
(1998) 04 AHC CK 0100
In the Allahabad High Court
Case No : C.M.W.P. No. 14957 of 1998

Smt. Sheela Sabharwal and others	Vs	APPELLANT
IInd Additional District Judge, Allahabad and others		RESPONDENT

Date of Decision : 30-04-1998

Acts Referred:

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

Citation : (1998) 3 AWC 1946

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Prakash Krishna, for the Appellant; S.C. and Vishnu Gupta, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Gupta, J.—Heard Sri Prakash Krishna, petitioner's counsel. Sri Vishnu Gupta and Sri K. M. Dayal, Senior Advocate appear for the caveator respondent Nos. 3 to 5 (landlords).

2. This is tenant's writ petition. The dispute relates to a portion of House No. 3. Baird Road (B. P. Jain Road). Allahabad which is in the tenancy of the petitioners since before the same was purchased by the present landlords. It is not disputed that the present release application by the landlords was filed against the petitioner after making compliance of the first proviso to Section 21(1) of the Act by serving the required notice on the tenant. The landlords filed release application that they required the entire tenanted accommodation for their personal need as the accommodation already in their occupation was insufficient to cater their need who are a man of high status of society. The tenant-petitioners denied the said allegation of the landlords and asserted that the accommodation in their possession was sufficient to cater their need. The Prescribed Authority accepted the landlords' claim for additional accommodation.

However, it came to the conclusion that the requirements of the landlords would sufficiently be met by releasing part of the tenanted accommodation lying to the South of the main building shown by letters S-1, S-2, S-3, S-7 and S-8 in the Commissioner's map. Aggrieved by the said order, both the landlords and tenant filed appeals before the lower appellate court. The appeal filed by the tenant has been dismissed while the one filed by the landlords has been allowed in part. As per the judgment of the lower appellate court, the portion shown in red colour by the letters S-1 to S-8 and S-16 as shown in the Commissioner's map has been allowed to be retained by the tenant-petitioners and the landlords were further directed to get constructed an additional latrine-cum-bathroom, which has been done by the respondents as per the statement given by the learned counsel for the caveator and it has not been disputed before me from the tenant's side. It may be mentioned here that the accommodation already left with the tenant consists of seven rooms, kitchen, bathroom, toilet, garrage, etc.

3. The concurrent finding recorded by both the Courts below on the question of bona fide need has been challenged mainly on the ground that the requirement for additional accommodation was based on the allegation that it was not practicable for the members of families of landlord Nos. 1, 2 and 3 to live together and they needed separate messing and living and for (hat purpose, each of them required separate dining rooms, living rooms, kitchen, bathroom, etc. Learned counsel for the petitioners contended before Ihis Court that the Prescribed Authority recorded a specific finding that landlords failed to prove that the family members of landlord Nos. 1 to 3 were not having cordial relations and separate living was necessary ; yet the Courts below have held need for additional accommodation to be bona fide. It may be mentioned here that after recording the above finding, the Prescribed Authority weighed other facts and circumstances of the case and came to a positive finding that the requirement of the landlords for additional accommodation was bona fide. The tower appellate court has reversed the finding of the Prescribed Authority on the point of separate living and on the basis of evidence on record, has held that on account of growing ages of children of the three landlords and the strained relations between the wives of the said landlords, the need of the landlords for additional accommodation for their separate living was necessary. It has also been found as a fact that they are men of status and they needed additional accommodation to cater their need for a comfortable living. Every landlord of a building is entitled to a comfortable living and he cannot be compelled in law to cramp himself in an Inadequate and insufficient accommodation. The Courts below have examined the entire facts and circumstances of the case and also Rule 16 (1) (d) of the Rules framed under the Act and the lower appellate court has thus allowed the tenant to retain the above-mentioned portion which cannot be said to be insufficient or Inadequate to meet out the need of the tenant and his family members. In this case, tenant has not been ordered to be thrown on streets and he has been allowed to retain still a portion of the tenanted accommodation which in the opinion of the Courts below was sufficient to cater his need having

regard to his family members. As already pointed out above, the said portion comprises of seven rooms besides kitchen, bathroom, toilets, garrage, etc.

4. Learned counsel for the petitioner contended before this Court that the portion which has been left with the tenant is not suited to him because it has asbestos ceiling and is meant for the use of servants. It may be mentioned here that before the Courts below the tenant himself offered a part of this portion to the landlords. If according to the tenant, this accommodation was suitable to landlord, there could not be any reason why the same would not be suitable to the tenant. Merely because the accommodation has ceiling of asbestos sheets would not make the accommodation unsuitable for habitation and as already stated above, the same was offered by the tenant to the landlord himself for that purpose.

5. Learned counsel for the petitioners further argued that the landlords had with them a building situated at Rajrooppur, Allahabad which they first concealed and when the same was pointed out, it was sold by the landlords which would show that their need for additional accommodation was not bona fide. This aspect of the matter has been duly considered by the Courts below. The landlords' case in respect of the said accommodation was that the same was not suitable for residential purpose and was being used for storage purpose and for that reason, it was not necessary to make a mention of that accommodation in the release application. However, according to the tenant- petitioner, the landlord was having this alternative accommodation and the same was most suited to serve their purpose of having additional accommodation for residential purposes. The landlord made an offer that if the said accommodation was fit for residential use as claimed by the tenant, the tenant could himself occupy the same. However; the tenant declined to do so and the offer was not accepted. The landlords' case further was that when the offer was not accepted by the tenant, he had no option but to sell the said property as the same was of no use to him. The fact that offer made by the landlords was not acceptable to the tenant would itself suggest that the said accommodation was not suitable for residential use. Moreover, we cannot shut our eyes to the fact that the said accommodation was situated away from the house in question, in a portion of which the landlords were in occupation. The landlords in their release application made a claim for the other portion of the house, which is in the tenancy of the petitioner so that they may live comfortably at one and the same place. A landlord who is in occupation of a portion of a house which comprises of the tenanted portion also, if bases his claim for additional accommodation of the tenanted accommodation, he cannot be compelled to have his residences at two different places, one which is already in his occupation and the other at a place far removed from it. The fact that the landlord himself offered the other accommodation to the tenant itself speaks of his bona fides. In the circumstances of the case, it cannot be said that the landlords' requirement for additional accommodation of the tenanted accommodation was not bona fide as they had with them an additional accommodation at Rajrooppur, Allahabad. The contention of the petitioners"

counsel must, therefore, be rejected.

6. The Courts below have also made a comparison of the likely hardships to be suffered by the parties and have recorded a finding in favour of the landlords.

7. The findings both on the questions of bona fide need and of comparative hardship are based on appraisal of evidence and being concurrent, they are not to be interfered with in exercise of powers under Article 226 of the Constitution. It could not be shown that these findings suffer from any infirmity or manifest error of law.

8. For the above reasons, this writ petition is liable to be dismissed.

9. At this stage learned counsel for the petitioners made a request that some reasonable time be allowed to the tenant-petitioners to vacate the released portion of the tenanted accommodation in question and shift his belongings to the portion which has been allowed to be retained by the tenant-petitioner. Learned counsel for the caveator stated that the landlords will have no objection to this prayer provided the tenant files an undertaking in writing before the Prescribed Authority within a specified period. Learned counsel for the petitioners, after obtaining instructions from the petitioner who is present in person, states that the petitioner is prepared to file any such undertaking as may be required by this Court for the said purpose.

10. In the circumstances, the petitioner is allowed time upto 31.7.1998 to vacate the portion of the tenanted accommodation which has been released in favour of the landlords under the order of the lower appellate court dated 27.2.1998, provided the petitioner files an undertaking in writing on affidavit before the Prescribed Authority within a period of two weeks from today to the effect that he shall vacate peacefully and hand over vacant possession of the released portion of the tenanted accommodation to the landlords on or before 31.7.1998 and shall not induct any third person therein. In case no such undertaking is filed within the aforesaid period and/or the undertaking is not honoured, it shall be open for the landlords to get the order of eviction enforced forthwith. However, if such an undertaking is filed and the undertaking is honoured, the dispossession of the petitioner from the released portion of the tenanted accommodation shall remain suspended till 31.7.1998.

11. With the above observations, this writ petition is dismissed in limine.