

(2004) 09 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 684 of 2004

State of U.P. and Another

APPELLANT

Vs

Nirmal Kumar Patni

RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Soldiers (Litigation) Act, 1925 — Section 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1), 21(8)

Citation : (2005) 1 ARC 192

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : S.C, for the Appellant; K. Shailendra, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—This writ petition was heard on 28th September 2004 when the writ petition was dismissed after hearing learned Counsel for the parties for the reasons to be recorded later on. Now here are the reasons.

2. This is a writ petition under Article 226 of the Constitution of India by the tenant-petitioners challenging an order passed by the prescribed authority on an application filed by the landlord u/s 21 (1) (a) and (b) of Act No. 13 of 1972 (in short the Act) for the release of accommodation in question. So far as application u/s 21 (1) (a) is concerned it relates to personal bonafide requirement and so far as application u/s 21 (1) (b) is concerned it is on the ground that the building is in dilapidated condition and requires reconstruction. The petitioner filed an objection denying the allegations made by the landlord in application u/s 21 and raised an objection that in view of Section 21 (8) of the Act since the tenant is protected from eviction on the ground on which the application u/s 21 (1) (a) is not maintainable and is liable to be dismissed. A perusal of Section 21 (8) which is reproduced below makes it clear that the petitioner being tenant of the

category who is protected from eviction u/s 21 (1) (a) by virtue of aforesaid provision of Section 21 (8), therefore, the application so far it seeks release of the accommodation in question for bona fide personal requirement deserves to be dismissed and has been rightly dismissed by the prescribed authority:-

"21. (8) Nothing in Clause (a) Sub-section (1) shall apply to a building let out to the State Government or to a local authority or to public sector corporation or to a recognised education institution unless the Prescribed Authority is satisfied that the landlord is a person to whom Clause (ii) or Clause (iv) of the Explanation to Sub-section (1) is applicable:

Provided that in the case of such building the District Magistrate may, on the application of the landlord, enhance the monthly rent payable therefore to a sum equivalent to one-twelfth of ten per cent of the market value of the building under tenancy, and the rent so enhanced shall be payable from the commencement of the month of tenancy following the date of application:

Provided further that a similar application for further enhancement may be made after the expiration of a period of five years from the date of the last order of enhancement."

3. It is next submitted that since no application can be entertained when the tenant is protected from eviction u/s 21 (8) the application so far it raises ground enumerated u/s 21 (1) (b) can also not be allowed because composite application raising grounds relating to Section 21 (1) (a) and Section 21 (1) (b) is not maintainable.

4. I have given considerate thought to the submission raised on behalf of the petitioner-tenant. Provisions of Section 21 (1) (a) and Section 21 (1) (b) are reproduced below:-

"21. Proceedings for release of building under occupation of tenant.-

(1) The Prescribed Authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely-

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;

(b) that the building is in dilapidated condition and is required for purposes of demolition and new construction:

Provided that where the building was in occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act no application shall be entertained on the grounds mentioned in Clause (a), unless a period of three years has elapsed since the date of such acquisition

and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years:

Provided further that if any application under Clause (a) is made in respect of any, building let out exclusively for non-residential purpose the prescribed authority while making the order of eviction shall after considering all relevant facts of the case, award against the landlord to the tenant an amount not exceeding two years' rent as compensation and may, subject to rules, impose such other conditions as he thinks fit:

Provided also that no application under Clause (a) shall be entertained-

(i) for the purposes of a charitable trust, the objects of which provide for discrimination in respect of its beneficiaries on the ground of religion, caste or place of birth;

(ii) in the case of any residential building, for occupation for business purposes;

(iii) in the case of any residential building, against any tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925) has issued a certificate that he is serving under special conditions within the meaning of Section 3 of that Act, or where he has died by enemy action while so serving then against his heirs:

Provided also that the prescribed authority shall, except in cases provided for in the Explanation, 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.

Explanation.- In the case of a residential building-

(i) where the tenant or any member of his family who has been normally residing with him or is wholly dependent on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained.

Note.- For the purposes of this clause a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee.

(ii)

(iii) where the landlord of any building is-

(1) a serving or retired Indian Soldier as defined in the Indian Soldiers (Litigation) Act, 1925 (IV of 1925), and such building was let out at any time before his retirement, or

(2) a widow of such a soldier and such building was let out at any time before the retirement or death of her husband, whichever, occurred earlier and such landlord needs such building for occupation by himself or the members of his family for residential purposes. Then his representation that he needs the building for residential purposes for himself or the members of his family shall be deemed sufficient for the purposes of Clause (a), and where such landlord owns more than one building his provision shall apply in respect of one building only.

(iv)....."

5. A perusal of the aforesaid provisions clearly demonstrate, if read with Section 21 (8), that there is no bar for moving an application u/s 21 (1) (a) as well as Section 21 (1) (b) by the landlord against the tenant.

In other way it can be said that if it is open for the landlord to move an application on the ground which attracts the provisions of Section 21 (1) (a) and Section 21 (1) (b) there is no bar u/s 21 that a combined application u/s 21 (1) (a) and 21 (1) (b) of the Act cannot be moved. Therefore, if read the provisions of Section 21 (1) (a) and Section 21 (1) (b) alongwith Section 21 (8) it protects the tenant from eviction so far as Section 21 (1) (a) is concerned. Therefore, in my opinion, the view taken by the prescribed authority and as observed earlier in this judgment the application could not have been allowed so far as the ground raised u/s 21 (1) (a) is concerned and in my opinion the prescribed authority has rightly dismissed the application u/s 21 (1) (a) of the Act, but since there is no bar, the grounds u/s 21 (1) (b) are available to the landlord. To this extent the orders passed by the prescribed authority and the appellate authority do not warrant interference by this Court in this writ petition.

6. Now coming to the order so far as it relates to the release of the accommodation on the ground enumerated u/s 21 (1) (b), learned Counsel for the petitioner has advanced arguments that the findings arrived at by the prescribed authority and affirmed by the appellate authority suffers from manifest error of law. So far as question of manifest error is concerned learned Counsel for the petitioner submitted that this Court should reappraise the evidence on the record. I am afraid that this cannot be a ground for interference by this Court in view of law laid down by the Apex Court in the case of Ranjeet Singh Vs. Ravi Prakash, and also in view of the law laid down by the Apex Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, .

7. No other error or perversity has been pointed out by the learned Counsel for the petitioners so far as findings recorded by the prescribed authority and affirmed by the appellate authority are concerned.

8. In this view of the matter, in my opinion, this writ petition has no force and it is accordingly dismissed.