
(2015) 07 UK CK 0015

In the Uttarakhand High Court

Case No : Writ Petition Nos. 1195, 1196 and 1197 of 2005

Sushila and Others

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Uttar Pradesh Municipalities Act, 1916 — Section 278
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 21(1)(a), 21(1)(b), 22

Citation : (2015) 112 ALR 570 : (2016) 1 RCR(Rent) 166 : (2016) 1 UC 101

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : Ramji Srivastava, for the Appellant; Sushil Vashist, for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J.—All the three writ petitions are interconnected, thus, all the three petitions are heard together and are being disposed of by this common judgment with the consent of learned Counsel for both the parties. Brief facts of the present case, inter alia, are that Smt. Naumi Devi, mother of the present petitioners, had moved three applications under section 21(1)(a) of the U.P. Act No. 13 of 1972 seeking eviction of the tenants from three different tenanted portions in their respective possession on the ground of bona fide need saying landlord has three storey building at Bucharkhana, Landour Mussoorie commonly known as Naumi Niwas consisting of two flats on each floor and each flat consisting of two bedrooms and one verandah; three flats are in possession of landlord while three flats are in possession of three different tenants-respondents, herein; family of the landlord is consisting of original plaintiff-Naumi Devi, her husband Mangal Singh, three sons namely Pooran Singh, Ramesh Singh and Rakesh Singh and three daughters namely Laxmi, Sushila and Neelu total eight in numbers; plaintiff landlord requires tenanted portions so that

she may reconstruct the building after demolishing the existing one, as per plan placed before the Trial Court to accommodate all the family members therein. It was further alleged that building, in question, is in dilapidated condition and Municipal Board, Mussoorie has issued notice under section 278 of the U.P. Municipalities Act, to the landlord saying building is in dilapidated and dangerous condition, therefore, is unfit for human habitation, therefore, same should be demolished forthwith; applications so moved by the landlord were registered as PA Cases No. 2/94, 3/94 and 4/94; all the tenants have filed their respective written statements stating therein that alleged notices issued by the Municipality for demolition of the building is collusive notice and building is not in dilapidated and dangerous condition and is fit for human habitation; landlord is in possession of about 9 rooms, therefore, tenanted portions are not required by the landlord for the alleged bona fide need. It is further alleged that landlord neither has any bona fide need nor building is in dilapidated condition requiring demolition and reconstruction.

2. During the pendency of PA cases before the Prescribed Authority/Trial Court, Naumi Devi - original landlord has expired and her legal heirs were substituted; an affidavit was also filed before the Prescribed Authority/Trial Court saying that all the three sons and three daughters of the original landlord are major while two sons namely Pooran Singh and Ramesh Singh are married-eldest son Pooran Singh has one son namely Master Varun while Ramesh Singh has one son namely Master Rohan and one daughter Vanshika while third son Rakesh is likely to be married in the near future; it was further stated that Sushila - one of the daughters of original landlord, is physically handicapped therefore, she requires ground floor accommodation to stay therein; this way it was demonstrated that family of the original landlord was consisting of 13 members including two daughters-in-law, therefore, available space with the landlords is not sufficient to accommodate all the 13 members therein.

3. Landlord-plaintiff has filed report of one Mr. Manocha to demonstrate that building is in dilapidated condition, which requires demolition; one report was also produced by tenants prepared by one Mr. I.S. Kashyap to the effect that building is fit for human habitation, therefore, does not require any demolition.

4. Learned Prescribed Authority having observed that landlord is in possession of 9 rooms, has opined that all the family members can be accommodated therein, therefore, landlord did not require tenanted portions for bona fide need. It was further observed by the Prescribed Authority that building is not in dilapidated condition, therefore, does not require demolition and reconstruction. Feeling aggrieved, three different appeals were preferred by the landlord under section 22 of the U.P. Act No. 13 of 1972, however, all the three appeals came to be dismissed by the learned District Judge vide judgment and order dated 24.12.2014. Feeling aggrieved, present writ petitions are filed assailing both the judgments passed by Prescribed Authority as well as Appellate Authority.

5. I have heard Mr. Ramji Srivastava, Advocate for the petitioners and Mr. Sushil

Vashisht, Advocate for the private respondents/tenants and have carefully perused the record.

6. Section 21(1)(a) and (b) of the U.P. Act No. 13 of 1972 read as under:

"(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 for 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 a dilapidated condition and is required for purposes of demolition and new construction."

7. Perusal of section 21(1)(a) of the Act would demonstrate that application can be moved by the landlord seeking release of the building on the ground that 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 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.

8. Section 21(1)(b) of the Act would demonstrate that release of the building can be sought by the landlord on the ground that the building is in dilapidated condition requiring demolition and new construction.

9. If Clauses (a) and (b) of section 21(1) are read together the only conclusion would be that landlord may seek release of the building under section 21(1)(a) on the ground that tenanted building is bona fide required either in its existing form or after demolition and new construction, for occupation by himself or any member of his family members while release of the building under section 21(1)(b) can be sought by the landlord on the ground that building is in dilapidated condition, therefore, requires demolition and new construction.

10. In other words, a building may not be in dilapidated condition and may be fit for human habitation even then under section 21(1)(a), landlord may seek release of the building on the ground that to fulfill his present need, he shall reconstruct the building after demolition of existing building, as per his requirement while if application is moved under section 21(1)(b), landlord is not required to show bona fide need, the only factum, which is required to be proved is that building is not fit for human habitation and is in dilapidated condition, therefore, requires demolition and reconstruction. Landlord is always at liberty to seek release either under section 21(1)(a) or under section 21(1)(b) or on both the grounds alternatively.

11. In the present case, although landlord has tried to take alternative plea of section 21(1)(b) during the pendency of appeal, however, her main case was under section 21(1)(a) of the Act saying her family is consisting of 13 members

and she will demolish the building in existing form and shall reconstruct it to fulfill her present existing need of 13 members. Both the Courts below have held that landlord is in possession of 9 rooms, therefore, all the 13 members can be accommodated therein, Appellate Court has held that two sons of the landlord have started living at Dehradun in connection with their services, therefore, nine members are present at Mussoorie.

12. I find force in the submission of Mr. Ramji Srivastava, learned Counsel for the petitioner that every landlord is free and always at liberty to decide as to how he wants to lead his life. Even if it is presumed, nine family members of the landlord are residing at Mussoorie, each member requires one separate bedroom, all of them shall require at least one big dinning room, one big drawing room and at least two guest rooms to accommodate their guests. Case of the landlord is that building is three storey building and on each storey, there are two flats on each floor and each flat is consisting of two bed rooms and one verandah. Therefore, as per the case of the landlord, even if it is held that landlord is in possession of three flats, it would demonstrate that landlord is in possession of only six bed rooms and three verandahs.

13. In the present case, both the Courts below have failed to observe as to how many family members of the family of the landlord are residing at Mussoorie and as to how all the family members can be accommodated in the space available with the landlords. Both the Courts below did not consider every adult member may require separate bed room and how many rooms are required by the petitioners.

14. Since I am exercising supervisory jurisdiction under Article 227 of the Constitution of India, therefore, I deem it necessary to remand the matter to the Appellate Court to decide the appeal afresh with the direction that Appellate Court shall hold the spot inspection personally to find out as to how many vacant rooms are in possession of landlord. Appellate Court shall be at liberty to give opportunity to both the parties to file their additional supplementary affidavits before it, in the light of spot inspection.

15. Consequently, all the writ petitions are allowed. Impugned judgments and orders are set aside. All the appeals stand remanded to the Appellate Court.

16. Presiding Officer shall inspect the building personally and shall give opportunity to both the parties to file additional supplementary affidavit demonstrating therein their personal need and shall decide the appeal afresh in accordance with law keeping in mind the observations made hereinbefore preferably within 120 days from first date fixed before the Appellate Court. Parties shall remain present before District Judge, Dehradun for further orders on 30.7.2015. Learned District Judge, Dehradun shall be at liberty either to hear the appeal himself or to transfer all the three appeals to any other Competent Court to decide the same in the fashion as directed herein before. No order as to costs. CLMA No. 8661 and 8662 of 2011 also stand disposed of accordingly.

Let copy of this judgment be placed in each connected petition.