
(1976) 02 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 5231 and 5232 of 1974

Smt. Parul Debi

APPELLANT

Vs

Ashok Raj Mudaliar and Others

RESPONDENT

Date of Decision : 04-02-1976

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 16, 16(1), 16(2)

Citation : (1976) AWC 210

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

Bench : Single Bench

Advocate : B.P. Tripathi, L.M. Pant and M. Puarshari, for the Appellant;

Final Decision : Allowed

Judgement

K.C. Agrawal, J.—These two writ petitions raise common questions of law-and, therefore, are being decided by a single judgment.

2. Smt. Parul Devi, the Petitioner in both the writ petitions, is the owner of premises No. 27, Tashkant Road, Allahabad. This consists of residential building in which she her-self is living along with her husband and other members of the family. The building has a garage and four outhouses which are appurtenant to the same. The garage was being used by the Petitioner for keeping her car whereas the out houses had been let out by the Petitioner to Ashok Raj Mudaliar and Prem Narain Misra. She filed an application u/s 21(1) of U.P. Act No. XIII of 1972 for eviction of the aforesaid two tenants on the ground that the accommodations in their occupation were required by the Petitioner for her use and occupation. Giving the details of her needs, she mentioned that the accommodations were needed for her driver and Chaukidar. The application was resisted by Ashok Raj Mudliar and Prem Narain Misra. They denied that the need of the Petitioner was bona fide. They also asserted that the need mentioned by

the Petitioner in her application was not her own and, therefore, the application filed by her was not maintainable. Both the parties adduced evidence in support of their respective cases.

3. The Prescribed Authority allowed the application filed by the Petitioner, against which appeals were filed by the tenants, that is Ashok Raj Mudliar and Prem Narain Misra, before the learned District Judge. The appeals were allowed by the impugned judgments dated 21-8-1974, and the judgment of the Prescribed Authority was set aside. The learned District Judge remanded the case to the Prescribed Authority for a fresh decision in accordance with the observations made by him in the judgment. Aggrieved, the Petitioner has come to this Court by means of the present petitions.

4. Learned Counsel for the Petitioner contended that the learned District Judge wrongly held that the need of the Petitioner had to be compared with those of Ashok Raj Mudliar and Prem Narain Misra. He urged that as Rule 16(2) of the Rules framed under U.P. Act No. XIII of 1972 had been declared ultra vires by this Court in Full Bench decision Chandra Kumar Sah and Another Vs. The District Judge and Others, , therefore, the direction given by the learned District Judge was illegal. The submission made by the learned Counsel for the Petitioner is well founded. The aforesaid decision of the Full Bench applies to the present case, although the same was given declaring Rule 16(2) as invalid. Sub-rule (1) of Rule 16 is in pari materia with that of Rule 16(2). The language employed in this provision is the same as in Rule 16(2). This also travels beyond the rule making power. Hence, applying the principles laid down by the Full Bench in the aforesaid case, I find that Rule 16(1) is also ultra vires. Accordingly, the direction given by the learned District Judge for comparison of the needs of the Petitioner with those of tenants is unjustified and is liable to be quashed.

5. The other ground raised by the learned Counsel for the Petitioner was that as Ashok Raj Mudliar and Prem Nartain Misra were living in a building, the remaining part of which was in occupation of the Petitioner, therefore, there was a presumption in favour of the Petitioner with regard to the bona-fide requirement of the accommodations in occupation of these two tenants. Explanation (iv) to Section 21(1) of the Act raises a presumption with regard to the bonafide requirement of the landlord in respect of the building. This explanation has, therefore, to be strictly applied. This explanation provides that if a part of the building is in occupation of a tenant, the remaining part whereof is in occupation of the landlord for residential purposes, the same shall be conclusive to establish that the need of the landlord is bona fide. A reading of this provision would show that it will be applicable only to a case where there is only one tenant inasmuch as only then it can be said that the remaining part whereof is in the occupation of the landlord. The word whereof-used in this, explanation is very relevant. It indicates that the whole of the remaining part of the building, a part of which is in occupation of the tenant, must be in occupation of the landlord for availing its benefit. The contention that even where there are two tenants in a building while

the remaining part is in occupation of the landlord this explanation would apply, does not convince me. In such a case, if an application for eviction u/s 21 is made against a tenant, the remaining portion would not be in occupation of the landlord alone but the other tenant as well. The language of the provision used in this section does not show that the legislature intended to give the benefit of this provision even to a case where there are more than one tenant.

6. Moreover, the mere fact that a landlord files applications u/s 21 of the Act against all the tenants and seeks their eviction would not change the interpretation of this provision. In a case where applications u/s 21 are made against all the tenants, portions of the building in their occupation cannot be lumped up together for the purpose of conferring benefit of Explanation (iv) of Section 21(1) on the landlord. The case of each tenant will have to be separately judged. So far as an individual tenant is concerned, the remaining portion of the building would not be in occupation of the landlord alone but also in possession of another tenant or tenants as well. This being the position it cannot be said that the requirement of Explanation (iv) of Section 21(1) is satisfied in such a case. As stated above, Explanation (iv) creates fiction and according to the rules of interpretation a fiction created by law has to be strictly applied. On the basis of this principle of law it will have to be held that Explanation (iv) was not meant for application to a case like the present. It has a limited purpose. The same being that in a building where its one portion has been let out to a tenant whereas the remaining portion of the same is in occupation of the landlord, there would be a presumption of bonafide requirement of landlord in such a case. The interpretation would remain the same irrespective of the fact that applications against all the tenants residing in the building have been filed.

7. For these reasons, the writ petitions are partly allowed, and the judgments of the learned District Judge dated 21-8-1974 are quashed. The learned District Judge is directed to decide the appeals filed by Ashok Raj Mudliar and Prem Narain Misra afresh in accordance with the observations made by me above. The appeals should be decided within six weeks, if possible. The stay order in both the petitions is discharged. No order as to costs.