

(1987) 12 AHC CK 0008
In the Allahabad High Court
Case No : Writ Petition No. 15717 of 1987

Smt. Vatsala Nayar

APPELLANT

Vs

Smt. Vandana Tandon and Others

RESPONDENT

Date of Decision : 17-12-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Hindu Succession Act, 1956 — Section 15
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(1), 13(1), 21, 21(1), 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 13(2), 15(2)

Citation : (1988) 1 AWC 432

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

Bench : Single Bench

Advocate : S.M. Dayal, for the Appellant;

Final Decision : Dismissed

Judgement

R.P. Singh, J.—By means of this writ petition under Article 226 of the Constitution, the petitioner has challenged the order passed by the Vth Additional District Judge, Kanpur Nagar, dated 20-5-1987, dismissing the appeal and upholding the order passed by the Prescribed Authority/Civil Judge, Kanpur dated 12-5-1986 in proceedings u/s 21(1)(a) of U.P. Act 13 of 1972.

2. The brief facts of the case are that the Respondent No. 1 Smt. Vandana Tandon filed an application for the release of the accommodation of premises No. 10/436-A, Khalasi Lines, Kanpur which was let out to Indian Explosives Ltd. Kanpur (hereinafter referred to as the I. E. L.) and was in occupation of its officer, P. S. Nayar, the husband of the petitioner, who expired in August 1982. The I. E. L. however, continued to retain the house in its tenancy and the same remained to be occupied by the petitioner after the death of her husband. The case of the landlady, Respondent No. 1, is that her mother Smt. Saroj Bhalla was the owner of the accommodation in dispute which had been let out to I. E. L.

initially on 7th July, 1974, for a period of three years and then subsequently renewed for three successive period on the same terms and conditions to the I. E. L. except some variation in rent from 7-7-1977 to 6-7-1980 and then from 7-7-1980 to 6-7-1983 and lastly from 7-7-1983 to 6-7-1987.

The I. E. L. had taken the aforesaid accommodation for the residence of its officer Sri P.S. Nayar, husband of the petitioner, who later died on 25th August, 1982, but the I. E. L. retained the accommodation in dispute in its tenancy for the occupation of its officers, and even after the death of Sri P. S. Nayar, the petitioner who is widow of Sri P. S. Nayar continued to remain in occupation of the same, Smt. Saroj Bhalla, however, died on 7-10-1984 leaving behind the accommodation in dispute to her heirs including Smt. Vandana Tandon, Respondent No. 1, who after her marriage with Sanjiv Tandon, a Chartered Accountant, was living in Kanpur in 117/85 Sarvodaya Nagar, Kanpur with her in-laws.

3. Smt Vandana Tandon, Respondent No. 1 in the case, moved an application in November 1984, u/s 21(1)(a) of the Act that she is the landlady of the accommodation and needed the same for her use and occupation and that she has to live with her in-laws after her marriage in one room causing her great hardship and that her need for the accommodation is bonafide and genuine. The I. E. L. filed a written statement admitting the bonafide and genuine need of the landlady and that they had no objection to the accommodation being released. The petitioner, however, then moved an application for her impleadment in the case and filed her written statement contesting the release application filed by Respondent No. 1 on the ground that though the accommodation in dispute initially let out to I. E. L. and was in occupation of her husband who was an officer of the company but after the death of her husband on 25-8-1982, on the basis of an agreement between the petitioner, the I. E. L. and Smt. Saroj Bhalla. the petitioner continued to pay the rent of the accommodation to Smt. Saroj Bhalla through the I. E. L. The petitioner contested the maintainability of the application by Smt. Vandana Tandon, Respondent No. 1, on the ground that being one of the daughters of Smt. Saroj Bhalla she is not entitled to maintain the application as Smt. Vandana Tandon is only one of the heirs of Smt. Saroj Bhalla and further that the house is shown to belong to Sri R. N. Bhalla, husband of Smt. Saroj Bhalla and further that after the death of her husband, the petitioner continued to pay the rent through the I. E. L. and hence the petitioner is the tenant of the accommodation. The case of the petitioner further is that since she has denied the title of the Respondent No. 1 to the accommodation in dispute and intricate question of title are involved and hence the application should have been returned for presentation to the proper court and the Respondents 3 and 4 were not competent to decide the question of title.

4. The Prescribed Authority holding that Smt. Vandana Tandon was the landlady entitled to maintain the application and her need for the same was bonafide and genuine, allowed the application against which the petitioner went up in appeal

before the Additional District Judge who also on going through the evidence on record and applying his mind to the same recorded a finding that Smt. Vandana Tandon, Respondent No. 1, was the landlady entitled to maintain the application and further that the petitioner is not even a tenant but was allowed to continue in possession after the death of her husband, by the I. E. L. who was the tenant to whom the accommodation was let out and hence the petitioner was not entitled to file an objection to the release application and further held that the I. E. L. having filed an application that they have no objection to the release application being allowed, the application of the Respondent No. 1 was entitled to be allowed and further recorded a finding that the need of Respondent No. 1 for the accommodation was bonafide and genuine and that greater hardship would be caused to the Respondent No. 1 if the accommodation was not released in her favour. Feeling aggrieved the petitioner has challenged the same by means of this writ petition.

5. The learned Counsel for the petitioner strenuously urged that Smt. Vandana Tandon, Respondent No. 1 being one of the daughters of Saroj Bhalla, was not entitled to maintain the application u/s 12(1)(a) of, the Act, she being not the landlady entitled to occupy the accommodation in dispute. Secondly, it was urged by the learned Counsel for the petitioner, that since the petitioner had challenged the title of Respondent No. 1 to the house in dispute and intricate question of title were involved and hence the application should have been returned for, presentation to the proper court and Respondents 3 and 4 could not proceed to decide the intricate questions of title involved in the case. Thirdly, it was argued that the petitioner would suffer greater hardship and hence also the application should not have been allowed.

6. Coming to the first point regarding the maintainability of the application u/s 21(1)(a) I have to first examine whether the present application filed by Smt. Vandana Tandon is maintainable. Section 21(1)(a) of the Act provides that the Prescribed Authority may on the application of the landlord in (hat behalf order the eviction of the tenant if he is satisfied that the same is required for bonafide use of the landlord. The word "landlord" has been defined in the Act as a person to whom its rent is payable. In the written statement filed by the petitioner before the Prescribed Authority, the petitioner in paragraph 1 has stated that--

The premises No. 10/436-A, Khalasi Lines, Kanpur belonged to Smt. Saroj Bhalla who expired in October, 1984 leaving behind her several legal heirs including the applicant and all of them succeeded to ownership right of the bungalow.

In paragraph No. 4 of her written statement the petitioner has stated that initially the accommodation in dispute was let out by late Smt. Saroj Bhalla, the then landlady, for residential use of the officers of I. E. L. In her affidavit filed before the Prescribed Authority the petitioner has stated in paragraph 2 of her affidavit that--

Late Smt. Saroj Bhalla bad left behind her several legal heirs including her

husband, Sri Ram Nath Bhalla three daughters including the applicant Smt. Vandana Tandon and one son.

thus it is clear that on the own case of the petitioner the accommodation in dispute belonged to Smt. Saroj Bhalla, the mother of Smt. Vandana Tandon, Respondent No. 1 and on her death, the Respondent No. 1 succeeded as one of the heirs of the said accommodation. An affidavit had been filed before the Prescribed Authority by R. N. Bhalla, the husband of Saroj Bhalla and also by Deepak Bhalla, the son of Saroj Bhalla, a copy of which is enclosed as Annexure C.A.-I, in which it is stated that Saroj Bhalla died on 7-10-84 leaving behind R. N. Bhalla, the husband, Deepak Bhalla the only son and her daughter Vandana Tandon, the Respondent No. 1 as the only legal heirs and that R. N. Bhalla and Deepak Bhalla do not claim any ownership right or interest in the accommodation in dispute which fell to the share of Smt. Vandana Tandon exclusively. Thus Smt. Vandana Tandon became the landlady of the accommodation of which the I. E. L. was the tenant. Now Sub-rule (2) of Rule 15 of the UP. Urban Buildings (R. L. R. E.) Rules, 1972 provides that every application for release u/s 21(1) shall be signed if there are more than one landlords by all the co-landlords and Sub-rule (2) of Rule 13 provides that if, there are more than one landlords, the application may be signed by any one of them but the co-landlords shall be arrayed as proforma opposite parties. The present application for release is signed by Smt. Vandana Tandon who is the legal heir of Smt. Saroj Bhalla u/s 15 of the Hindu Succession Act and in view of the affidavit filed by the other two legal heirs, namely, R. N. Bhalla and Deepak Bhalla, before the Prescribed Authority that they do not claim any title or ownership in the accommodation in dispute which has fallen exclusively to the share of Vandana Tandon, there has been substantial compliance of the Rules and the application cannot be said to be hot maintainable at the instance of Vandana Tandon. In *Girraj Singh v. IIIrd Additional District Judge, Bareilly* 1979 ARC 422, a similar question was raised and the application u/s 21 had been dismissed by the learned District Judge on the ground that it was not signed by all the co-landlords. It was held in that case that the Rule expressly permits the signing of the application u/s 21 of the Act by one or more of the co-landlords and the other co-landlords may be arrayed as proforma opposite parties. It was also observed that it would be sufficient compliance with the Rules if the non-petitioning landlords are only arrayed as proforma Respondents. In *Yogesh Saran v. Jyoti Prasad* 1978 ARC 408, it was held that--

To roe it appears that the omission to sign the application by all the landlords is of a formal character and an application made by the landlord cap not be rejected on that basis. It is so because for getting a premises released u/s 21 it is not necessary that the landlord must set up the needs of all the landlords and allege that the premises is needed by all of them. It can be for the need of only one landlord.

In a Full Bench case of *Gopal Dass v. 1st Addl. District Judge, Varanasi* 1987

AWC 538 it was held:

In view of these decisions, there can, therefore, be little doubt as to the maintainability of the action for eviction brought by one co-owner without impleading the other co-owners.

It was also observed that-

However, we may point out that the requirement of Rule 15 (2) that an application for release of premises owned by co-owners should be signed by all co-owners would be invalid. One co-owner is competent to maintain an action for eviction of the tenant of the entire premises, since he can be considered as a landlord within the meaning of Section 3(j) of the Act. One co-owner alone would be competent to sign such an application.

In *Sri Ram Pasricha Vs. Jagannath and Others*, it was observed at page 2339 as follows:

Jurisprudentially it is not correct to say that a co-owner of a property is not its owner, he owns every part of the composite property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property. The position will change only when partition takes place. It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of Section 13(1)(f) as long as he is a co-owner of the property being at the same time the acknowledged landlord of the defendants.

7. In view of the decisions noted above, it is clear that the application filed by Smt. Vandana Tandon, Respondent No. 1, u/s 21(1)(a) is maintainable.

8. The learned Counsel for the petitioner relied on *Smt. Sugra Begum v. Sri Ram* 1983 (2) ARC 143 in support of his contention that the application moved by Smt. Vandana Tandon, Respondent No. 1, for the release is not maintainable. This case lends no support to his submission as it has been laid down in that case that only a person who is entitled to occupy can alone move an application which indicates that one who is not entitled to occupy or has no right to occupy in his own right cannot apply for release u/s 21. Thus an agent or an attorney of an owner of the house may realise the rent of the house in respect of which power is conferred on him by the owner to do so and for that limited purpose he may be considered to be landlord within the meaning of Section 3 of the Act but such a person is not entitled to move an application u/s 21. In the present case before me there is no doubt that Vandana Tandon Respondent No. 1 is a person who is entitled to occupy the house, in her own right and she is certainly not an agent or attorney of an owner of the house. This case does not lend any support to the submission of the learned Counsel for the petitioner. The learned Counsel for the petitioner also placed reliance on the case of *B.E. Dayal v. Smt. Phool Mani Dayal* 1976 AWC 716. This case also lends no support to the learned Counsel for the petitioner. Here also all that is laid down is that an agent or

attorney cannot evict a tenant for their own need u/s 21(1)(a) of the Act. It is laid down in this connection that what is to be seen u/s 21 is the need of the landlord owner. In this case before me, as already stated above, Smt. Vandana Tandon is not an agent or attorney but filed the application in her capacity as landlady owner. Thus in view of the discussions made above, it is amply clear that the application filed by Smt. Vandana Tandon, Respondent No. 1 for the release of the accommodation u/s 21(1)(a) is clearly maintainable.

9. Now coming to the second point raised by the learned Counsel for the petitioner that since the petitioner has challenged the title of the Respondent No. 1 and questions of title are involved in the case and hence the Respondents 3 and 4 could not proceed to decide the same and should have returned the application for decision before the appropriate court. In support of his contention the learned Counsel for the petitioner placed reliance on a case of D.S. Victor v. The District Judge, Bareilly 1978 AWC 605. It was observed in that case that-

However, it appears to me that court dealing with an application u/s 21 of U.P. Act 13 of 1972 being a court of limited jurisdiction did not have the jurisdiction or authority to decide a complicated and intricate question of title if the same arises for decision before him. If a question of title is decided incidently for the purpose of deciding the chief point involved, there can be no objection to such a decision but where as here, the substantial object of the Respondent No. 2 was to get a decision of her title through application filed u/s 21 of U.P. Act No. 13 of 1972, the same has to be objected to and cannot be permitted.

In that case the genuineness of a partition deed filed by the Respondent No. 2 under which she claimed title had been disputed by the petitioner. The validity of an agreement to sell was also in challenge and since complicated questions of title were involved in that case and hence in view of the facts of that case it was observed that such complicated questions of title could not be gone into in proceedings u/s 21 of the Act. In the present case no complicated questions of title are involved and neither the genuineness of any document or title are to be gone into.

10. Another case relied on by the learned Counsel for the petitioner is Smt. Kailashwati v. IV Addl. District Judge 1980 ARC 388 where also it was laid down that if the dispute involves complicated and intricate questions of title and the defence raised by the tenant is not for delaying or embarrassing the proceedings, such questions cannot be decided in summary proceedings. In that case the Prescribed Authority as well as the Additional District Judge in appeal found intricate question of title involved in the case and this Court in writ jurisdiction held that in such circumstances the lower court was right in not going into the question of resolving the controversy with regard to the title of the property. In the writ petition before me, as already stated above, no intricate and complicated questions of title are involved and hence this case also lends no support to the contention of the learned Counsel for the petitioner.

11. Another case which is relied on by the learned Counsel for the petitioner is Hamid Raza Khan v. Third Addl. District Judge, Pilibhit 1979 ARC 192 where it was held that where the application for release is contested by the tenant on the ground that there was no relationship of landlord and tenant, the application was rightly rejected. In that case the tenant asserted that he was the owner of the property and since the relationship of landlord and tenant is itself challenged, the lower court rightly held that the application was not maintainable and this Court in writ jurisdiction refused to interfere with the same. In the present writ petition the petitioner has not challenged that Respondent No. 1 is the owner of the house in dispute. In fact the finding is that the petitioner is not even the tenant of the house in dispute which was admittedly let out to I.E.L. and hence this case is also of no avail to the learned Counsel for the petitioner.

12. Now coming to the third point raised by the learned Counsel for the petitioner regarding the comparison of hardship, though in view of the finding that the petitioner is not proved to be the tenant or sub-tenant of the accommodation in dispute, still the comparative hardship has been gone into by the learned Additional District Judge who has found that the Respondent No. 1 along with her husband who is a Chartered Accountant, is living with their children in one room and being put to great inconvenience and hardship as the husband of Respondent No. 1 cannot receive his clients and guests in the room where he is living with his family and children and on the other hand, the petitioner who is Principal of Inter National Center English School, Kanpur and is in a position to pay Rs. 1500/- as rent for the accommodation in dispute, could easily afford another alternative accommodation specially when her elder son is already admitted in English School in Dehradun and the petitioner has only one minor child staying with her and hence after appraising the evidence, recorded a finding that greater hardship would be caused to the Respondent No. 1 if the accommodation in dispute is not released in her favour.

13. The learned Counsel for the Respondent strenuously contended that since the petitioner is not proved to be tenant or even a sub-tenant, she has no locus standi to contest the release application filed by Respondent No. 1 specially when the I. E. L., who is the tenant of the accommodation to whom the same was let out by Smt. Saroj Bhalla initially, had no objection to the accommodation being released in favour of Respondent No. 1. It is clear from the facts of the case that the accommodation was initially let out to I. E. L. and the lease had been renewed from time to time in favour of the company i.e., I.E.L. for the residence of its officers. The last lease was renewed on 7-7-1983 in favour of I. E. L. till 6-7-1987. A copy of this renewal of the lease in favour of the I.E.L. dated 13th July, 1983, entered into between Smt. Saroj Bhalla and the I.E.L., is annexed as Annexure 9. Thus the contract of tenancy is between Smt. Saroj Bhalla and the I.E.L. and there had been no contract of tenancy with the petitioner nor any rent has been paid to Smt. Saroj Bhalla, or Respondent No. 1 by the petitioner. In reply to a letter written by Smt. Saroj Bhalla, the I.E.L. replied vide its letter dated 8th November, 1983, a copy of which has been annexed as Annexure

CA-2, in which it is stated that--

Please note that the company has not sublet the premises to any one neither it has any intention to sub-letting the premises. We are in need of the -premises and shall continue to occupy till the agreement between us enables us to keep the premises with us. You are aware that the above premises was allotted to our Mr. P. S. Nayar who unfortunately expired and it was in the fitness of the Company to rehabilitate Mrs. Nayar and as a gesture of goodwill as well as a part of entitlement of widow Mr. P. S. Nayar we have allowed her to continue to occupancy of the above premises. We are not charging any rent from her and, as such, it should not be treated as sub-letting in the eye of law.

This will clearly show that the company, who is the tenant and not the petitioner and hence the petitioner had no locus standi to contest the application, she being neither the tenant nor a sub-tenant. During the pendency of the proceedings before the Prescribed Authority the petitioner even filed a compromise application duly signed by her and her counsel and a copy of this compromise application dated 27-9-1985 is annexed as Annexure CA-3 in which the petitioner admitted that she was occupying the accommodation through the courtesy of Indian Explosives Ltd. and since the Respondent No. 1 Smt. Vandana Tandon required the accommodation for her personal residence, the petitioner was willing to vacate the same, the need of Respondent No. 1 being genuine and according to the terms stated in the compromise the petitioner was to vacate the accommodation by 31st May, 1986, and hand over peaceful possession of the same to the Respondent No. 1. This compromise application, though duly signed by the petitioner and her counsel before the Prescribed Authority, was later on withdrawn on the ground that the petitioner had not fully understood the purport of the application and had signed it under some misapprehension. It may be noted that the petitioner is very well educated person being principal of a college and; hence it is difficult to believe that such an educated person could not understand the purport of the application and signed the same without understanding the, same. This is a reflection on the conduct of the petitioner. In view of the, contract of tenancy in respect of the accommodation in dispute being with the company i.e., I.E.L., it is clear that the petitioner could not be a tenant and there is nothing on the record to show that she is a sub-tenant. Hence there is, force in the contention of the learned Counsel for the Respondent No. 1 that this Court may not entertain the petition on behalf of the petitioner. Reliance has been placed by the learned Counsel for the Respondent No. 1 on the case Smt. Vishnu Kant Sharma v. Prescribed Authority 1983 (2) ARC 19, wherein it was held that the petitioners, claiming to be tenants of the disputed accommodation having failed to prove that they are the tenants, are liable to be evicted and since on the findings recorded by the lower courts the petitioner is found only to be licensees, she is liable to be evicted in pursuance of an order passed u/s 21 of the Act, against the tenant. My attention has also been drawn to the judgment of the Supreme Court dated 6th October, 1987 in Civil Appeal No. 2608 of 1984 Smt. Sarla Narula v. Smt. Raghubir Kaur Renal and Anr. which

was an appeal filed by Special leave against an order passed by the High Court of Delhi, dated 29th May, 1984 by which the Appellant was refused the prayer of being joined as a party in the proceedings in execution and the order of eviction against the tenant was passed u/s 14(1)(e) of Delhi Rent Control Act 1958. In that case the company, namely, M/s. Bharat Carbons and Ribons Manufacturing Company was the tenant and the husband of the Appellant Late T. R. Narula was an employee of the said company who retired in 1973. The landlord filed an application that she bonafide required the premises in question and the company which was a tenant did not oppose the eviction petition as the tenant had left the premises. The widow of late T. R. Narula made an application to be joined as a party in the suit which was refused by the learned Judge. The High Court held that after the company left the premises there was no new contract entered into between Late T. R. Narula and the landlady and hence T. R. Narula and his heirs, had no right to be joined as a party. The appeal was accordingly dismissed by the Supreme Court. In the present case also after the company i.e., I.E.L. who was the tenant, filed the written statement stating that the need of the landlady was genuine and bonafide and that the application may be allowed and in view of the findings recorded by the lower courts, that no new contract of tenancy has been entered into between the petitioner and the Respondent No. 1 or her mother Smt. Saroj Bhalla and hence the petitioner had no locus standi to contest the application for the release of the accommodation.

14. In the result there are no merits in this writ petition which is accordingly dismissed with costs.