

(1997) 03 AHC CK 0201
In the Allahabad High Court
Case No : C.M.W.P. No. 31921 of 1995

Vijay Bahadur Singh

APPELLANT

Vs

IVth Addl. District Judge and Others

RESPONDENT

Date of Decision : 31-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(2), 21(1), 24(2)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 17, 20

Citation : (1997) AWC 129 Supp

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : Man Mohan Das Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

M.C. Agarwal, J.—By this petition under Article 226 of the Constitution of India, the Petitioner challenges the judgment and decree dated 16th October, 1995 passed by the 4th Additional District Judge, Etawah, thereby allowing an appeal of the landlord Respondents and ordering the eviction of the Petitioner from a house No. 92, and appurtenant land No. 91, situate in mohalla Jatpura, in the town of Etawah.

2. Counter and rejoinder affidavits have been exchanged and the writ petition has been finally heard.

3. The landlord Respondents moved an application u/s 21(1)(a) read with Section 21(1)(b) of the U.P. Urban Buildings (Regulations of Letting. Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act") for the eviction of the tenant Petitioner from the aforesaid house claiming that they had purchased the said property by a sale-deed dated 9th May, 1983, and they needed the same for

their own bona fide needs. It was also contended that the house is in a dilapidated condition being more than 200 years old and a new construction of the house is the only alternative. According to them, it was necessary to demolish the standing structures for the better use of the land and raise a fresh building thereon. The details of the reasons why the two applicants require the property in question for their personal use were given and it was also stated that they have the means to raise buildings on the land. It was also stated that a required legal notice dated 15th October, 1984, was served on the tenant and a further notice dated 27th September, 1986, was served by way of additional information, though the same was not required and the proceedings are maintainable on the basis of the notice dated 15th October, 1984, and more than three years have passed since the property was purchased.

4. The tenant (Petitioner) contested the proceedings denying that the property was in a dilapidated condition. The allegations regarding the alleged need of the landlord applicants were also controverted. The contents of paragraph 16 of the application mentioning the service of the notices aforesaid were denied and it was said that the application is premature.

5. The prescribed authority held that the need of the applicants of the property in question was not bona fide and the hardship that was going to occur to the tenant by his eviction was more than the hardship that the landlords would face by the refusal of the application. Regarding the notice contemplated by the first proviso to Section 21(1)(a) of the Act, the Prescribed Authority observed that there was no need for a notice because the application was u/s 21(1)(a)(b) of the Act. It further observed that the notice dated 15th October, 1984, had been filed by the tenant. It did not express any opinion as to whether it was a valid or an invalid notice. It merely stated that in the written statement, the tenant had not expressly stated that for want of notice, the application for release was not tenable. With these findings, the petition purporting to be u/s 21(1)(a) was dismissed.

6. On appeal, the learned Additional District Judge held that the tenant had not raised any plea about the absence of notice in his written statement and, therefore, the plea would be deemed to have been waived. Regarding the grounds for eviction of the tenant, the lower appellate court took up for consideration first the question of the alleged dilapidated condition of the house and held that the house was in a dilapidated condition. Then, it took up the question as to the comparative needs of the applicants and the tenant and observed that the tenant was occupying the premises in question for the last more than fifty years on a rent of Rs. 5 per month and he has not made any attempt to acquire another accommodation because for this rent, he cannot have some space of even on a footpath and, therefore, looking into the condition of the property, his need was fake (naganya). The learned appellate Judge also observed that it is not the intention of the law that unless the tenant brings down each and every brick of the house, he will continue to be a tenant and that a

landlord has every right for the betterment of the property. Having prefaced his findings with these observations, the learned appellate Judge made observations about the allegations made in the affidavits of the applicants about their need and without a categorical finding, that the need of the applicants for the tenanted property is genuine and bona fide, it recorded its conclusions in paragraph 16 of its judgment, which, when translated into English, reads as under:

Therefore, on a consideration of the entire evidence and circumstances and a discussion thereof, I come to the conclusion that the disputed house is in a dilapidated condition and hence the same should be released. Therefore, this appeal becomes allowable.

7. With these conclusions, the learned Additional District Judge set aside the order of the Prescribed Authority and ordered the release of the property directing the tenant to hand over possession thereof within thirty days.

8. The first point raised in this petition was that the petition being one u/s 21(1) (a) of the Act was bad for want of a notice, as required by the first proviso. In order to appreciate this point, we may look at the relevant provisions of Section 21(1) of the Act, which 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 a dilapidated condition and is required for purposes of demolition and new construction:

Provided that where the building was in the 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 purchase 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.

9. The Prescribed Authority held that no notice under the aforesaid proviso was necessary because the petition was u/s 21(1)(a)(b). It was not disputed that for a petition u/s 21 of the Act filed by the landlords having purchased the property from a previous owner, a notice under the first proviso is necessary if the petition is filed shortly after the expiry of three years.

10. In Abdul Zabbar v. VIIIth Additional District Judge (1988) ARC 277, it was held that the service of a notice contemplated by the said proviso is a condition precedent for the filing of an application for release.

11. Reliance was also placed on Smt. Nazauk Jahan v. Additional District Judge and Ors. 1981 ARC 530 in which the Hon"ble Supreme Court observed that the notice must be in writing and not merely a casual or oral request.

12. On behalf of the landlord Respondents, it was contended that such a plea was not raised before the authorities below and a notice being a question of fact, this plea cannot be raised, for the first time in a writ petition.

13. Reliance was also placed on Mahendra Pal Singh v. IInd Additional District Judge and Ors. 1993 ARC 210, in which it was observed that the requirement of giving six months" notice to the tenant is a condition precedent for institution of an application for release. Although an application for release can be filed within three years, but the same cannot be decided finally before the expiry of the period of three years. It was also observed that where the tenant failed to raise objection in that behalf, it will be deemed that the tenant has waived the plea.

14. In the present case, the landlords, in paragraph 16 of their application for release, have vaguely stated that a legal notice dated 15th October, 1984, was served on the tenant. It was not specifically stated that the notice was in compliance with the provisions of the first proviso to Section 21(1) of the Act. The reply to this paragraph in the written statement of the present Petitioner was that the contents of this paragraph are denied. It was further stated that the application of the landlords was premature. Admittedly, while the landlords did not file a copy of the alleged notice dated 15th October, 1984, the tenant filed the same before the Prescribed Authority and has annexed a copy thereof as Annexure "4" to the writ petition. This was patently not a notice satisfying the terms of the aforesaid proviso and was an ordinary notice u/s 106 of the Transfer of Property Act terminating the tenancy of the tenant on the expiry of thirty days. The tenant Petitioner had filed the original notice in the proceedings before the Prescribed Authority.

15. The learned Prescribed Authority has stated that the tenant in his written statement has not stated clearly that the application was not maintainable for want of notice. This is taking too technical a view of the averments made in paragraph 16 of the written statement in which the contents of paragraph 16 of the application for release were specifically denied and it was stated that the petition was premature and ignoring the vagueness of the landlord"s allegations in paragraph 16 of their application, which merely stated that the legal notice was served. It was not mentioned that the legal notice was in compliance with the requirements of the aforesaid proviso nor, as stated above, the said notice was filed before the court below to show that it actually was in spite of the fact that the tenant had filed the original notice served on him. Similarly, the observation of the learned appellate Judge, that in the circumstances of the case,

the tenant would be deemed to have been waived the notice, is misconceived and is against the facts and circumstances of the case.

16. Service of notice is a requirement of law for the maintenance of a petition u/s 21(1)(a) of the Act and, therefore, it was incumbent on the landlords to specifically and unequivocally allege that they had complied with the requirements of the proviso. A vague plea, that a legal notice had been served, was of no consequence. Therefore, the findings of the authorities below on this point are set aside and I hold that no notice, as required by the first proviso to Section 21(1)(a) of the Act, is proved to have been served on the tenant.

17. As regards the observation of the Prescribed Authority, that the petition being one u/s 21(1)(a)(b) of the Act, no notice in terms of the aforesaid proviso was required, it is apparent that this observation is based on a misconception about the provisions contained in Clauses (a) and (b) of Section 21(1) of the Act. The two clauses contained in Section 21(1) of the Act give two different grounds for the eviction of the tenant. Clause (a) deals with a case where the 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, while Sub-clause (b) speaks of eviction on the ground that the building is in a dilapidated condition and is required for purposes of demolition and new construction. When eviction is sought under Sub-clause (a) of Section 21(1) of the Act, it is not necessary for a landlord to prove that the building is in a dilapidated condition and a landlord can seek eviction without stating that he would demolish the old building and would raise new constructions. As a tenant has a right to continue in a dilapidated accommodation, if the landlord does not seek his eviction under Clause (b) of Section 21(1) of the Act, so has the landlord a right to occupy the building in the condition in which it is vacated by the tenant. At times, it may be necessary for a landlord to show that he would demolish the existing structures and raise new constructions, but that would become necessary only in a case where it is necessary for him to show this to establish his bona fide need.

18. A building may be very dilapidated and the tenant may raise a plea that the same is not suitable for the residence of the affluent landlord and that the landlord would, after the eviction of the tenant, part away with the property. In such cases, it may be necessary for the landlord to establish his bona fide need to aver and prove that he would demolish the old structure and raise new constructions. If that be not so, a landlord has a right to live in a building that may be dilapidated and require demolition. As a matter of fact, Sub-clause (a) does not use the word "dilapidated" at all and it is largely the discretion of the landlord whether to demolish the existing structure or to use it as such with or without any modifications, repairs and renovations etc.

19. On the other hand, Sub-clause (b) of Section 21(1) of the Act covers a case where the building is dilapidated and the landlord requires the same for purposes of demolition and new constructions. The purpose of Sub-clause (b) is different from Clause (a). The purpose is that old structures, which have become

dilapidated, should be demolished and new buildings should be raised so that the land could be usefully utilised and the towns do not become a graveyard of old and dilapidated buildings only. The purpose under Sub-clause (b) is not the complete and absolute eviction of a tenant and by virtue of Section 24(2) of the Act, the tenant has been given an option to apply to the District Magistrate to allot him the new building and, on such allotment, the tenant shall be liable to pay rent for such building an amount equal to one per cent per month of the cost of construction thereof. Therefore, if a tenant offers to have the newly constructed accommodation at the enhanced rent, the landlord has to let out the same to the tenant who was evicted u/s 21(1)(b) of the Act.

20. In order that the provisions of Section 24(2) of the Act are not frustrated and a landlord is not allowed to seek eviction of a tenant without a genuine desire to let out the new construction to the evicted tenant, the following provisions have been made in Rules 17 and 20 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, Rules 17 and 20 of the said rules read as under:

17. Application for release on the ground for demolition and new construction,-

(1) Before allowing an application for release of a building u/s 21(1)(b) on the ground that it is required for purposes of demolition and new construction, the Prescribed Authority shall satisfy itself-

(i) that the building require demolition;

(ii) that a proper estimate of expenditure over the proposed demolition and new construction has been prepared;

(iii) that a plan has been duly prepared and conforms to the bye-laws or Regulations of the local authority or other statutory under any law in that behalf for the time being in force; and

(iv) that the landlord has the financial capacity for the proposed demolition and new construction.

20. Application for re-allotment.--(1) An application by a tenant under Sub-section (2) of Section 24 for allotment of a new building or any one of them shall be made within one month from the date on which the construction of the building sought to be allotted is complete.

(2) The application shall also state the extent of the tenant's requirements regarding accommodation.

Explanation.--In this rule, the date of completion of construction has the same meaning as in the Explanation (a) of Sub-section (2) of Section 2.

Therefore, when a landlord invokes Sub-clause (b) of Section 21(1) of the Act, it is appropriate that the Prescribed Authority looks to the building plan to see that the landlord is reconstructing the accommodation that will be demolished. In other words, the landlord cannot be allowed to frustrate the provisions of Section

24(2) of the Act by raising buildings that are inconsistent with the building to be demolished, for example, if the tenant is to be evicted from a shop, a new shop of the same or substantially the same size and other specifications has to be reconstructed and it would not be permissible to build a kitchen or a toilet or a living room in place of the shop. In order that the matter is effectively decided, it is appropriate for the Prescribed Authority to specifically inquire from the landlord whether he is willing to let out the reconstructed building to the tenant in accordance with Section 24(2) of the Act and also to pin down the tenant by inquiring from him whether he is willing to have the reconstructed accommodation on rent to be determined in accordance with the said provision. If he refuses then the landlord would be free to raise any short of construction in place of the dilapidated building without regard to the requirements of the tenant.

21. In the present case, there has been grave misconception in the minds of the landlords and the Prescribed Authority and the Additional District Judge about the nature of the proceedings. The petition purported to be u/s 21(1)(a)(b) of the Act and this is what the Prescribed Authority thought about it. There cannot be any such application. There has to be an application u/s 21(1)(a) or an application u/s 21(1)(b) of the Act. There can, however, be an application u/s 21(1)(a) and, in the alternative, u/s 21(1)(b) of the Act where the landlord asserts that in case his personal need is not established, then the petition may be treated as one u/s 21(1)(b) of the Act and the tenant be evicted on the ground that the accommodation is dilapidated and is required for demolition and reconstruction.

22. The application for release moved by the landlords was not one where they had set up Clause (b) as an alternative ground for eviction. Their case unequivocally was that they had purchased the accommodation for their own use and they needed the same for satisfaction of their bona fide need and since the accommodation is in a dilapidated condition, they would demolish the existing structures and raise new ones. The application thus was exclusively under Clause (a) of Section 21(1) of the Act and, therefore, the notice under the first proviso was necessary, as the application was filed shortly after the expiry of three years and the landlords had to establish that they bona fide required the building for occupation by themselves. As I have shown above, the landlords failed to establish that any notice satisfying the requirements of the proviso to Section 21(1) of the Act was served, the application was, therefore, incompetent and was liable to be rejected on this ground.

23. As regards the bona fide requirement, the learned Prescribed Authority held that the landlords had failed to establish their bona fide requirement. The lower appellate authority has not reversed this finding and, as stated above, it has made various observations which were totally irrelevant and which clearly show that the learned Additional District Judge started from a wrong end. He, as discussed above, has allowed the claim of the landlords on the ground that the building was a dilapidated one while, as shown above, the petition exclusively

was u/s 21(1)(a) of the Act for eviction on the ground of personal need and while ordering the eviction on the ground of dilapidated condition of the building, the learned Additional District Judge did not take any care to protect the rights of the tenant that he had under Sub-section (2) of Section 24 of the Act and prescribed no condition in that regard, particularly the condition about the period during which the landlords should raise the building. Therefore, the order passed by the learned Additional District Judge was vitiated because he adopted an utterly wrong approach and has attempted to compare the respective needs of the parties without first finding whether the finding recorded by the Prescribed Authority, that the landlords' need was not established, required reversal. There could be no question of a comparison unless the landlords' need was first established.

24. On behalf of the Petitioner, it was also contended that the landlords had failed to establish that they had satisfied the requirements of Rule 17 of the Rules framed under the Act. As discussed above, this was not a petition under Sub-clause (b) of Section 21(1) of the Act and, therefore, the said rule had no application.

25. In the result, the petition is allowed and the impugned order dated 16th October, 1995, passed by the IVth Additional District Judge, Etawah, in Kent Appeal No. 1 of 1990 is hereby set aside and the said appeal is ordered to stand dismissed. The Petitioner will get his costs of this writ petition from the landlord Respondents.