
(1998) 04 AHC CK 0107

In the Allahabad High Court

Case No : C.M.W.P. No. 12214 of 1998 and C.M.W.P. No. 12217 of 1998

Shyam Sunder Lal Sharma

APPELLANT

Vs

IInd Additional District Judge, Haridwar and others

RESPONDENT

Date of Decision : 09-04-1998

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 21(1A), 25(1A)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 21(1A), 25(1A)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 21(1A), 25(1A)

Citation : (1998) 2 AWC 1477

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Narayan Singh Negi, for the Appellant; S.C. and R.K. Agarwal, for the Respondent

Final Decision : Disposed Of

Judgement

J.C. Gupta, J.—Both these writ petitions are taken up together as common question of facts are involved.

2. Heard petitioner's counsel Sri Narayan Singh Negi. Sri. R. K. Agarwal appears for respondent No. 3 who has filed caveat on his behalf.

3. This is tenant's writ petition. The house in question was previously owned by Nihal Chand and his sons. After the death of Nihal Chand, according to the case of the landlord, a family settlement took place between the family members and the house in question fell into the share of Brij Mohan Lal Garg respondent No. 3 and he alone became landlord of the same. Since he was at that time serving in Punjab rent was being realized under his authority by his brother Narendra Kumar. A memorandum in writing regarding family settlement aforesaid also came into existence on 8.9.1992 and names of the members of family were

mutated in Municipal records against the property falling in their shares. Respondent No. 3 landlord was in service and retired on 31.1.1991 from the post of General Manager, Milk Federation, Punjab. He was given extension for about one and half years on contract basis and ultimately he had ceased to work from 30.6.92. He was occupying an official residence which he had to vacate on account of his cessation of his employment. Thereafter the landlord moved an application against the petitioner for the release of the house in question on the ground that the landlord, who has no other accommodation to live at Roorkee, was in dire need of the house in question as he wanted to settle down at Roorkee from where he could also manage his agricultural property. Since he occupied a high post in government service, he Intended to rebuild the house in question after demolishing the same. The application for release was thus purported to have been moved u/s 21 (1A) ; u/s 21 (1) (a) and Section 21 (1) (b) of the U. P. Act No. XIII of 1972. The petitioner's stand was that there had been no such partition/family settlement as alleged by the landlord and the same has been set up in order to create a ground for eviction of the petitioner from the house in question. The bona fide need of the landlord was also challenged and it was also asserted that the building required no demolition as it could not be said to be in a dilapidated condition. The parties produced evidence and on the basis of the same the prescribed authority allowed the landlord's application only u/s 21-(1A) of the Act and rejected the application as far as it concerned u/s 21 (1) (a) and 21 (1) (b) of the Act. Aggrieved by the said order both the tenant and landlord filed appeals before the respondent No. 1 who has been pleased to allow the landlord's appeal, while the appeal filed by the tenant-petitioner has been dismissed.

4. It is not necessary to go into the question whether the landlord's application under Sections 21 (1) (a) and 21 (1) (b) of the Act has been correctly allowed by the lower appellate court or not as the order of eviction can be sustained on the concurrent findings of the Courts below with regard to the application moved u/s 21 (1A) of the Act.

5. It is well-settled law that where the provisions of sub-section (1A) are attracted, the authority concerned is not required to make any enquiry into the question whether or not the need of the landlord is bona fide nor in such a case the likely hardship which the tenant might suffer by the grant of the application for release is to be considered. The authority concerned has not been given any option with regard to the making of an order of eviction in such cases. The legislative mandate is evident from the language used in this sub-section as it has employed the word "shall" unlike the word "may" used in sub-section (1) (a) of Section 21. The use of different word "shall" in sub-section (1A) and the word "may" used in sub-section (1) (o) itself speaks of the Intention of the Legislature behind enacting these provisions. The mandate of the Legislature is further amplified by the fact that this sub-section has an overriding effect as this provision begins with a non-obstinate clause. Where sub-section (1A) applies, it will be against the true Intent of the Legislature, if the authority concerned is

asked to enquire into the need and requirements of the landlord or to weigh the likely hardships to be faced by the parties. It is also noteworthy that while in an application u/s 21 (1) (a), it is open for the prescribed authority to release only a part of the building under tenancy having regard to the facts and circumstances of a particular case but u/s 21 (1A), the entire building under tenancy is to be released and that is why the expression "any specified part thereof" are conspicuous by their absence therein. This clearly indicates that the purpose of sub-section (1A) was different than the purpose of sub-section (1) (a) of Section 21. Whereas, while dealing with a case covered by sub-section (1) (a) of Section 21 of the Act, it is open to the prescribed authority to direct eviction of a tenant either from the whole of the building or from any specified part thereof, but an order under sub-section (1A) is envisaged against the whole of the building.

6. In the present case, the concurrent findings of fact recorded by the Courts below are to the effect that in a mutual family settlement, the house in question fell into the share of respondent No. 3 who alone became landlord of the petitioner. He was serving in Milk Federation, Punjab and while in service, he was occupying an official residence which he had to vacate on account of cessation of his employment. It has also been found as a fact by both the Courts below that respondent No. 3 does not have any other accommodation available to him at Roorkee where he could live and settle down. On these findings, provisions of Section 21 (1A) of the Act are fully attracted and thus the view taken by the Courts below is perfectly legal and correct and requires no interference by this Court.

7. At this stage, learned counsel for the petitioner requested that some reasonable time may be given to the petitioner to vacate the premises in question. The respondents' counsel urged before the Court that the respondent No. 3 has retired since June, 1992 and despite a lapse of more than five years, he has not been able to occupy his own house wherein he wants to settle down and he is facing great hardship. Learned counsel for the said respondent further submitted that despite all the inconvenience which the respondent No. 3 is facing, he has no objection for granting of a reasonable time to the petitioner to hand over possession of the house in question to the said respondent subject to his furnishing an undertaking in writing to that effect. Petitioner's counsel states that the petitioner is ready to furnish the undertaking as may be required by this Court.

8. In the circumstances, the petitioner is allowed time upto 30.6.1998 to vacate the premises in question and hand over its vacant possession to respondent No. 3 on the condition of his filing an undertaking in writing on affidavit before the prescribed authority within a period of four weeks from today, failing which the order extending time for delivery of possession shall stand automatically vacated. If the required undertaking is filed within the time specified above, the petitioner's eviction shall remain suspended till 30.6.1998.

9. With the above observations and directions, both these writ petitions are

dismissed in limine with no order as to costs.

Let a copy of this order be placed on the record of Writ Petition No. 12217 of 1998.