

(2000) 04 AHC CK 0125
In the Allahabad High Court
Case No : C.M.W.P. No. 18425 of 2000

Smt. Nirupa Rana and others

APPELLANT

Vs

1st Additional District Judge, Dehradun and another

RESPONDENT

Date of Decision : 18-04-2000

Acts Referred:

Soldiers (Litigation) Act, 1925 — Section 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 3
Soldiers (Litigation) Act, 1925 — Section 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 3
Soldiers (Litigation) Act, 1925 — Section 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 3

Citation : (2000) 3 AWC 1807 : (2000) AWC 1807

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : K.K. Arora, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of the Prescribed Authority dated 23.5.1997 allowing the release application filed by the landlord-respondent No. 2 and the order of the appellate authority dated 1.3.2000 dismissing the appeal against the said order.

2. Respondent No. 2 is the landlord of the disputed premises. He filed an application for release of the disputed accommodation against three tenants, namely, S. S. Thapa, B. S. Rana and Sri H. Ahmad under Section 21 (1) (a) of U. P. Act No. XIII of 1972 (in short the Act). Sri S. S. Thapa is a tenant of one room, kitchen and half verandah. B. S. Rana was also a tenant of similar accommodation while Shri H. Ahmad is tenant of the premises comprising of two rooms, half verandah and a kitchen. In the application, it was stated that the accommodation in occupation of the aforesaid tenants was in a dilapidated

condition and required demolition and reconstruction. The landlord is an Engineer in Indian Airlines and is going to retire on 31.1.2001. He has to settle his sister Usha who is unmarried and another sister Niloufer who is mentally retarded. He will construct after demolition of the building for residential purpose.

3. The application was contested only by two tenants, namely, S. S. Thapa and B. N. Rana. Sri H. Ahmad did not file any written objection. It was denied that the disputed accommodation was in a dilapidated condition and requires demolition and reconstruction. The need of the landlord-respondent was also denied.

4. The Prescribed Authority made a local inspection of the premises in dispute and he recorded a finding that the need of the landlord was bona de and he will occupy it for residential purpose. On a comparative hardship, it was found that he would suffer a greater hardship in case the application was rejected. The application was, accordingly, allowed. The petitioners preferred an appeal against the said order. The appeal has been dismissed by respondent No. 1 by the Impugned order dated 1.3.2000.

5. I have heard Sri K. K. Arora. learned counsel for the petitioners who assailed the findings recorded by both the authorities.

6. Learned counsel for the petitioners submitted that the authorities below failed to record any finding as to how much accommodation was required by the landlord. It is contended that there are three tenants. Two tenants have one room accommodation and the third tenant had two rooms" accommodation besides another tenant had vacated the accommodation and thereafter it was demolished and an open land was available for him to raise construction. There was no dispute about the extent of the accommodation with the tenants. The Prescribed Authority had made local inspection and it has been found that the landlord-respondent is serving as an Engineer in Indian Airlines. Keeping in view of his status, even if the entire accommodation is taken with the tenants, he will be having four rooms and this cannot be taken more than his requirement.

7. It in next contended that in the application he had stated about the need of his staters but they are not members of the family as defined u/s 3 (g) of the Act. The need of landlord depends on various factors. He may require an accommodation for a person who may be helping him or the landlord is under an obligation to accommodate such person e.g., a servant, a brother receiving education and an unmarried sister who is dependent on him. His sister Usha is unmarried and his another sister Niloufer is mentally retarded. There is no one except the respondent to look after them. The need of the landlord has rightly been examined by the Prescribed Authority in this context.

8. It is further submitted that the application filed by respondent No. 2 was not maintainable u/s 21 (1) (a) of the Act. It in contended that the application was filed against three tenants. One of the tenants was Sri B. S. Rana. He died on 19.3.1996. during the pendency of the proceedings before the Prescribed

Authority. An application for substitution was filed for impleadment of his widow Smt. Nirupama Rana and his four sons. One of his sons, namely, Vikas Rana, after the death of his father, was recruited in the Army in December, 1996 and was posted in Shllong. It is submitted that after his recruitment in the Army, the application u/s 21 (1) (a) of the Act was not maintainable in view of clause (iii) to third proviso of Section 21 (1) (a) of the Act which reads as under :

"Provided also that no application under clause (a) shall be entertained :

"(iii) In the case of any residential building, against any tenant who is a member of the armed forces of the Union and in whose favour the Prescribed Authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925) has issued a certificate that he is serving under special conditions within the meaning of Section 3 of that Act, or where he has died by enemy action while so serving then against his heirs."

9. This submission was not raised before the Prescribed Authority. The appellate authority has also not referred to any argument alleged to have been raised before it. In para 18 of the writ petition. It has not been stated that which counsel argued the appeal before the appellate authority raising this question. The petitioners have not filed any affidavit of such counsel.

10. On examining the merit of this submission. I do not find any substance. Sri B. S. Rana was a tenant but he was not in Army service at the time when the application was filed u/s 21 (1) (a) of the Act against him. He was already retired from service. In my view, clause (iii) of third proviso will be applicable as against the tenant who was a member of the armed forces of the Union at the time of the filing of the application. If a tenant has died and one of his heirs is recruited in army service, later on, this clause will not be applicable unless the tenant had died by enemy action as is clear from words "... or where he has died by enemy action while so serving then against his heirs."

11. Secondly, this provision will be applicable when such tenant is serving in special condition within the meaning of Section 3 of the Indian Soldiers (Litigation) Act, 1925. The petitioners have not shown in the writ petition under what special conditions one of the sons of the deceased-tenant, namely, Vikas Rana is serving in the army. He was recruited after the death of his father in army. The petitioners have annexed a certificate (Annexure-9 to the writ petition) alleged to have been issued by the Prescribed Authority that he is serving under special conditions but the special conditions have not been mentioned. The intention of the Legislature is that if the tenant is a member of the armed forces of the Union and there are special conditions, he may not be evicted even if the need of the landlord is bona fide. Section 3 of the said Act reads as under :

"3. Circumstances in which an Indian soldier shall be deemed to be serving under special conditions.--For the purposes of this Act, an Indian soldier shall be deemed to be or, as the case may be, to have been serving :

(a) under special conditions (when he is or has been serving, under war conditions), or overseas, or at any place (beyond India, (or any such place within India as may be specified by the Central Government by notification in the Official Gazette) :

(b) under war conditions when he is or has been, at any time during the continuance of any hostilities declared by the (Central Government) by notification in the (Official Gazette) to constitute a state of war for the purposes of this Act or at any time during a period of six months thereafter.--

(i) serving out of India,

(ii) under orders to proceed on field service.

(iii) serving with any unit which is for the time being mobilized, or

(iv) serving under conditions which, in the opinion of the Prescribed Authority, preclude him from obtaining leave of absence to enable him to attend a Court as a party to any proceeding or when he is or has been at any other time serving under conditions service under which has been declared by the (Central Government) by notification in the (Official Gazette) to be service under war conditions ; and

(c) overseas-when he in or has been serving in any place outside India (other than Ceylon) the journey between which and (India) is ordinarily undertaken wholly or in part by sea).

12. The petitioners have failed to establish that any special condition existed as contemplated under the said section.

13. In view of the above, the writ petition in dismissed.

14. In the end. learned counsel for the petitioners prayed that some time may be granted to the petitioners to vacate the disputed premises. Considering the facts and circumstances of the case, the petitioners are granted six months" time to vacate the disputed premises provided they give an undertaking on affidavit before the Prescribed Authority within two weeks from today that they will vacate the disputed premises within the time granted by this Court and would hand over its peaceful possession to the landlord-respondent No. 2.