
(2000) 01 AHC CK 0057

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7896 of 1990

Sri Govind Lal

APPELLANT

Vs

VIIIth Addl. Distt Judge, Moradabad and Others

RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 22

Citation : (2000) 01 AHC CK 0057

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 581999, whereby Respondent No. 1 allowed the appeal and released the disputed accommodation in favour of the landlord respondent.

2. Respondent No. 2 is landlord of the shop in question of which the petitioner is tenant. He filed application under Section 21(I)(a) of UP. Act No. 13 of 1972 (in short the Act), with the allegations that his son Anil Kumar is unemployed and wants to start a Chemist shop. He passed B. Sc. examination in IIIrd division and could not get admission in M Sc. The petitioner contested the application and denied the averments made by the landlord. The Prescribed Authority rejected the application by its order dated 451988. Respondent No. 2 filed appeal against the said order. The Appellate Authority allowed the appeal on 581989, reversing the finding recorded by the Prescribed Authority and released the disputed accommodation in his favour. This order has been challenged in the present writ petition.

3.1 have heard Shri B.D. Mandhyan, learned counsel for the petitioner and Shri K.M. Tripaihi, learned counsel for I he respondent.

4. Learned counsel for the petitioner contended that the finding recorded by the Appellate Authority on the question of bona fide need is erroneous. The landlord has another shop which he had let out to one Liladhar which was vacated in the

month of January 1984 and if there had been any need, he should not have let out the same. The Appellate Authority has not considered this aspect. It has been found that at that time his son Anil Kumar was in B. Sc. and even if he had let out the same at the said time, it cannot be said that his son does not require the shop in question to start the Chemist shop. The tenantpetitioner did not point out that in fact, Anil Kumar was employed. The finding recorded by the Appellate Authority on the question of bona fide need does not suffer from any illegality.

5, Learned counsel for the petitioner then contended that during the pendency of the writ petition Liladhar had vacated the accommodation. The respondent has filed counteraffidavit stating that another son of Respondent No. 2 has occupied the same and is carrying on the business. It is further urged that the petitioner has been working as teacher in some college. It has been denied by the respondent. Even assuming that his son Anil Kumar has taken the shop that will not indicate that he has no intention to carry on any business in the shop in question. The application for release was filed in the year 1985 and if the matter had been pending for this long time, the son of the respondent was to do some business. His son Anil Kumar has passed B. Se. examination. Considering all these facts and circumstances the finding recorded by Respondent No. 1 that his son Anil Kumar wants to start Chemist shop in the disputed shop, does not suffer from any manifest illegality.

6. The last submission of learned counsel for the petitioner is that the Appellate Authority has failed to consider the hardship which he would suffer in the event the application is allowed. The impugned order shows that the Appellate Authority did not consider this aspect of the matter. It is required to apply its mind to the fourth proviso to Section 21 (1)(a) of the Act which provides that the Prescribed Authority shall take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.

7. In view of the above the writ petition is allowed. The impugned order dated 581989 is hereby quashed. Respondent No. 1 is directed to decide the appeal afresh keeping in view the observations made above and in accordance with law within two months from the date of production of a certified copy of this order before him.

Considering the facts and circumstances of the case the parties shall bear their own costs. Petition allowed.