
(1996) 02 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 14154 of 1994

Ved Rani Diwan and Anr.

APPELLANT

Vs

VIIIth Addl. D.J., Ghaziabad & Ors.

RESPONDENT

Date of Decision : 28-02-1996

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 21(1A), 3(j)

Citation : (1996) 02 AHC CK 0075

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

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 2891993, passed by the Prescribed Authority releasing the disputed accommodation in favour of respondent Nos. 3 and 4 and the order dated 451994, passed by respondent No. 1, dismissing the appeal against the aforesaid order.

2. Briefly stated the facts are that respondent Nos. 3 and 4 filed an application purporting to be under Section 21(1A) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) on the allegation that respondent No. 4 is owner of the house in question to the extent of half share and remaining half share of the ancestral house is in possession of his younger brother. Her husband respondent No. 3 is realising the rent and they are landlords of the house in question. It was stated that husband of respondent No. 4, namely. Om Prakash was an employee of U.P. State Electricity Board at its Thermal Power Station, Harduwaganj, Qashimpur, Aligarh and he was to retire from service on 317 1991. He was occupying the accommodation provided by the U.P. State Electricity Board and after retirement he has to vacate it. They needed the accommodation for residential purpose. They claimed that the accommodation in question will be released under Section 21(1A) of the Act which provides that in case the landlord was in occupation of a public building for residential purpose which he had to vacate on account of cessation of his employment, he can move application for release of the accommodation. The

petitioner contested the application. It was alleged that the husband of respondent No. 4 was not the landlord. The applicants do not need the accommodation in question. The Prescribed Authority found that the husband of respondent No. 3 was in service of U. P. State Electricity Board and has retired from service on 31/7/1991 and after retirement they want to settle themselves in the accommodation in question for residential purpose. There is no other accommodation except the house in question. The application for release was allowed purporting to be under Section 21(1A) of the Act. The Prescribed Authority did not compare the need of the petitioner with that of landlord respondents. The appeal filed by the petitioner was also dismissed. The petitioner has challenged these orders in the present writ petition.

3. I have heard Sri B. B. Paul, learned Counsel for the petitioner and Sri J. J. Munir, learned Counsel for respondents 3 and 4.

4. Learned Counsel for the petitioner urged that Smt. Gayatri Devi was owner as well as landlord of the premises in question. Her husband was not the landlord. As respondent No. 3 was not the landlord, the application filed by him under Section 21(1A) of the Act was not maintainable.

5. Learned Counsel for the respondent contended that though Smt. Gayatri Devi was owner of the house in question but her husband was realising the rent and he can also be treated as landlord within the meaning of Section 3(j) of the Act which provides that the word "landlord" includes a person to whom the rent is payable and includes except in clause (g), the agent or attorney of such person. A person can be taken as landlord for the purpose of realising rent etc. under Section 3(j) of the Act, but as he is not entitled to occupy the building let out to a tenant in his own right, he cannot be treated as landlord for the purpose of filing application under Section 21 (1)(a) of the Act for his own occupation.

6. In *Prem Chandra Pachit v. Second Additional District Judge, Saharanpur and others*, 1978 ARC 394, wherein a Manager, who was looking after the business of the landlord and realising the rent, filed an application for release under Section 21(1)(a) of the Act for his personal need, it was held that he will not be treated as landlord for the purpose of getting an accommodation released in his favour under Section 21(1)(a) of the Act. Similarly, in *Smt. Sughra Begum v. Sri Ram and others*, 1983 (2) A.R.C. 143, the argument was raised that an attorney or agent is landlord within the meaning of Section 3(j) of the Act and is entitled to file application under Section 21(1)(a) of the Act for his own need. This contention was not accepted and it was held that he may be landlord for the purpose of realising rent but for the purpose of filing an application under Section 21(1)(a) of the Act such person must be entitled to occupy the premises in the own right. The expression "occupation for himself or for family members" has been used by the Legislature to manifest its intention that the landlord is entitled to occupy for his own purpose alone and can seek eviction on the ground of his personal requirement. The Supreme Court considering the provisions of Section 11 (1) (c) of Bihar Buildings (Lease, Rent and Eviction Control) Act (Act 3 of

1947) held that the definition of landlord as given in Section 2 (d) is couched in a very wide language but the amplitude of the expression has been cut down by the explanation to clause (c) of subsection (1) of Section 11. It is only such person who has a right to occupy the building, is entitled to file application for his personal requirement.

7. The words used under Section 21(1)(a) of the Act provide for occupation by the landlord himself or members of his family. The word "landlord" in the context of Section 21(1)(a) will mean only such person who is not only entitled to realise the rent but also has a right under law to occupy for his personal use and such person alone can file application under Section 21(1)(a) of the Act. Respondent No. 4 is owner and landlady of the premises in question and if she has authorised her husband to realise the rent, she cannot file an application for release under Section 21(1A) of the Act in his own right.

8. Respondent No. 4 was not in service. The application under Section 21(1A) of the Act can be filed only by such landlord who was himself in service. In *Ex. Subedar Balwant Singh v. 6th Addl. District Judge and others*, 1978 U.P. RCC 208, it has been held that the benefit of Section 21(1A) of the Act is available only to the landlord who is to vacate the premises on account of cessation of his employment but it does not extend to his or her spouse.

9. The findings recorded by the court below are that husband of respondent No. 4 has retired from service and they had no other accommodation for residential purpose. The need has been found to be bonafide. The need of respondent No. 4 for residential purpose is bonafide and she is living with her husband and on his retirement she has to live in the house in question. Her need can be taken as bona fide under Section 21(1A) of the Act.

10. If an application is filed under Section 21(1)(a) of the Act, the Prescribed Authority has to consider the comparative hardship as provided under the Act and the Rules framed thereunder. The courts below have not considered the comparative hardship.

11. In view of the above, the order passed by the Prescribed Authority dated 28/9/1993 and order dated 4/5/1994 are hereby quashed. The finding as regards bona fide need is confirmed. The Prescribed Authority will, however, decide the application afresh after taking into consideration the comparative hardship which the parties may suffer in the case.

12. The Prescribed Authority is directed to decide the application keeping in view the observations made above within three months from the date of production of a certified copy of this order.