

(1992) 09 AHC CK 0035

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2667 of 1983

Syed Mohd. Afzal Hussain

APPELLANT

Vs

IInd Additional District Judge and Others

RESPONDENT

Date of Decision : 17-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 18, 21(1), 21(5), 22

Citation : (1992) 4 AWC 218 Supp

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : Madan Behari Lal, for the Appellant;

Final Decision : Allowed

Judgement

S.P. Srivastava, J.—After his retirement from the post of Principal in the Islamia Intermediate College; Saharanpur in the year 1965, the Petitioner had to continue his stay at that place as his children were receiving education there. However, when he was in a position to leave Saharanpur, he moved an application u/s 21(1)(a) of the U.P. Act No. 13 of 1972 in the year 1980, seeking release of his residential house No. 139, Dondipur, Allahabad which was under the tenancy of the Respondent tenant, seeking its release on the ground that, it was bonafide required by him, as he wanted to live with his family in his house in his old age and will suffer greater hardship in comparison to the tenant in case, the accommodation is not released in his favour. It was also asserted that the sons of Petitioner were of marriageable age and their marriage was held up due to non availability of the accommodation.

2. The aforesaid application was contested by the Respondent, who challenged its maintainability on the ground that the Petitioner was not the sole landlord and owner of the house in dispute and apart from him, Iftiqar Hussain, Smt. Ajja Bibi and Smt. Saira Bibi were also landlords and owners " of the house in dispute. It

was also asserted, that the contesting Respondent was not the sole tenant of the house in dispute but it was in the joint tenancy of Smt. Rahmatunnisa his mother and Mohammad Ahmad, his brother. The tenant Respondent also denied the claim of the Petitioner about the bonafide requirement of the house and further asserted that as he had got no alternative accommodation and will be thrown on the street if evicted and he will suffer greater hardship in comparison to the Petitioner in the event of grant of release.

3. The assertions made by the tenant about the maintainability of the application for release at the instance of the Petitioner alone, were denied by the Petitioner in the affidavit, which he had filed in reply to the counter affidavit, filed by the tenant. It Was asserted by the Petitioner that Iftiqar Hussain was his brother and Sabira Bibi and Hajra alias Ajja Bibi were his sisters and all of them had transferred their share in the house in question to the Petitioner in the year 1945 and since then, it was the Petitioner alone, who was the exclusive owner/landlord of the premises in dispute and had been dealing with it in such capacity. It was also asserted that the tenant Respondent himself had clearly admitted the status of the Petitioner to be that of exclusive owner/landlord of the premise; in dispute in Misc. Case No. 127 of 1968 registered on the basis of the application filed by the tenant Respondent u/s 7C of the U.P. Act No. III of 1947. It was asserted that in the aforesaid proceedings, Inayat Rasul, the tenant Respondent had filed an affidavit admitting thereunder that the present Petitioner alone was the landlord of the accommodation in dispute and had further admitted there that premises in dispute had been let out to him only.

4. During the pendency of the release application before the Prescribed Authority, the Petitioner had filed an affidavit of Habib Khan, his brother in law who had testified that Iftiqar Husain., Smt Sabira Bibi and Hajra Bibi had transferred their interest in the house in dispute in favour of the Petitioner. He also testified that the accommodation in dispute had been let out to Inayat Rasul.

5. The Prescribed Authority vide its judgment and order dated 8-6-1981 accepted the claim of the Petitioner that his requirement in respect of accommodation in dispute was bonafide. However, on considering the comparative hardships the Prescribed Authority expressed a view to the effect that the release of the ground floor portion of the accommodation in dispute could satisfy the requirement of the Petitioner. In spite of the aforesaid finding, the release application was dismissed on the ground that the case of transfer of the interest of the brothers and sisters of the Petitioner in his favour had not been taken up in the release application and that there was no evidence, in support of such a case.

6. Aggrieved by the aforesaid order; the Petitioner filed an appeal which was heard and disposed of by the Respondent No. 1 vide the judgment and order dated 23-12-1982, where under the appellate authority upheld the finding recorded by the Prescribed Authority about the bonafide requirement of the Petitioner in respect of the accommodation in dispute. The appellate authority where under it was held that the ground floor portion of the accommodation in

dispute could satisfy the need of the landlord and instead upheld the claim of the Petitioner in respect of the requirement of the entire accommodation. The appellate authority further held that the landlord Petitioner will suffer greater hardship as compared to the tenant in the event of rejection of the application for release. However, the appellate authority dismissed the appeal after endorsing the finding of the prescribed authority to the effect that the Petitioner was not exclusive landlord of the premises in dispute and since the other landlords had not joined in moving the application, the said application was defective and was liable to be rejected.

7. Aggrieved by the aforesaid order, the landlord Petitioner has approached this Court for redress and has prayed for the quashing of the orders dated 8-6-1981, and 23-10-1992 and has further prayed for the issuing of an order, writ or direction commanding the opposite parties to deliver vacant possession of the house No. 149, Dondipur, Allahabad to the Petitioner for him and his family members residence.

8. The writ petition was admitted on 5-9-1983 by this Court. It is asserted by the Petitioner that the notices in duplicate alongwith the copies of the writ petition etc. and postal stamps for affecting service on the tenant Respondent by registered post acknowledgement due were duly supplied by him and the notices were actually issued on 13-8-1984. The notices issued by this Court, fixing 27th August, 1984, for the appearance of the tenant Respondent were issued vide postal receipt No. 1715 dated 13-8-1984. Neither the acknowledgement was received back nor the undelivered registered cover containing the notices was returned back. The notices therefore, will be deemed to have been served on the Respondent as provided under Chapter 8 Rule 10 Explanation (ii) of the Rules of the Court. In spite of the Service aforesaid, neither the tenant has appeared in person nor filed any counter affidavit, nor any counsel has put in appearance on his behalf.

9. The Petitioner filed a supplementary affidavit on 5-9-1983 alongwith the writ petition, wherein, it has been asserted that the application for getting the corrections made in the entry containing the names of the owner of the house in dispute in municipal records, which was pending during the period when the release application was pending before the Prescribed Authority had been allowed and the names of Iftiqar Hussain, Smt. Ajja Bibi and Smt. Sabira Bibi had been deleted holding the Petitioner alone as the exclusive owner of the premises in dispute. The requisite order in this connection had " been passed by the competent authority on 21-6-1983.

10. I have heard the learned Counsel for the Petitioner. None has appeared to oppose this writ petition. Further the assertions made in the writ petition and the supplementary affidavit referred to above have not been rebutted.

11. It has been urged by the learned Counsel for the Petitioner that in the circumstances of the case, after recording the findings on the question of

bonafide requirement of the accommodation in dispute by the Petitioner and the question of relative hardships. There could be no justification for rejecting the release application on the ground that it was not maintainable at the instance of the Petitioner alone, specially in face of the clear cut admission contained in the affidavit of Inayat Rasul, filed in Misc. Case No. 1127 of 1968, Inayat Rasul v. S. M. Afzal Hussain and the facts asserted in the affidavit of the Petitioner which were duly supported by the affidavit of Habib Khan. The counsel for the Petitioner had challenged the findings recorded by the appellate authority on the question of maintainability of the application for the release by the Petitioner on the ground that it stands vitiated an account of wrong approach of the Respondent No. 1 to the weight of evidence on record and the omission to consider the effect of the admission of the tenant" Respondent and the affidavit of Habib Khan in a correct perspective. The learned Counsel for the Petitioner has further asserted that the order passed by the competent authority whereunder the names of the alleged three co-owners, had been deleted from the municipal records, on the basis of whose non joining, the application for release was found to be not maintainable, clearly established that what had been asserted by Habib Khan was correct and the objection raised by the tenant was totally misconceived. He further asserted that in these circumstances, the application for release could not have been rejected as not maintainable.

12. I have considered the submissions made by the learned Counsel for the Petitioner and have also carefully perused the record. The appellate authority while disposing of the appeal has observed that the fact about the gift of the property in dispute whereunder the Petitioner claims to have become the exclusive owner of the house in question had not been alleged in the application for release and was for the first time disclosed in the affidavit of Habib Khan. From the materials on record, it is apparent that in the release application, the Petitioner had asserted himself to be the exclusive owner/landlord of the premises in dispute. It was in reply to the aforesaid allegations made by the landlord that the tenant Respondent had come up with a case that apart from Afzal Hussain his brother Iftiqar Hussain and two sisters also were landlord/owners of the house in dispute. This case set up by the tenant was refuted by the landlord in his reply to the objections as well as the rejoinder affidavit filed by him. The landlord had clearly asserted in his reply to the objection as well as in his rejoinder affidavit that Iftiqar Hussain his brother and his two sisters had already transferred their shares in the house in dispute in his favour in the year 1945. The landlord further asserted that the fact that he alone was the owner/landlord of the premises in dispute stood corroborated by the tenant's own conduct and in this connection, placed reliance upon the affidavit filed by the tenant in Misc. Cass No. 128 of 1968 Inayat Rasul v. S. M. Afzal Hussain, reference to which has already been made above. Apart from it the tenant also placed reliance upon the affidavit of Habib Khan. The observation of the appellate authority to the effect that for the first time the case about the transfer of the interest of the brothers and sisters of the Petitioner in his favour were brought on

record by filing the affidavit of Habib Khan, is not correct. The appellate authority has further placed reliance upon the entry in the municipal record of the year 1980, which showed the names of Afzal Hussain, Iftiqar Hussain, Smt. Ajja Bibi, Smt. Saira Bibi as the owners of the accommodation in dispute. It was on the basis of the aforesaid entry in the municipal record that the appellate authority inferred that the Petitioner was not the sole landlord of the property in dispute and he alone had no right to move the application. The aforesaid entry in the municipal records, which is the sole basis for concluding that the Petitioner was not the exclusive owner/landlord of the accommodation in dispute has since been corrected and as is apparent from the assertions made in the supplementary affidavit filed alongwith the writ petition and the documentary proof annexed therewith, the competent authority has already deleted the name of Iftiqar Hussain and two sisters of the Petitioner from the municipal records and the Petitioner alone stands recorded therein as exclusive owner of the aforesaid premises.

13. It may further be noticed that a learned Single Judge of this Court in the decision in the case of Rangnath v. I Additional District Judge 1984 (U.P.) RCC 146, had held that a suit for eviction of a tenant filed at the instance of a co-owner alone was competent. This decision was approved by the decision of a full bench of this Court in the case of Gopal Das v. I Additional District Judge, Varanasi 1987 (UP) RCC 219. While noticing the aforesaid decision of (he learned Single Judge and the decision in the" case of Smt. Kanta Goel v. V. P. Pathak and Ors. decided by the Apex Court reported in AIR (977 SC 1599, wherein it was held that one co-owner could bring an action for eviction of the tenant without impleading all the co owners in the proceedings, the Full Bench clearly observed in paragraph 13. of its judgment that the view taken in Rangnath case (supra) was correct and reiterated the same.

14. In the circumstances of the case, on the materials which were brought on record, there could be no manner of doubt the maintainability of the application at the instance of the Petitioner alone. I have no hesitation whatsoever in concluding that the approach of the appellate authority was wholly against the weight of evidence on record and it is impossible to approve the same.

15. The Petitioner had filed the application for release of the "residential accommodation in the year 1980. The appellate authority had found that the need set up by the Petitioner was genuine and the accommodation in dispute was bonafide required by him. The appellate authority further found that the Petitioner landlord will suffer greater hardship as compared to the tenant in the event of the release application being dismissed. The judgment of the appellate authority upholding the dismissal of the release application on the ground of its non-maintainability as indicated above was passed on 23-10-1982. This writ petition was filed on 2nd March, J983 and it was admitted on 5-9-1983. By an order of the Hon"ble the then Chief Justice dated 17-5-1991, the hearing of the writ petition was expedited. Rule 13 of the Rules framed under the U.P. Act No.

13 of 1972 provides that every application for release of a vacant building shall as far as possible be decided within one month from the date of its presentation. Rule 15 of the Rules provides that every application for release of the building under the occupation of a tenant shall as far as possible be decided within two months from the date of its presentation. Rule 7 of the Rules which relates to appeals and revisions contemplated under sections 18 and 22 of the Act provides that as far as possible a revision u/s 18 shall be decided within one month and appeal u/s 22 shall be decided within six months from the date of its presentation.

16. In view of what has been noticed above, it is apparent that the underlying policy of U.P. Act No. 13 of 1972 is that the matter of release of an accommodation should be decided most expeditiously, so that the land-lord may not suffer. While it is true that U.P. Act No. 13 of 1972 is a beneficent piece of legislation and was intended for the benefit of tenant in view of the shortage of housing accommodation in the State, yet it can not be over looked that the aforesaid Act and the rules framed thereunder take care of the interest of the landlord also and in case, sufficient ground is made out for the grant of the release of a vacant building or a building occupied by a tenant, the proceedings have to be disposed of expeditiously as far as possible within the time limit prescribed under the Rules to which a reference has already been made above. The word "as far as possible as used in the aforesaid Rules signify that the time limit should be adhered to unless for cogent reasons, it is not possible to do so. Such a provision has obviously" been made to protect the interest of the landlord and to ensure that in case sufficient ground has been made out the accommodation should be made available at the earliest to satisfy the requirement of the landlord.

17; In the circumstances of the present case, the record shows that the Petitioner had retired from service in the year 1965. He had filed the application for release in the year 1980. He had made out sufficient ground for the grant of release but his application for the purpose has been rejected on a totally misconceived basis that it was not maintainable.

18. In the circumstances, I do not find it necessary to remit the case for reconsideration. The Petitioner had made a prayer before this Court that apart from quishing the impugned orders, a direction may be issued to the Respondent to deliver to him the vacant possession of house No. 139, Dondipur, Allahabad. The, jurisdiction of the writ Court is wide enough to give substantial relief to the petition, even though not specifically asked for in the writ petition Article 226 of the Constitution of India confers on the High Court very wide powers, which were never possessed before and since the powers under this Article are discretionary, no limit can be placed upon discretion bnt of course, the discretion must be reasonable and no arbitrary. The concluding words of clause (I) of Article 226 "and for any other purpose" make the jurisdiction of the High Court quite extensive. It is by now well settled that the High Courts should not feel bounded

by the procedural technicalities of the English prerogative writs in the exercise of jurisdiction contemplated under Article 226 of the Constitution of India. It has to be kept in mind that such orders should be passed, which are truly effective. The Hon"ble Supreme Court in its decision in the case of Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, , has clearly held that. High Court can issue directions orders, or writs other than the prerogative writs.

19. In the facts and circumstances indicated hereinbefore. I am clearly of the view that it is a fit case, in which not only the impugned orders dated 8-6-1981 and 23-10-1982 should be quashed but a direction should be issued requiring the Respondent No. 1 and 2 to proceed further from the stage of section 21(5) of the U.P. Act No. 13 of 1972 deeming the building in question to have been released as contemplated therein.

20. In view of the conclusions indicated hereinbefore, this writ petition succeeds and is allowed. The impugned orders dated 8-6-1981 and 23-10-1982, dismissing the release application on the ground of its non maintainability are quashed. It is further directed that this order shall be sufficient authority for deeming the building in question, released in favour of the landlord, as contemplated u/s 21(5) of the U.P. Act No. 13 of 1972 and the Respondents shall proceed further from that stage in accordance with law.

21. There shall be no order as to cost.