
(1979) 07 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 9778 of 1978

Smt. Kanta Devi Jain

APPELLANT

Vs

Addl. Distt. and Sessions Judge and Others

RESPONDENT

Date of Decision : 19-07-1979

Acts Referred:

Rent Control Act, 1972 — Section 12, 12(3), 16, 21(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21

Citation : (1979) AWC 543

Hon'ble Judges : Satish Chandra, C.J.;Yashoda Nandan, J

Bench : Division Bench

Advocate : V.K. Gupta, for the Appellant;

Final Decision : Allowed

Judgement

Satish Chandra, C.J. and Yashoda Nandan, J.—Finding a conflict of opinion between the learned Single Judges of this Court, another learned Single Judge has referred this writ petition to a Division Bench.

2. The Petitioner is the landlady of the accommodation in dispute which is situate on the first floor of the building in Dehradun. The landlady applied for permission to sue for the ejectment of the tenant under the Rent Control Act of 1947. These proceedings were treated to be for release u/s 21 of the U P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The tenant-Respondent contested the proceedings. The Prescribed Authority held that the need of the landlady was genuine. The application for release was allowed. On appeal, however, that order was set aside and the matter was sent back for decision afresh.

3. After remand, the Prescribed Authority held that the need of the landlady for the accommodation in dispute was not bonafide and that comparatively, hardship to the tenant would be much greater if he is ordered to be evicted. On these findings, the release application was dismissed. Aggrieved, the landlady went up

in appeal.

4. In appeal, it was urged that since the tenant's son had constructed another building in the same town, Explanation (i) of Section 21(1) of the Rent Control Act, 1972 debarred the tenant from raising any objection to the release application of the landlady. The learned Judge found that the tenant's son had admittedly constructed the Kothi and that it was vacant on July 15, 1972 when the Act of 1972 came into force. It was let out to tenants much later. Consequently, Explanation (i) of Section 21(1) of the Act was applicable to the facts of the present case and so no objection on behalf of the tenant to the release application was liable to be heard. The learned Judge went on to consider the question whether the landlady had established her bonafide need for the accommodation in question. After referring to the evidence led by her as well as by the tenant, the learned Judge came to the conclusion that the accommodation in actual possession of the landlady on the ground floor was sufficient for her needs and that she had failed to establish bonafide need for the accommodation in question, namely, which was in the occupation of the tenant on the first floor of the building. On these findings, the appeal was dismissed.

5. Aggrieved, the landlady came to this Court by way of a writ petition.

6. On behalf of the landlady, reliance was placed upon Smt. Urmila Rani Telang v. III Addl. D.J. 1977 (U.P.) RCC 654. In this case, a learned Single Judge held that a bare reading of Sub-clause (i) of the Explanation would show that where a tenant constructs a residential building in the same city, he is precluded from raising the objection relating to the bonafide requirement of the premises by the landlord. The necessary result of this Sub-clause is that the need of the landlord about the house will be deemed to be genuine. Consequently, the court is precluded from examining the question of bonafide requirement of the premises by the landlord and to reject his application in case he finds that the same is not bona-fide. As a matter of fact, the landlord is not required in such a case to adduce any evidence in support of his bonafide requirements. The presumption of the need being conclusive, the court is bound to draw the same in his favour and to proceed on that basis.

7. On behalf of the tenant, reliance was placed upon Kailash Chand v. III Addl. D.J. 1977 (U.P.) RCC 211. In this case, another learned Single Judge held that the Explanation does not require the raising of presumption that the need of the landlord was genuine or that it was bonafide required by him. The landlord has yet to prove these things to the satisfaction of the Prescribed Authority though the tenant is precluded from raising any objection to the release application. The view taken in Kailash Chand's case has been accepted in Sher Singh v. III Addl. D.J. 1978 (UP) RCC 253. This case was decided by the learned Judge who decided Srimati Urmila Rani's case. He held that where the Explanation applies, the tenant is debarred from raising an objection to the landlord's application for release. But it was also observed :

He could, of course, challenge that the need of Respondent No. 3 was not genuine.

8. In other words, though the tenant could not put forward his own need as an objection to the release application of the landlord yet he was entitled to say that the landlord's need was not genuine.

9. In *Gopal v. IV Addl. D.J. 1978 (UP) RCC 375*, it was held that where the Explanation applies, no presumption as to the bonafide need of the landlord can be raised. The landlord has to establish that his need was genuine to the satisfaction of the Prescribed Authority. In support, reliance was placed upon *Kailash Chand's case*. In *Faim Khan v. D.J. Varanasi 1978 (UP) RCC 486*, it was held that under the Explanation, the bar is that the tenant would not be entitled to resist the application of the landlord. It does not do away with the requirement of a landlord of establishing the bonafide requirement of the premises. Again, reliance was placed upon *Kailash Chand's case*. The same view was taken in *Smt. Ganeshi Devi v. IV Addl D.J. Meerut 1978 (UP) RCC 339*. In our view, the view taken in *Kailash Chand's case* is the correct view. Section 21 provides for release of an accommodation in favour of the landlord. It states;

* * * *

10. The scheme of Section 21 is that a landlord can apply for release of the accommodation in his favour on fulfilling the statutory conditions. The condition in clauses(a) postulates that the building is bonafide required by the landlord for occupation by himself or any member of his family, etc. to the satisfaction of the Prescribed Authority. Under the provision the Prescribed Authority is statutorily bound to compare the likely hardship of the landlord and the tenant except in cases provided for in the explanation. The First Explanation says that where the tenant or any member of his family has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, "no objection by the tenant against an application under this Sub-section shall be entertained." Thus, in cases where the Explanation applies, the tenant is barred from raising any objection to the landlord's application. In such a case, the Prescribed Authority is exempt from comparing the hardship of the landlord with that of the tenant. The tenant goes out of the picture.

11. Yet the condition precedent to the landlord's entitlement to an order for release is given in Sub-section (1) itself; and the condition is that the building is bonafide required by the landlord ; and the same should be established to the satisfaction of the prescribed Authority. It is true that the tenant is not entitled to contest such an application, but nonetheless the landlord has to establish his case to the satisfaction of the prescribed Authority. The situation is somewhat akin to a suit filed in the regular court to which the Defendant does not file any defence; but the same cannot be decreed merely for that reason ; because the Plaintiff has to establish his case by producing evidence prima facie to the satisfaction of the court in order to get a decree.

12. The decision in Srimati Urmila Rani's case that the necessary result of the application of the Explanation is that the need of the landlord would be deemed genuine and the court is precluded from examining his bonafide requirement does not lay down the correct law. The further observation in Sher Singh's case that the tenant can still challenge the need of the landlord is also not an accurate statement of law. The tenant is debarred from participating in the proceedings. He cannot raise any objection to landlord's application for release. Obviously he cannot question or lead evidence to challenge the bonafide need of the landlord.

13. We may consider the problem from another view point. Section 12 provides for vacancy which may be deemed to have taken place. Sub-section (3) says:

(3). In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy.

14. This provision is substantially similar to the Explanation to Section 21(1). In such a situation, the tenant will be deemed to have ceased to occupy the building under his tenancy. Such an accommodation is open to allotment u/s 16. In the case of deemed vacancy, the landlord can apply for release and any other person can also apply for allotment. The release application of the landlord can be granted only if the District Magistrate is satisfied that the building is bonafide required by the landlord for occupation by himself or any member of his family, etc. This provision is identical to Clause (a) of Section 21(1).

15. The position is that where the tenant acquires another building within the meaning of Section 12(3), vacancy is deemed to come into existence and it is open to the landlord to apply for release and it is equally open to any one else to apply for an allotment. The application for release can be made either u/s 21(1) or u/s 16. u/s 16, a release application cannot be allowed unless the condition mentioned in it is satisfied. The condition is of bonafide requirement. In proceedings u/s 16, a person who has applied for allotment is entitled to participate and contest the release application. This also shows that the mere application of the Explanation to Section 21(1) does not absolve the landlord from establishing to the satisfaction of the prescribed Authority his bonafide need or requirement.

16. If it is held that on the application of the Explanation a statutory presumption of the landlord's bonafide need has to be raised, Section 21(1) may come in conflict with Section 16. In an identical situation, u/s 16, the landlord has to establish his bonafide need.

17. Under the scheme of the Act, it is impossible to arrive at the conclusion that because the tenant has acquired another house, the landlord is precluded from proving his bonafide need.

18. We, therefore, hold that on the finding of fact recorded by the courts below, the Explanation was applicable, The tenant was precluded from raising any objection to the application of the landlord, but nonetheless the latter was bound to establish his bonafide need. A perusal of the judgment of the learned District Judge shows that he has relied upon evidence filed by the tenant. The tenant was barred from raising any objection: which means that he was barred from participating in the proceedings by way of leading evidence or even countermanding the evidence that may be led by the landlord.

19. In the result, the writ petition succeeds and is allowed. The finding of the learned District Judge that the landlady has failed to establish her bonafide need is set aside and the matter is sent back to the learned judge for recording a fresh finding on that point after excluding from consideration the evidence that has been led on behalf of the tenant. The applicant will be entitled to costs.