

(1989) 11 AHC CK 0069

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18633 of 1989

Smt. Shakina Bibi and Others

APPELLANT

Vs

IXth Addl. District Judge and Others

RESPONDENT

Date of Decision : 29-11-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1)

Citation : (1990) 1 AWC 410

Hon'ble Judges : R.P. Singh, J

Bench : Single Bench

Advocate : Ranjit Saxena, for the Appellant; M.A. Qadir, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Singh, J.—By means of this writ petition under Article 226 of the Constitution the Petitioner has prayed for quashing of the order, passed by Respondents 1 and 2 allowing the application of the landlord for the release of the disputed accommodation in proceedings u/s 21(1)(a) of U.P. Act XIII of 1972, hereinafter referred to as the Act.

2. Since the parties are represented and counter and rejoinder affidavits have been exchanged and hence this writ petition is being finally disposed of at the admission stage under Rule 2 of Chapter XXII of the High Court Rules.

3. The facts of the case briefly are that the Petitioner is the tenant of the disputed accommodation, ground floor of House No. 47 S.C. Basu Road, Allahabad of which the Respondents 3 and 4 are the landlords. The landlords filed an application for the release of the disputed accommodation u/s 21(1)(a) of U. P. Act 13 of 1972, hereinafter referred to as the Act, on the ground that they are living in house No. 12-C/I Minhajpur which belongs to Barkat Ali Respondent No. 4. The case of the landlord Respondent No. 3 is that his family consists of six members including himself while there are five members in the

family of his brother Barkat Ali Respondent No. 4 and since all the sons and daughters of the family have grown up and in all there are only four rooms, one verandah, one balcony, bath room and kitchen in house No. 12-C/I Minhajpur in which both the brothers are living with their families which is wholly inadequate to accommodate the family members of both the brothers and due to this shortage of accommodation Barkat Ali who is the owner of the house is pressing his brother Moharram Ali Respondent No. 3 to arrange for a separate accommodation and there being no other accommodation available in vacant state to, Moharram Ali Respondent No. 3 and hence the landlord applied for the release of the disputed premises for his own residence. The landlord also stated in his application that even though there are other houses which are owned by them but they are all in occupation of others and are not available in vacant state and in view of the bonafide and pressing need of the landlord and the continuing pressure of his brother Barkat Ali to vacate his house No. 12C/1 Minhajpur and to arrange for a separate accommodation, the landlord Moharram Ali Respondent No. 3 moved the application on the ground that his need for the disputed accommodation is bonafide and genuine and greater hardship would be caused if the disputed accommodation is not released in his favour.

4. The Petitioner who is the tenant contested the release application on the ground that the landlords own a number of houses in the city and the house No. 12C/1 Minhajpur in which they are living is itself a big house consisting of 16 rooms which is sufficient to accommodate the members of their family and hence the need of the landlord is not genuine or bonafide and the tenant would be put to greater hardship if they are thrown out from the disputed accommodation.

5. The Prescribed Authority on appraisal of the evidence on record held that house No. 12C/1 Minhajpur was constructed and owned by Barkat Ali Respondent No. 4 in which Moharram Ali Respondent No. 3 has no share as there was evidence on record to show that the sale deed of the land of 12C/1 Minhajpur was executed by Smt. Raisa Begum in favour of Barkat Ali and that Barkat Ali alone constructed the house in which landlord is living. The Prescribed Authority also held that the other houses which are alleged to be owned by the landlord are neither owned exclusively by Moharram Ali Respondent No. 3 nor any of them are available for the residential purpose of Moharram Ali in vacant state, and since Barkat Ali who is the owner of house No. 12C/1 Minhajpur is insisting upon his brother Moharram Ali to vacate the house which is too small to accommodate the family members of both the brothers, the need of the landlord was bonafide and genuine and thereafter holding that there are only two rooms available for the residence of the family of Moharram Ali which is wholly inadequate to accommodate Six grown up members of his family including two daughter-in-laws and that the tenant had not made any attempt to search any alternative accommodation for himself since 1982 and hence the landlord under the circumstances would be put to greater hardship in case the accommodation is not released in his favour, allowed the release application subject to the condition that the landlord provides an alternative accommodation to the tenant

on reasonable rent having atleast two or three rooms within a period of two months.

6. The tenant feeling aggrieved against the order passed by the Prescribed Authority went up in appeal before the IXth Additional District Judge Respondent No. 1 while another appeal was filed by the landlord against that part of the order of the Prescribed Authority imposing condition on the landlord to provide an alternative accommodation to the tenant on reasonable rent within a period of two months. The Respondent No. 1 on perusal of the evidence on record dismissed the appeal filed by the tenant upholding the findings recorded by the Prescribed Authority on bonafide need and comparative hardship recorded in favour of the landlord and allowed the appeal of the landlord against the imposition of the condition on the landlord to provide an alternative accommodation to the tenant. It is this order passed by the IXth Additional District Judge dated 5-9-1989 which is in challenge in the present writ petition.

7. Heard Sri. Ranjit Saxena learned Counsel for the Petitioner and Sri. M.A. Qadir learned Counsel for the Respondent.

8. The learned Counsel for the Petitioner strenuously contended that the need of the landlord for the disputed accommodation is not bonafide or genuine as the landlord owns number of houses in the city of Allahabad and even the house in which they are living i.e. house No. 12C/1 Minhajpur is a big house having sixteen rooms which is more than sufficient to accommodate their family members in the same and hence the need of the landlord for the disputed accommodation is neither bonafide nor genuine. Secondly, it was contended that the Petitioners had moved an application for inspection of house No. 12C/1 Minhajpur which application was wrongly rejected by the Prescribed Authority and thirdly it was argued that the finding on the comparative hardship in favour of the landlord is vitiated.

9. The learned Counsel for the Respondent on the other hand contended that the concurrent finding recorded by the Prescribed Authority and also the IXth Additional District Judge in appeal being based on consideration of the relevant evidence on record, it is not open to this Court in exercise of its jurisdiction under Article 226 of the Constitution to reappraise the evidence and interfere on the concurrent finding of fact recorded by both the courts. The learned Counsel for the Respondent also contended that both the Prescribed Authority and the IXth Addl. District Judge in appeal on appraisal of evidence has held that none of the accommodation pointed out by the tenant is exclusively owned by Moharram Ali landlord Respondent No. 3 in the case nor any one of them is available in vacant state for the residence of his family and since the accommodation in house No. 12C/1 consisting, of four rooms was wholly insufficient to accommodate the large number of members of the family of both the brothers Barkat Ali and Moharram Ali and the house in which they are living belongs exclusively to Barkat Ali who is insisting upon his brother Moharram Ali to vacate the said house and arrange for a separate accommodation elsewhere in view of

the pressing need and necessity to have additional accommodation, the Respondents 1 and 2 have rightly held that the need of the landlord for the disputed accommodation is bonafide and genuine. It has also been contended by the learned Counsel for the Respondent that against the rejection of the application for Inspection of house No. 12C/1 Minhajpur, the Petitioner had moved a writ petition before this Court which writ petition was rejected and hence it is not open to the Petitioner to raise this objection, at this stage again before this Court. It was also contended by the learned Counsel for the Respondent that the finding on the question of comparative hardship is also based on the perusal of the evidence on record which is not liable to be interfered with by this Court.

10. Coming to the first question argued by the learned Counsel for the Petitioner that the need of the landlord for the disputed accommodation is not bonafide and genuine as house No. 12C/1 Minhajpur is itself a very big house sufficient to accommodate the family members of both the landlords and further that the landlord owns number of houses, the learned Counsel for the Petitioner contended that house No. 176 Minhajpur is also owned by the landlord. This fact has been controverted in the counter affidavit and it has been stated that house No. 176 Minhajpur belonged to their mother Smt. Hamidan Bibi and even in her life time Smt. Hamidan Bibi had given the said house to her daughter Smt. Amna Begum and moreover, the said house is not used for residential purpose but only for commercial purpose by the sons of Smt. Amna Begum in the name of M/s. Amna & Sons. Apart from Respondents 3 and 4 the other daughters and family members have also share in the said house which is not available to the landlord Moharram Ali for his residence. Another house No. 117 Meerganj pointed out by the Petitioner but according to the landlord the said house is used for carrying on whole sale business in the name and style of M/s. Hazi Ramzan and Sons and is adjacent to the red light area and hence not fit for residential purpose. Another house pointed out by learned Counsel for the Petitioner is 1618 Atarsuiya Allahabad butt according to the landlord the said house belongs to the sister of Respondents 3 and 4 namely Smt. Rahit Begum and Smt. Anna Begum and is occupied by their tenants who are residing in the said house. The other house pointed out by the Petitioner namely house No. 679 Mutthiganj Allahabad is also stated to be a Waqf property and dedicated to Mutthiganj mosque. Similarly house No. 10 Chowk Allahabad is also a commercial accommodation in occupation of tenants running their business in the name and style of M/s. Pathak Bhandar. As far as house No. 12C/1 Minhajpur also the concurrent finding of Respondents 1 and 2 is that it consists of only four rooms apart from verandah, bath room and kitchen etc. which has been held to be too inadequate and insufficient to accommodate the large number of family members of Respondents 3 and 4. It has been further found that since Barkat Ali is the exclusive owner of house No. 12C/1 Minhajpur as the land over which the house stands was exclusively purchased by Barkat Ali from Smt. Raisa Begum on 16-12-1977 and the house No. 12C/1 was also constructed by Barkat Ali and

hence the house is owned exclusively by Barkat Ali who is pressurising his brother Moharram Ali to vacate the said house and arrange a separate accommodation elsewhere in view of the insufficiency of the accommodation and hence on a consideration of the relevant evidence on record the Respondents 1 and 2 have held that the need for the disputed accommodation for Moharram Ali is bonafide and genuine which finding cannot be interfered with by this Court under Article 226 of the Constitution in the circumstances of the case. It was also contended by the learned Counsel for the Petitioner that the first floor of the house in dispute has been got vacated on the application of the landlord. No doubt the order for release has been passed in respect of the first floor of the disputed house No. 47 S.C. Basil Road but it is contended by the learned Counsel for the Respondent that original suit No. 397 of 1989 has been filed in respect of the said house by Mohd. Siddiq and Mohammad Ali who are brothers of erstwhile tenant in which an adinterim injunction was issued restraining the landlord from ejecting the Plaintiff during the pendency of the suit on account of which the landlords have not been able to obtain possession. Moreover, the Respondents 1 and 2 have found that the said accommodation on the first floor is too small to accommodate the family members of Moharram Ali landlord. Thus the need of the! landlord has, in my opinion, been rightly found to be bonafide and genuine.

11. The next submission of the learned Counsel for the Petitioner is that the Petitioner made an application for inspection of house No. 12C/1 Minhajpur which was wrongly rejected by the Prescribed Authority. However, the Petitioner had earlier filed a writ petition against the order rejecting the application of the Petitioner for inspection of house No. 12C/1 Minhajpur which was rejected by this Court and hence it is not open to the Petitioner to reagitate the matter again about inspection at this stage. The Respondents 1 and 2 both on perusal of the evidence on record have held that the accommodation in 12C/1 was wholly insufficient for the residence of members of the family of Respondents 3 and 4 and hence need of the landlord for the disputed accommodation is bonafide and genuine and hence there are no merits in the submission of the learned Counsel for the, Petitioner on this point.

12. Coming to the third submission of the learned Counsel for the Petitioner that the finding recorded by the Prescribed Authority and also the IXth Additional District Judge, Respondent No. 1 on the question of comparative hardship is vitiated and liable to be set aside. I find no merit in this submission also. From the perusal of the orders passed by the Prescribed Authority and the Additional District Judge in appeal I find that they have recorded this finding after perusal of the relevant evidence on record. Whenever an application u/s 21 of the Act is allowed the tenant has to quit and this involves discomfort but if this alone were sufficient to non suit the landlord, no application for release could ever be allowed. The landlords application for release, cannot be dismissed merely on the ground that the tenant would be thrown on the street. The physical dispossession of the tenant is the necessary concomitant of every release application of the landlord and the release application cannot be thrown out merely with the bald

observation that the tenant would suffer greater hardship. In the present case the finding on the comparative hardship has been arrived at on consideration of the relevant evidence on record and it is not open to this Court to reappraise the evidence in writ jurisdiction. In the case of Munni Lal v. Prescribed Authority AIR 1975 SC 29 the Supreme Court observed thus:

It is not for the High Court in the exercise of its jurisdiction under Article 226 of the Constitution to reappraise the evidence and come to its own conclusion which may be different from that reached by the District Judge or the Prescribed Authority.

In the case of Harbans Lal Vs. Jagmohan Saran, the Supreme Court observed that there is no sanction enabling the High Court to reappraise the evidence without sufficient reasons in law and reach findings of fact contrary to those rendered by an inferior court or subordinate court and when a High Court proceeds to do so, it sets plainly in excess of its powers.

13. In the result, there are no merits in this writ petition which is dismissed.

14. In the end learned Counsel for the Petitioner prayed that some time may be allowed by which time the Petitioner may vacate the disputed premises and handover vacant possession of the same to the landlord Respondents 3 and 4, In case the Petitioner files an undertaking before the Prescribed Authority Respondent No. 2 within a period of one month from today that be shall vacate and handover peaceful possession of the disputed premises on or before 30th April 1990, the Petitioner shall not be evicted from the disputed premises till 30th April 1990. In case, however, the Petitioner fails to give an undertaking as stated above within a period of one month from today, it will be open to the Respondents to evict the Petitioner forthwith in accordance with law.