, I find another error which has crept into the judgment of the learned District Judge. This error, to my mind, is sufficient in itself for allowing the writ petition. The same was that the learned District Judge wrongly held that the shop to be vacant by applying Section 12(2) of the said Act. The "question of applicability of Section 12(2) of the Act depends on its construction, the same reads as under;

In the case of non residential building, where a tenant carrying on business in the building admits a person who is not member of his family as a partner or a new partner as the case may be, the tenant shall be deemed to have ceased to occupy the building.

The question is whether Section 12(2) applies even to a case where a partner was admitted before coming into force of the New Act. Relying on the word "admits" Sri V.N. Khare, counsel for the Petitioner, urged that giving it the grammatical meaning it would be found that Section 12(2) of the Act takes within its ambit only those cases where a person is admitted as a partner, who is not a family member of the tenant, after the enforcement of this Act.

7. Sri Shanti Bhushan, counsel for the Respondent No. 3, controverted the submission and urged that as Sub-section (4) of Section 12 has used the word "has ceased", therefore, the same being in the past perfect tense, Sub-section (2) of Section, 12 should be given a meaning covering transactions which took place before coming into force" of the New Act He also urged that the word "admits" should also be interpreted in the sense that its applicability is not restricted to cases arising out of admission of partners after the enforcement of the New Act. Reliance was placed by the learned Counsel for the Respondent No. 3 on a case of the Supreme Court reported in Goppulal Vs. Thakurji Shriji Shriji Dwarakadheeshji and Another, .

8. After having considered the respective submissions of the learned Counsel for the parties I am unable to uphold the contention of the learned Counsel for the Respondent No. 3. It is important to note that Clauses (a), (b) and (c) of Sub-section (1) of Section 12 which are in present perfect tense, and have used the expressions "has removed" "has allowed" "have taken up" respectively, whereas Sub-section (2) uses the word "admits". In cases covered by Sub-section (1), it appears that the cases where transactions took place before the coming into force the same were also covered by Sub-section (1). These clauses being in present perfect tense include within their purview even transactions which were made in the past and have continued upto the present day. For the applicability for these clauses it does not matter that the transaction mentioned in them took place before or after the Act came into force. The same expression has not been used in Sub-section (2) of Section 12. This shows that the legislature, since did not intend to cover cases of taking partners before coming into force of the Act, it purposely and designedly used the word "admits" The use of this word shows that cases of admission of partners before the commencement of the Act do not fall within its purview.

9. So far as Gappu Lal's case (supra) is concerned it may be pointed out that in that case the words used in Section 13(1) of the Rajasthan Rent Control and Eviction Act were "has sublet". Interpreting these words, the Supreme Court said that they take within their sweep any Sub-letting which was made in the past and continued upto the present time. According to its opinion, these words indicated that it did not matter that the subletting was either before or after coming into force of the Act. Since the expression used in Sub-section (2) of Section 12 is different than employed in Section 13(1)(e) of the Rajasthan Act, which was considered by the Supreme Court, this authority is clearly distinguishable.

10. So far as the question of Sub-section (4) of Section 12 is concerned, it may be pointed out that it applies to cases covered by Sub-section (1), (2) and (3) of Section 12. It does not have independent operation, apart from the aforesaid provisions. Therefore, in order to give meaning to the words "has ceased" Sub-section (4) will have to be read along with the Sub-section (2) of Section 12. Reading these two sub-sections together I find that the only interpretation possible is that a person admitted, as a partner, after the commencement of the New Act alone is covered by it. Hence, in my opinion, the learned District Judge was wrong in holding that Sub-section (2) of Section 12 apply to the present case. As observed", he ought to have decided the appeal as one, arising out of an application u/s 21. Section 21(1)(a) provides for an application by a land lord against a person, who is his tenant and is in occupation of the building, whereas Section 16 envisages an application when the premises is vacant, or is likely to fall vacant or there is a deemed vacancy. The scope, the purpose and the object of these two provisions are different. I do not see any justification for the appellate courts to have embarked upon an enquiry, which was not occasioned. I have, therefore, no alternative but to direct him to decide the appeal again.

11. In the result, the writ petition succeeds and is allowed. The judgment of the learned Addl. District Judge is quashed and he is directed to decide the appeal afresh in the light of the observations made by me above. Since the matter is pending since long, he may decide the case as expeditiously as he can. The Petitioner will receive the costs from the Respondent No. 3.