

(1978) 10 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 990 of 1976

Sukhbir Singh Jain

APPELLANT

Vs

District Judge, Muzaffarnagar and others

RESPONDENT

Date of Decision : 18-10-1978

Acts Referred:

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

Citation : (1978) 10 AHC CK 0024

Hon'ble Judges : K.C.Agrawal, J

Final Decision : Allowed

Judgement

K. C. Agarwal, J.

This writ petition is directed against a judgment of the District Judge, Muzaffarnagar dated 9121975 dismissing an appeal filed by the landlord against the judgment of the Prescribed Authority dated 2541975.

The petitioner is the owner of the shop in dispute situated on the G.D. Toad, Khatauli District Muzaffarnagar. The shop had been let out to Shanti Pershad, respondent no. 3, on the 9th January, 1974, the landlord filed an application under section 21 (1) (a) of U.P. Act No. 13 of 1972 for eviction of respondent no. 3 on the ground that the premises in dispute was required by him for starting a new business by himself and his son, who was a student of B. Sc. The landlord alleged that he had no other accommodation available with him where he could commence any business. He, however, claimed that the tenant had a number of premises available to him and that he could shift the business which was being done in the disputed premises to one of those buildings.

The application was contested on the ground that the tenant could not shift his business to any other place. The Prescribed Authority rejected the application. Against the said, order the landlord filed an appeal. The appeal met with the same fate. Hence the writ petition.

In an application filed under section 21 (1) (a) the first thing which is required to be decided by a court is whether the building is bona fide required by the landlord for occupation by himself or any member of his family. In the instant case, the application was filed by the landlord on the allegation that the premises in dispute was required by him for starting a business by himself and his second son Antariksh Kumar, who was then studying in B. So. Part I. The learned District Judge, held that since landlord's son was a student, the application could not be allowed. The other ground given by him was that as the first son of the landlord was employed, the need of the said son did not appear to be genuine. It may be noted here that the application was not filed by the landlord for the need of his first son. In the application the landlord had clearly stated that as he was not possessed of an premises, the first son, who intended to start a business, had to join the service. It is incorrect that the application was filed by the landlord for the need of the first son. The learned District Judge did not consider the need of the landlord. He simply confined himself to the need of the sons. As the need of the landlord was not considered, the judgment of the District Judge is vitiated.

At this place, it may be noted that the word "bona fide" has been interpreted judicially in a number of decisions and its interpretation is no longer in controversy. It means, genuinely in good faith, and it conveys an idea of absence of intent to deceive. If a landlord moves an application for getting accommodation on false pretext with collateral purpose, the need cannot be bona fide. In the instant case no such finding has been given.

Sri Sudhir Chandra counsel appearing for the tenant next pointed out that as an application under section 21 of the UP. Act No. 13 of 1972 can be filed by a landlord in respect of present and existing need, the application filed in the present case was not maintainable. In this connection, learned counsel pointed out that even if it be assumed that the application had been filed by the landlord for the need of his second son Antariksh, Kumar, the same being in respect of a future need, the application was liable to be rejected. The core of the submission of the learned counsel for the tenant was that the need postulated by the statute must be a current immediate need on the date of the application.

In order to judge the submission of the learned counsel for the tenant, it is necessary that a reference first be made to the relevant provisions of section 21 of the Act. Section 21 (1) (a) of the Act reads as under:.

"(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 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 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 a dilapidated condition and is required 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."

Reading of the aforesaid provisions makes it clear that an application should be made by a landlord for his own occupation. It does not prescribe the requirement that the same must be a present and existing one on the very date of the making of the application. It is nowhere to be found in section 21 of the Act that the bona fide requirement for occupation of the premises by the landlord must exist either on the date of the filing of the application or on the date of the order. The requirement would be satisfied if a landlord files an application for his need. It must not be a need of the remote future and must not be one which may or may not arise. It should be certain. It is enough if it is reasonably likely to arise in the near future. Knowing that a litigation takes a long period in coming to its end, it will be repelling the provisions of section 21 of the Act, if courts insist on landlord having present need as against prospective but certain need.

In *J.G. Kohlt v. The Financial Commissioner Haryana, Chandigarh and another* A.I.R. 1976 P. & H. 107, the Punjab High Court was called upon to decide a similar question, it felt that the landlord's need must not be immediate and existing one on the very date of the application. According to its view a landlord is entitled to anticipate his requirement in a reasonable foreseeable future.

In *A.P. Madhavan v. M.P. Ram Chandran* 1970 R.C.J. 479, interpreting the concept of bona fide need of a landlord under section 11 (3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, the Kerala High Court repelled a similar argument and held :

"However, respondent's counsel has argued, that, since on the date of the institution of the petition the landlord was a teacher in Perinthalamanna and not at Pathirippala, he had set up only a future and not a present need in his eviction petition and this was fatal. I must point out that the concept of the need cannot be narrowly understood or pedantically interpreted but applied in a pragmatic way. The petitioner had really been transferred to Pathirippala even as he had alleged in his petition. He must have reasonably accepted a transfer and might well be said that a need had arisen then. It is not necessary that there should be a current urgent need. It is enough if it is reasonably likely to arise in the near future. Knowing that between the institution of the petition and the ultimate order from the apex court's order pass, it will be as good as repelling the provision for eviction on the ground of bona fide need, if courts insist the landlords proving a present need as against the prospective but certain need. Else, when the need confronts him, the building will be years away from him. Proceedings in court should become tantalising trick."

The second question which is required to be decided in such an application is that of comparative hardship. Fourth proviso added by U. P. Act No. 28 of 1976 to

subsection (1) of section 21 requires an authority to consider the likely hardship of the parties. Rule 16 was framed by the State Government in exercise of its power under section 34 (8) for the purposes of laying down the manner in which the question of likely hardship had to be decided. This rule was declared ultra vires in a Full Bench decision of this Court reported in Chandra Kumar Shah v. Distt. Judge, Varanasi 1976 (2) A.L.R. 95. Subsequent to the said decision the Legislature amended subsection (1) section 21 and validated the rule 16 with retrospective effect. As already stated above this rule stated the factors which had to be taken into account while deciding the question of comparative hardship. Subrule (1) applies to a case of residential building whereas subrule (2) applies to a case of nonresidential building. In the instant case, the learned District Judge took into account the rule 16 (2) (a) and found that since the tenant had been carrying on his business in the building for the last 30 years there was no justification for allowing the application. It is no doubt true that Rule 16 (2) (a) is one of the considerations which should be taken into account but that was not conclusive or determinative of the controversy relating to hardship. A look at the judgment of the District Judge would indicate that he thought the same to be a determining factor and erroneously held that since the tenant was in possession of a shop since long the application of the landlord was liable to be rejected. The learned District Judge ought to have considered the factors in favour of the landlord as well. He ignored them altogether. That being so, the judgment of the District Judge cannot be upheld.

Sri Sudhir Chandra, counsel appearing for the tenant, however, pointed out that since the landlord possessed an alternative accommodation, the application was liable to be dismissed. In support of this submission he invited my attention to the judgment of the District Judge wherein he observed that two of the rooms are lying without roof and some land is also lying vacant to the west of these rooms." There is no finding that the aforesaid two rooms could be utilized by the landlord for the purposes of the business which he intended to open in the shop in dispute.

That apart, the grievance of the landlord also was that the tenant was possessed of a number of other buildings where he could shift his business which he was carrying on in the shop in dispute. This question had also not been properly decided by the learned District Judge. In this view of the matter also it appears necessary (o set aside the judgment of the District Judge and to remand the case to him for a fresh decision. In deciding the appeal he will not only reconsider the question of bona fide requirement of the premises by the landlord but would also give a fresh finding on the question of comparative hardship after looking into the evidence of the parties, it appears appropriate that the parties be given an opportunity to file fresh evidence if they so desire.

I am in respectful agreement with the view expressed above.

In the result, the writ petition succeeds and is allowed. The judgment of the District Judge dated 9121975 is set aside and he is directed to decide the appeal

afresh in accordance with law and in the light of the observations made above.
Under the circumstances, the parties shall bear their own costs.