

(1999) 03 AHC CK 0035
In the Allahabad High Court
Case No : C.M.W.P. No. 39971 of 1996

Sita Ram and Onkar Nath

APPELLANT

Vs

IVth Additional District Judge, Etawah and others

RESPONDENT

Date of Decision : 27-03-1999

Acts Referred:

Uttar Pradesh basic Education Act, 1972 — Section 18(8), 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 20(2), 21, 21(1), 21(8)

Citation : (1999) 2 AWC 1457

Hon'ble Judges : Yatindra Singh, J

Bench : Single Bench

Advocate : Man Mohan Das Agrawal, for the Appellant;

Judgement

Yatindra Singh, J.—Petitioners are the landlords. They filed an application u/s 21 (1) (a) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (the Act for short). They filed an application u/s 21 (1) (a) of the Act for the release, which was dismissed on 22.9.1993. Their appeal was also dismissed on 16.9.1996. They have filed this writ petition for quashing of the orders.

FACTS :

2. Petitioners are the landlords. Uttar Pradesh Basic Shiksha Parishad (the Parishad for short) is their tenant. It pays a rent of Rs. 34 per month. It runs a primary school in the premises in dispute. Forty children study there. Petitioner landlords have large family. The family of the petitioner No. 1 consists of himself, his wife, two daughters and one son. The family of petitioner No. 2 consists of his wife, one daughter and one son. They are nine in numbers. They live in the old ancestral house, which is too small. Their children are studying and require separate rooms for study. They are not able to do so ; there is no space. It is for this reason that petitioners filed the present application for the release of the premises in dispute.

3. The prescribed authority held the need of the landlord to be bona fide, but looking the need of the children studying in the premises held that greater hardship would cause to them than to the landlord in case the application is allowed. He further held that application is not maintainable in view of Section 21 (8) of the Act.

4. The petitioner-landlords filed an appeal. The appellate court held that: ? the bar of Section 21 (8) is not applicable in view of State of U. P. v. Mallik Jarid Khalid ; the application u/s 21 (1) (a) of the Act is maintainable.

? the need of the landlord is bona fide, but as greater hardship would be caused to the children studying in the school in case application is allowed.

He dismissed the appeal. This is the reason for the writ petition.

POINTS FOR DETERMINATION

5. I have heard the counsel for the petitioner. Following points arise for determination in the case.

? Whether application u/s 21 (1) (a) of the Act is maintainable against the Parishad? Is it barred by Section 21 (8) of the Act?

? In case the above question is decided in favour of the petitioners, then a question will arise. Did the Courts below properly compare the hardship? Should hardship of the Parishad be taken into account or should the hardship of children studying in the premises be taken into account.

FINDINGS

General Law

6. The Contract Act and Transfer of Property Act governed the relationship of landlord and tenant. Generally speaking, the landlord could evict his tenant in accordance with the terms of the lease deed or sometimes if tenant had acted in breach of his terms. A tenant at will or tenant after expiry of lease deed could be evicted after termination of his tenancy. But this all changed : public interest intervened. The Legislature had initially enacted the United Province (Temporary) Control of Rent and Eviction Act, 1947. It was replaced by the present Act. It overrides the Transfer of Property Act and the CPC to the extent they are contrary to it. This is so provided in Section 38 of the Act. The eviction of tenants is no longer as easy as it was. But the Act does not apply to all buildings. Few are exempted. The exemption is provided u/s 2 of the Act. If the building is covered by the Act, then the general laws stand superseded. A suit for eviction of a tenant covered by the Act can only be filed on specified grounds mentioned in Section 20 (2) of the Act. It is a journey from contractual tenant to statutory tenant. But the Act also permits the landlord to evict his tenant if he bona fide requires the building and his need is greater than the tenant's need. It is so provided in Section 21 of the Act. The premise in dispute is covered by the Act otherwise there was no necessity of filing an application u/s 21 (1) (a) of the Act.

But application u/s 21 (1) (a) of the Act is not maintainable in respect of all buildings. Application is barred in respect of some buildings. These are mentioned in Section 21 (8) of the Act.

The Scope of Section 21 (8) of the Act

7. Section 21 (8) of the Act says that an application u/s 21 (1) (a) will not lie in respect of buildings, which are let out to certain persons. They are State Government. Local Authority, Public Sector Corporation and recognised Educational Institution. The landlord cannot get the building released against these persons unless he is covered by Explanation II or IV of Section 21 (1) of the Act. There is no case that landlord is covered by Explanation II or IV of Section 21 (1) of the Act. It is not relevant. It is also doubtful whether this condition would really apply in any case, the Explanations II and IV have been deleted by the same amending Act, by which Section 21 (8) was substituted. But this at some other time. The question here is different. Is the Parishad or the school that it is running covered by Section 21 (8) of the Act?

8. Public Sector Corporation has been defined in Section 3 (p) of the Act. It means corporations owned or controlled by the Government. The Parishad has been constituted u/s 3 of U. P. Basic Education Act, 1972 (The Basic Education Act for short). It is a statutory body controlled by the Government. It is a public sector corporation within the meaning of Section 3 (f) and section 21 (8) of the Act. Nagar Palika, Etawah, was initially running the school in question. All schools, which were being run by the local bodies including the present one, were taken over by the State Government. The Parishad now runs them. It has become the tenant of building of the schools, run by the local bodies. This is so provided u/s 18 (8) of the Basic Education Act. This includes the school in question. It is a recognised school within the meaning of Section 21 (8) of the Act. The building is not only under tenancy of Public Sector Corporation but it houses a recognised educational institution. The bar of Section 21 (8) is applicable. No application u/s 21 (1) (a) was maintainable. The landlord could at the most file an application for enhancement of the rent under that sub-section, but he could not get the tenant evicted.

State of U. P. v. Abdut Zarid Khalid

9. The appellate court has held that bar of Section 21 (8) of the Act does not apply, This was in view of the ruling in State of U. P. v. Abdul Zarid Khalid. This was handed down in different context. The law was different, so was the exemption clause.

10. Section 3 (o) defines "public building". It means a building belonging to the Central Government. State Government (including other States), local body or a public sector corporation. It also includes building taken on lease by them. The Act exempted the building at that time. It is no longer so. Section 2 (1) (a) of the Act has been amended. The building in tenancy of public sector corporation is no longer exempted. It is only the building of which public sector corporation or

other persons are landlord that is exempt. Here public sector corporation is not the landlord but a tenant. The Act applies. It is in the light of law at that time that the Apex Court delivered that judgment. It is no longer applicable.

11. The Section 21 (8) of the Act was applicable. The application u/s 21 (a) of the Act was not maintainable. If the present application is not maintainable then there is no point in entering into the second controversy ; namely should the hardship of the Parishad be looked into and or the students studying in the school.

CONCLUSION

12. I find no merit in the writ petition. It is dismissed. Neither any counter-affidavit was filed nor anyone appeared on behalf of the Parishad. I don't think that I should award costs.