
(2013) 07 AHC CK 0283
In the Allahabad High Court
Case No : C.M.W.P. No. 36078 of 2013

Smt. Shanti Devi (Deceased) and Others	APPELLANT
Vs	
Shyam Nath Nagar and Others	RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Citation : (2013) 100 ALR 148 : (2014) 3 AWC 2333

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—Heard Sri K.K. Arora, learned Counsel for the petitioners and Sri S.K. Mehrotra, holding brief of Sri Atul Mehra, learned Counsel appearing on behalf of the respondents. This is a writ petition by the tenants challenging the order of the Additional District Judge, Court No. 1, Bijnor, dated 22nd May, 2013 by which the Rent Control Appeal No. 1 of 2006, filed by the petitioners against the order of the Prescribed Authority, i.e., Civil Judge, Junior Division, Nagina, Bijnor, dated 24th January, 2006 in Case No. 5 of 1997, Shyam Nath Nagar v. Smt. Shanti Devi has been dismissed.

2. Briefly stated, the facts giving rise to the present petition are that the respondents are the owners of the house situated at Basdar Darwaja, Mohalla Gujaratiyan, Kasba, Pargana and Tehsil Dhampur, District Bijnor, owned by late Shyamnath Nagar, who was an employee in the Irrigation Department. The tenanted house was initially let out to Chet Ram Sharma and after his death, the same was being occupied by his wife Smt. Shanti Devi and sons Chandra Prakash and Bhanu Prakash. Sri Shyamnath Nagar, a year before his retirement in 1998 from service, had moved a release application, u/s 21 of U.P. Act No. 13 of 1972 (hereinafter referred to as the "Act") for release of the house in question. It appears that initially the release application was moved u/s 21(1)(a) of the Act, however, later on in the year 2007, section 21(1-A) has also been added. It was the case of the land lord that after the retirement from the Government service in the year 1998, there was a requirement of the house in dispute for residential

purposes. Further, one son of defendant No. 1, Narendra Kumar, was in Government service and is residing at Himanchal Pradesh and the other son, Umendra Tiwari, was residing at Dhampur in Linepar area and another son was residing at Tehsil Chandpur. It was also the case of the landlord that the defendant No. 1, most of the time, resides outside alongwith her sons whereas in respect of the defendant - Bhanu Prakash, it has been stated that he also, did not reside in the house in dispute and he is in Government service in Ram Nagar, District Nainital where he is residing. Son of defendant No. 2-Bhanu Prakash is also employed in Delhi and he resides at Delhi. However, it is the case of Chandra Prakash that he alongwith his mother Smt. Shanti Devi and brother Bhanu Prakash reside in the house in dispute. Since after the retirement of the landlord, Shyamnath Nagar, the house in dispute has not been vacated, though repeated efforts were made, he went to Chandausi, District Moradabad where he was residing in a rented accommodation at the rent of Rs. 1,200/- per month. Subsequently, he died and he has been substituted by his legal heirs.

3. Before the Trial Court, the case of the land lord was that after the retirement, in the year 1998, he was entitled to get his house released u/s 21(1-A) as there was a genuine and bona fide need inasmuch as he required one residential house after his retirement to reside. The case has been contested by the petitioners being the tenants on the ground that the son of Shyamnath Nagar is residing at Delhi and wife of Shyamnath Nagar is also residing with her son. He was also having another house, which has been sold by him on 3rd of January, 1994. The need, as stated by the landlord, is not genuine and the comparative hardship is also in favour of the tenants.

4. The Trial Court, after going through the facts and the record, came to the conclusion that the landlord has a bona fide need and the comparative hardship is also in his favour, therefore, allowed the release application. Feeling aggrieved by the order of the Trial Court, the petitioners filed the appeal, which too has been dismissed by the impugned order. The Appellate Court has held that the landlord, Shyamnath Nagar was a Government employee in the Irrigation Department. He moved the release application within one year from the date of his retirement from service stating that he was occupying a Government accommodation provided by the Government department and, therefore, in view of section 21(1-A), the house in dispute, which is his own house, is liable to be released in his favour. Further, the Appellate Court held that for the purposes of section 21(1-A) it is not necessary to establish bona fide need. It has also been held by the Appellate Court that the landlord has a bona fide need. It has further been held that after the retirement, the landlord had to reside at Chandausi, District Moradabad forcefully, taking an accommodation on rent at the rate of Rs. 1,200/- per month, despite availability of his own house, which is being occupied by the tenant on a rent of Rs. 60/- per month. The Appellate Court has held that the landlord has the bona fide and genuine need in comparison to the tenant.

5. Learned Counsel for the appellant submitted that for applying section 21(1-A),

it is necessary to establish that the landlord was in occupation of a public building for the residential purposes while he was in service, but in the present case no such case has been made out in the release application. Further, it has been submitted that the finding recorded by the Trial Court and the Appellate Court on the bona fide need of the land lord is not justified.

6. I do not find substance in the argument of learned Counsel for the petitioner. The appellate authority has categorically recorded the finding that the landlord, Shyamnath Nagar had to vacate the Government accommodation, which had been provided to him while he was in service in the Irrigation Department. There is no material to the contrary. In my view section 21(1-A) of the Act is fully applicable. Further, the facts stated in the order of the Trial Court and the Appellate Court clearly establish the bona fide need of the landlord and comparative hardship. In my view, the present case is a clearcut case where there was a bona fide need of the landlord and hardship. A Government servant arranges to construct a house during the period of service and let it out only with a view that whenever he will retire, he will get his own house vacated and live in his own house. With this object, section 21(1-A) has been enacted. But in the case in hand, after the retirement the landlord could not get his own house vacated and, therefore, could not reside in his own house and has been compelled to live in a rented accommodation at a different place and lastly died leaving behind his widow. What more can be hardship of a landlord. The whole purpose of section 21(1-A) is being frustrated. The findings recorded in this regard are findings of fact and in the facts and circumstances cannot be said to be perverse, which require interference and judicially reviewed by this Court.

7. The Apex Court in the case of Mohd. Ayub and Another Vs. Mukesh Chand, has held that the landlord's requirement need not be a bare necessity. The hardship which the landlord will suffer by not occupying his own house will be far greater than the hardship the tenant will suffer by having to move out to another place. In view of the above, I do not find any merit in the writ petition. In the result, the writ petition fails and is dismissed. However, in case if the petitioners give an undertaking before the Court below to vacate the premises in dispute within two weeks from today, the eviction of the petitioners shall remain stayed for a period of three months.