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Court : Allahabad

Decided On : Oct-11-1976

Reported in : AIR1977All8

Judge : N.D. Ojha, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20, 21, 23 and 25(1)

Appeal No. : Civil Misc. Writ No. 159-A of 1976

Appellant : Chhakki Lal

Respondent : Iiird Additional District Judge, Mainpuri and ors.

Advocate for Def. : R.S. Verma, Adv. and ;Standing Counsel

Advocate for Pet/Ap. : R.K. Dwivedi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

N.D. Ojha, J.

1. Subhash Chandra, respondent No. 2, is the landlord of a shop. He made an application under Section 21 of the U. P. Urban Buildings (Regulation of Letting,

Rent and Eviction) Act, 1972 against Ugra Sen, respondent No. 3, for release of the aforesaid shop in his favour on the allegations that the shop in question was in dilapidated condition and also that he needed it bona fide for his own use. Ugra Sen, respondent No. 3, filed a written statement. His case was that he had vacated the shop in question and had no concern with it and that it was Chhekki Lal, the petitioner, who was the tenant of the shop. Thereafter, the respondent No. 2 got the application under Section 21 amended. The plea introduced by the amendment application was that Ugra Sen had illegally sub-let the shop in question to Chhakki Lal the petitioner. A relief was also claimed for ejectment of the petitioner along with Ugra Sen the respondent No. 3. The petitioner asserted that he was himself the tenant and was not a sub-tenant. The prescribed Authority dismissed the application on the ground that on the allegations made therein as it stood after its amendment, it was not maintainable under Section 21 of the Act. Against that order, an appeal was filed by the respondent No. 2. It was heard by the Third Additional District Judge, Mainpuri. He came to the conclusion that irrespective of the allegations introduced in it by amendment the application was maintainable inasmuch as the real question which had to be decided by the Prescribed Authority was as to whether the need of respondent No. 2 was bona fide. He also held that the need of respondent No. 2 had to be compared with that of the tenant respondent No. 3. It is this order of the Additional District Judge which is sought to be quashed in the present Writ Petition.

2. It was urged by counsel for the petitioner that on the allegation that the petitioner was a sub-tenant the application filed by respondent No. 2 was not maintainable under Section 21. His only remedy was to file a suit under Section 20. I find myself unable to agree. Under Section 20 it is only if the case falls within one of the contingencies provided for in Sub-section (2) thereof that a suit for eviction of a tenant can be instituted. One of the contingencies as contained in Clause (e) is that if the tenant has sub-let in contravention of the provisions of Section 25, or as the case may be, of the old Act the whole or any part of the building a suit for ejectment can be instituted against him. Section 21, on the other hand, contemplates an application by the landlord for release of the accommodation in his favour on the ground that it is required bona fide either in its existing form or after demolition and new construction by him for occupation by

himself or any member of his family. If ejectment of a sitting tenant is sought on the ground of bona fide requirement of the landlord a suit under Section 20 cannot be instituted. On the other hand, even if the landlord may not be in need of the accommodation, he can yet institute a suit for ejectment of the tenant under Section 20 if he has sub-let the accommodation as contemplated by Clause (e) of Sub-section (2) to that section. Even in a case of sub-letting as aforesaid I am of opinion that since no decree for ejectment of a tenant on the ground of the bona fide need of the landlord can be passed under Section 20 it would still be open to the landlord not to file a suit under Section 20 but to make an application under Section 21 provided he needs the accommodation bona fide for his own use. In such a case a decree under Section 20 would serve no purpose unless the landlord after getting the tenant evicted succeeds in getting the building released in his favour and for that he will again have to make an application for release, of course, in that event under Section 16 and not under Section 21 of the Act. If on the other hand, an order for release is passed under Section 21 on the ground that the accommodation is needed by the landlord bona fide such sub-tenant would automatically be ejected along with the tenant under Section 23 of the Act. In this way multiplicity of proceedings would be avoided.

3. It was then urged by counsel for the petitioner that on a plain reading of Sections 21 and 23 of the Act, it was clear that the said sections do not envisage any inquiry in regard to the nature of possession of any person other than the person who may have been described as the tenant in the application under Section 21. In my opinion, if this submission is accepted it would lead to disastrous results and indeed would defeat the very purpose of the Act which was to protect the tenants from eviction except in certain contingencies. With regard to Section 23 the matter can be clarified by giving an illustration. Suppose 'A' is the landlord and 'B' is the tenant of an accommodation. The landlord by ignoring the tenant makes an application under Section 21 against 'C' who even though has no concern with the accommodation in question but is willing to assist the landlord in getting possession thereof and it is asserted in the said application that 'C' is the tenant. 'C' either does not contest the application or puts up a show of contest and the application is allowed. Can it be said that in proceedings for enforcement of the eviction order passed as stated above, 'B' who is the real tenant should be evicted

under Section 23 of the Act without any inquiry in regard to the nature of his possession? If the submission made by counsel for the petitioner is accepted, the answer will have to be in the affirmative and in that event it is absolutely clear that no tenant in the State of Uttar Pradesh, who is occupying an accommodation to which the provisions of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 are applicable, can have any protection from ejection whatsoever. This as pointed out above would defeat the very purpose of the Act.

4. In my opinion, in proceedings under Section 23 for enforcement of an eviction order if any person other than the person against whom an order of eviction has been passed, claims to be in possession, the nature of his possession would have to be enquired into, If it is shown by such person that he is occupying the accommodation in his own right for instance as a tenant, he cannot be evicted by enforcing an order to which he was not a party. On the other hand, if his possession is only on behalf of the tenant against whom the order for eviction has been passed for instance as a sub-tenant within the meaning of Section 25 (1) of the Act or as a licensee, such person can be evicted under Section 23 while enforcing the eviction order passed against the tenant. I wish to make it clear that I am not expressing any opinion in regard to a sub-tenant to whom Sub-section (2) of Section 25 of the Act is applicable because in the instant case that question does not arise.

5. The next point which falls for consideration is as to whether the position in law would be in any manner different if the proceedings are not at the stage of Section 23 but are at the stage of Section 21. In my opinion, there seems to be no rational ground to take the view that it would be so. If the nature of possession for purposes of enforcing the eviction order can be investigated under Section 23, it can certainly be done under Section 21 also. Under both the sections the fact as to whether the person sought to be evicted is the tenant, which term in the context would include a person in occupation on behalf of the tenant, would be the jurisdictional fact. The finding on this fact one way or the other would either confer jurisdiction on the Prescribed Authority or deprive him of jurisdiction to take action under these sections. A finding on this jurisdictional fact will have to be recorded by the Prescribed Authority and the jurisdiction to record such a finding would, in the

circumstances, inhere in the said authority.

6. Keeping in view the nature of the pleadings of the petitioner and respondents 2 and 3 it was incumbent on the Prescribed Authority to first find out as to whether Ugra Sen, respondent No. 3, was the sitting tenant of the shop in question when the application under Section 21 was made and the petitioner was only his sub-tenant as was the case of respondent No. 2 or that it was the petitioner who was the tenant and Ugra Sen had no concern with the shop in question as was pleaded by them and then to decide the application for release on merits. Since it failed to do so its order was liable to be set aside and the Additional District Judge was right in setting it aside. It is true that the Additional District Judge has passed the impugned order on a slightly different ground but no interference with his order is called for on this score since in view of the manifest error of law committed by it the order of the Prescribed Authority is in any view of the matter not sustainable.

7. In the circumstances stated above, the order of the Additional District Judge requiring the Prescribed Authority to decide the case afresh has to be maintained. Before parting with the case, I may point out that even in this Court Ugra Sen respondent No. 3 has in the counter-affidavit filed by him reiterated his stand that he had vacated the shop in question and ceased to have any interest therein and that the petitioner was its tenant since long before the filing of the application under Section 21 by respondent No. 2. The Prescribed Authority would now find out as to which of the two pleas one set up by respondent No. 2 and the other by the petitioner and respondent No. 3 in regard to the status of the petitioner and respondent No. 3 is correct and whether the need of respondent No. 2 is bona fide as also as to which of the two parties namely the landlord and the person who is found to be the tenant would be put to greater hardship in the event of the application being allowed or dismissed as the case may be.

8. In the result, the Writ Petition fails and is dismissed subject to the observations made above in regard to the manner in which the prescribed Authority will now proceed to decide the application under Section 21. The Prescribed Authority is directed to decide the application expeditiously as the matter is an old one, keeping in mind the observations made above. In the circumstances of the case,

parties will bear their own costs.

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