

(1988) 05 AHC CK 0004

In the Allahabad High Court

Case No : Civil Misc. Wrti Petition No. 14013 of 1984

Smt. Sidheshwari Tiwari

APPELLANT

Vs

The Prescribed Authority/Munsif and Others

RESPONDENT

Date of Decision : 17-05-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1), 21(1A), 22, 23

Citation : (1988) 2 AWC 945

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : S.R. Misra, for the Appellant; K. Prasad and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India arising out of proceedings u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act). This petition arises out of very peculiar circumstances.

2. The property in dispute is house No. 5 situate in Mohalla Mahuabagh, Ghazipur. Smt. Sidheshwari Tiwari, the Petitioner, is the landlady of the said premises. She filed an application u/s 21(1)(a) of the Act before the Prescribed Authority. Her case was that she was residing with her husband, who is occupying a Government building in the opium factory situate at Ghazipur and that her husband was about to retire after completing 54 years of service and, consequently, she required the accommodation in dispute for her personal need. This application was filed on 14th April, 1982, against Kalika Prasad Singh, Respondent No. 2 who, according to her, was the tenant in the premises in suit.

3. After filing of the application and after notices of the application having been served on Kalika Prasad Singh, instead of filing an objection to the release application, Kalika Prasad Singh, on 5-11-1982 entered into a compromise to the

effect that the property may be released in favour of the Petitioner, but he may not be evicted till April, 1984. In accordance with the agreement, consequently, the Prescribed Authority passed an order on 9-11-1982 for release of the accommodation in dispute and Kalika Prasad Singh was given time to vacate the premises till April, 1984. This order of the Prescribed Authority releasing the property in favour of the Petitioner passed on 9-11-1982 was not challenged by Kalika Prasad Singh and the same became final.

4. At the time when the release application was filed, Kalika Prasad Singh was living in the house along with his wife and sons. In spite of the fact that Kalika Prasad Singh had to vacate the premises by April, 1984, since he did not vacate the same, the Petitioner filed an application u/s 23 of the Act for delivery of the actual physical possession of the house in dispute. This application was filed on 16th May, 1984.

5. When this application was filed, the Prescribed Authority issued notices on the same and, thereafter, on 27th July, 1984, Smt. Shanti Devi, wife of Kalika Prasad Singh and sons, Sanjiv Kumar Singh and Rajiv Kumar Singh filed objections to the enforcement of the release order in the objections, the case taken up by the wife and sons of Kalika Prasad Singh was that Kalika Prasad Singh was never the tenant of the property and in fact, they were the tenants of the property and since they were not made party to the release application, the same cannot be enforced. The Petitioner filed a reply to the objections of Respondents 3 to 5 and clearly stated before the Prescribed Authority that in fact, only Kalika Prasad Singh was the tenant and Respondents 3 to 5 are wife and sons of Kalika Prasad Singh and they have only been set up to obstruct the enforcement of the release order. The Prescribed Authority, however, by the judgment dated 14th September, 1984, allowed the objections of Respondents 3 to 5. The Petitioner-landlady, has now challenged the order dated 14th September, 1984, by means of the present petition in this Court.

6. I have heard learned Counsel for the Petitioner and learned Counsel for Respondents 3 to 5. Kalika Prasad Singh has not come to contest this petition.

7. At the outset, it may be stated that the release order had been made against Kalika Prasad Singh. He availed of the time granted in the compromise decree and stayed in the property in dispute along with his wife and sons. During the pendency of the release application, wife and sons did not turn up either to get them impleaded as parties to the release application nor did they file any objections to the same. When the release order was about to be enforced, they filed objections. It is not disputed that wife and sons, who had filed these objections were, in fact, residing with Kalika Prasad Singh. It is, therefore, clear that the objections are nothing but in fact, abuse of the process of the court and as such, they were not maintainable at all. The Prescribed Authority acted completely arbitrarily in exercise of its jurisdiction in entertaining these objections.

8. In *R.B.L. Banarasi Dass and Co. Pvt. Ltd. v. Shree Amar Trading Company* 1988 (1) ARC 387 the Hon"ble Supreme Court in similar circumstance where an ad-interim injunction had been obtained from the trial court after the tenant availed of the time granted to him for vacating the property on the basis of a compromise decree, held that the order granting an injunction was nothing but an abuse of the process of law. It held as follows:

We were, however, impressed by the feature that the Respondent was not acting bonafide, he availed of the benefit under the compromise decree and remained in occupation for about five years without raising any dispute against the order of eviction and the institution of the suit is not a bona fide act.

Section 23 of the Act reads as follows:

23 (1) The Prescribed Authority may use or caused to be used such force as may be necessary for evicting any tenant against whom an order is made u/s 21 or an appeal u/s 22, as the case may be, or against any other person found in actual occupation and for putting the landlord into possession.

From the above Section, it is clear that the Prescribed Authority has been authorised to use or caused to be used such force as may be necessary for evicting any tenant in pursuance of a release order. It has also been permitted to take action against any other person found in actual occupation of the premises in question in relation to which the release order has been passed. Once the release order has been passed against a person he cannot be permitted in law to set up his wife and sons to contest the same by the stay of the enforcement of the same u/s 23 of the Act. If he does so, it is nothing but an abuse of the process of the court.

9. In the instant case Kalika Prasad Singh is living with his wife and sons. The release application was filed against him which remained pending for many months. Thereafter, he compromised and took sufficient time to vacate the premises. When this period of time expired and when the release order was about to be enforced u/s 23, then he set up his wife and sons to oppose the enforcement of the release order. This is clearly a collusive act and patently a case of an abuse of the process of the court. The Prescribed Authority should not have entertained such an objection. Such an objection was not maintainable at all u/s 23 of the Act.

10. In *Hukum Singh Vs. The Prescribed Authority and Others*, , it has been clearly held by this Court that a bare look at Section 23 of the Act reveals that it can be pressed into service not only for evicting any tenant against whom an order is made but also against any other person in actual occupation and for putting the landlord into possession. The Bench further has taken the view that even in case of joint tenancy, if one of the joint tenant is impleaded in the proceedings for release, he sufficiently represents the rights of the remaining joint tenants and other joint tenants are equally bound by the release order. It has been opined as follows:

The Petitioner's specific case was that he and Respondent No. 3 were joint tenants. In case of joint tenancy even if one of the joint tenants is impleaded in the proceedings for release of the accommodation in dispute, he sufficiently represents the rights and interest of the remaining joint tenants and the order passed against the impleaded tenant is equally binding on others not so impleaded.

Accepting the view taken in the Hukum Singh's case (supra), this Court in Sri Ganga Saran v. The Prescribed Authority Munsif Ghaziabad 1982 2 ARC 477 has taken the view that even if the objector was a joint tenant or a co-tenant, an objection filed by him u/s 23 was not maintainable and the same could not have been allowed. I respectfully agree with this decision.

11. Even if Respondents 3 to 5, the wife and sons of Kalika Prasad Singh were either joint tenants or co-tenants, though in fact, as I have found below, they have no such status, the objections filed by them u/s 23 of the Act were not maintainable at all and the same could not have been allowed.

12. Learned Counsel for the Petitioner has argued that Respondents 3 to 5, the wife and sons of Kalika Prasad Singh were not Petitioner's tenants at all. The case set up in the objections is wholly false.

13. Learned Counsel for Respondents 3 to 5, however, urged that, in fact, the disputed accommodation was taken on rent by M/s. Suhasini Theatre to provide residential accommodation to its partners, namely, Respondents 3 to 5, who were to live in Ghazipur and manage the cinema business.

14. It is not disputed that there is no agreement between the landlady and Respondents 3 to 5, by virtue of which they can be said to be the tenants of the property in dispute. The burden, consequently, shifts to Respondents 3 to 5 to establish their case of tenancy. Their case of tenancy is set out in paragraph 7 of the counter affidavit filed in this court, which is quoted below:

That Thakur B.P. Singh, managing partner of the firm negotiated with Shri Murlidhar Tewari Petitioner's husband for taking the accommodation in dispute on rent for the purpose of providing residential accommodation to the answering Respondents who were decided by the partnership firm to live in Ghazipur and look after and manage the Cinema business of Sushasini Theatre. Thakur K.P. Singh was never a partner of the firm. He being head of the family of the answering Respondents was introduced to the landlord by Sri B.P. Singh, representing to the landlord that the answering Respondents along with Thakur K.P. Singh will reside in the accommodation in question but, it is Suhasini Theatre which will pay and be responsible in every manner for payment of rent etc. of the accommodation to the landlord. So far as Thakur K.P. Singh is concerned he looked after and was engaged in other business in Kanpur and elsewhere and mostly kept out of Ghazipur.

On the basis of paragraph 7, it has been urged by counsel for the Respondents 3

to 5 that, in fact, the tenancy was in favour of Suhasini Theatre, and since Respondents 3 to 5 were partners and not Kalika Prasad Singh, as such, Respondents 3 to 5 are the tenants. On a reading of paragraph 7 quoted above, it is clear that it is the own case of Respondents 3 to 5 that Kalika Prasad Singh being the head of the family, was introduced to the landlady that the Respondents 3 to 5 along with Thakur Kalika Prasad Singh will reside in the accommodation in question. It is, therefore, clear that actually even according to the case of Respondents 3 to 5, Kalika Prasad Singh was to be a tenant with whom Respondents 3 to 5 were to reside. Kalika Prasad Singh was the head of the family. The case now set up, cannot, possibly be believed because at the time when the property was taken, both the sons of Kalika Prasad Singh were minors. No receipt has been filed to show that the firm was accepted as a tenant. In the receipt which has been filed only it has been stated that the amount has been received. The argument of the learned Counsel for the Respondents is that since the amount was paid from the account of the firm, therefore, the firm became the tenant. This argument, in my opinion is wholly misconceived. If a tenant in order to pay the rent of a property asks any firm to pay the same on his behalf, the firm does not become a tenant of the said property.

The word "tenant" has been defined in Section 3(a) of the Act which is as follows:

3 (a) "tenant" in relation to a building means a person by whom its rent is payable.

From the above definition, it is clear that a tenant in relation to a building means a person by whom its rent is payable. He does not mean a person by whom the rent is paid. If a tenant of a property asks any other person to pay rent on his behalf, the said person does not become the tenant of the property. The tenant means a person by whom the rent is payable and not by whom it is paid. The mere fact that Kalika Prasad Singh took money from the firm's account to pay the rent of the premises does not mean that so far as the landlord is concerned, the tenancy shifts to the firm. This argument, in my opinion, is wholly fallacious. The court below has relied on this circumstance to find that Respondents 3 to 5 were also joint tenants of the property. In my opinion, the judgment of the trial court on this question, cannot, possibly, be sustained.

15. Learned Counsel for the Respondents have also placed reliance on the payment of electricity bills and telephone charges for the purposes of creating a tenancy with the landlady-Petitioner, as also the finding of their names in the ration card. The names in the ration card or payment of electricity and telephone charges by themselves do not establish any tenancy. It is a question of contract. If any person occupying the premises along with a tenant pays electricity charges or telephone charges, he does not become a tenant of the property. Similarly, if the members of a family of a tenant are found recorded in the ration card, they cannot become the tenants of the property. The view to the contrary taken by the Prescribed Authority is not only unreasonable but wholly perverse. From the facts on record, it cannot be said that Respondents 3 to 5 are also joint tenants

of the property in dispute.

16. Learned Counsel for the Respondents in support of the judgment of the Prescribed Authority has vehemently urged that the compromise decree passed against Kalika Prasad Singh is void decree and as such, it cannot be enforced. This argument is not open to be taken by Respondents 3 to 5 who are not parties to the release application. Kalika Prasad Singh against whom the release order has been passed, has not challenged the compromise decree. Respondents 3 to 5 are his wife and sons. They are living together. They must have the knowledge of the release proceedings, and, in case they were really aggrieved by the same, it was open to them to get themselves impleaded as parties to the release application and to contest the same. After having taken benefit of the time granted under the compromises by* the Petitioner landlady to vacate the premises, Respondents 3 to 5 cannot be permitted to take this objection.

17. Learned Counsel for the Respondents has also urged that the application u/s 21(1)(a) of the Act was not maintainable, hence; the release order cannot be enforced. His case is that it is an application u/s 21(1-A) of the Act and not 21(1)(a). This argument is also misconceived. Section 21(1-A) of the Act applies only in case where the landlord is in occupation of a public building which he has to vacate on account of cessation of his employment.

18. In the instant case, the landlady is not in occupation of any public building. It is only her husband who is in occupation of a public building. It has also not been stated that the husband has been asked to vacate on account of the cessation of his employment. The need of the landlady is a personal need as required by Section 21(1)(a) of the Act and not 21(1-A) of the Act. This argument has no force. The application u/s 21(1)(a) of the Act is maintainable.

19. In view of the above, I am clearly of the opinion that Respondents 3 to 5 are not the tenants of the property in dispute, neither the firm Suhasini Theatre is the tenant of the same. The case taken up in the objections by Respondents 3 to 5 is completely false. The view to the contrary taken by the Prescribed Authority is manifestly erroneous and as such, the contentions raised by the Petitioner, is well-founded.

20. In the result, the petition is allowed with costs. The impugned order dated 14th September, 1984 passed by the Prescribed Authority/Munsif, Ghazipur is quashed. The Prescribed Authority is directed to enforce the release order forthwith.