

Kranti Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Apr-25-1974

Reported in : AIR1975All71

Judge : R.L. Gulati, J.

Acts : Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Sections 3 and 3(2); [Constitution of India](#) - Article 226; Uttar Pradesh (Temporary) Control of Rent and Eviction (Amendment) Act, 1972 - Sections 43

Appeal No. : Civil Misc. Writ No. 241 of 1972

Appellant : Kranti Kumar

Respondent : State of U.P. and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : V.P. Goel, Adv.

Disposition : Petition allowed

Judgement :

ORDER

R.L. Gulati, J.

1. The petitioner Kranti Kumar is the son of late Dr. Harish Chandra, resident of Najibabad, district Bijnor. Dr. Harish Chandra was a medical practitioner in the town of Najibabad. He used to run his clinic in the disputed accommodation. He died on 26th March, 1969, leaving behind the petitioner and his widow Smt. Ram Sakhi as his heirs and legal representatives. At that time the petitioner was in employment at Jabalpur. The accommodation in dispute is owned by the third respondent Smt. Vidyawati hereinafter referred to as the landlord. She applied for permission to file a suit for ejectment against the petitioner and his mother under Section 3 of the U. P. (Temporary) Control of Rent and Eviction Act. The Rent Control and Eviction Officer in his detailed order considered the needs of the landlord and of the tenants, namely the petitioner and his mother. It appears that the petitioner's mother had indicated to the Rent Control and Eviction Officer her intention to start a chemist shop in the accommodation in dispute as a source of her livelihood. The Rent Control and Eviction Officer found that the need of the landlord was not genuine whereas the need of the tenant was genuine and pressing. He accordingly rejected the application of the landlord. Thereafter the landlord filed a revision before the Commissioner, Roholkhand Division. Bareilly. During the pendency of the revision application the petitioner's mother died and he being the only son of the deceased inherited the tenancy rights in the disputed accommodation. Due to change of the circumstances he resigned from the service at Jabalpur and started in the disputed accommodation a shop of readymade garments under the trade name of 'Garment Centre'. The petitioner placed his case before the Commissioner, Bareilly, but the Commissioner did not accept his case and allowed the revision application of the landlord. Aggrieved the petitioner preferred a revision before the State Government under Section 7-F of the U. P. (Temporary) Control of Rent and Eviction Act. The State has dismissed the revision by its order dated 26th November, 1971. The petitioner is aggrieved and has filed the present writ petition under Article 226 of the Constitution.

2. The contention raised on behalf of the petitioner is that neither the Commissioner, Bareilly, nor the State Government had considered his need and had proceeded on irrelevant considerations. After having heard the learned Counsel for the parties I am of opinion that the contention raised by the petitioner is well founded.

3. It is well settled that when a landlord wants to evict a sitting tenant, he can succeed only if a comparison of his need and of the tenant is made, and the need of the landlord is found to be greater than that of the tenant. A landlord cannot succeed merely by saying that he needs the accommodation genuinely for his own use. This principle applied with greater force in the case of an accommodation which is of commercial nature. When a tenant of such an accommodation is evicted, his business gets dislocated. An alternative accommodation may not be of the same utility to him, because certain amount of goodwill is attached to his commercial establishment and when the location of a business is changed, the good-will is likely to be lost.

4. The Commissioner has disposed of the matter in the following words:

'Dr. Harish Chandra was a medical practitioner and kept a dispensary in the accommodation in dispute. His widow is not a medical practitioner and the dispensary has been lying closed. Dr. Harish Chandra's son is not a doctor either nor does he live in Najibabad. He has not even contested the case. The widow's contention that she will start a druggist's shop in this accommodation does not carry conviction. In any case, she has no licence to sell drugs, nor has she started any shop yet. In these circumstances, it cannot be held that Dr. Harish Chandra's widow requires the accommodation any longer for her own personal needs. The accommodation in question is part of a larger accommodation which belongs to the revisionist and of which the revisionist is in occupation. It is only reasonable that she should be allowed to resume possession of the portion occupied by Dr. garish Chandra.'

5. Now it is very clear from this quotation that the Commissioner has not taken notice of the death of the petitioner's mother and has proceeded on the assumption that the petitioner's mother was still a tenant. From the affidavits of the parties it is clear that their admitted case was that the petitioner's mother had died during the pendency of the revision before the Commissioner and the petitioner had contested the case before the Commissioner. The Commissioner has not taken notice of the presence of the petitioner presumably because he had not contested the case before the Rent Control and Eviction Officer. The explanation

of the petitioner is that he was not served with the notice of the case when he was at Jabalpur. Be that as it may, the Commissioner has proceeded clearly on an erroneous assumption. It is the petitioner, who had now inherited the tenancy rights and his need had to be considered. He has not said a word about his need and has laid emphasis on the fact that the disputed accommodation was a part of a larger accommodation which belonged to the landlord and was in her occupation. In the first place the accommodation in dispute was a business accommodation and could not be a part of the residential accommodation of the landlord and secondly merely because the landlord was residing in a portion of the house the other portion of which was in the tenancy of the petitioner, is no ground by itself to allow the landlord to evict his tenant.

6. The order of the State Government is no better. Although the State Government has taken notice of the fact that the petitioner after the death of his mother had come to stay at Najibabad and had started a garment business in the disputed accommodation, yet it has not given due weight to it. That apart the State Government has not said a word about the need of the landlord. A landlord can evict his sitting tenant only if he needs the accommodation genuinely for his personal use and his need is greater than that of the tenant. Admittedly, the accommodation is of commercial nature. There is no suggestion from the landlord that she wants to utilise it for a business. The petitioner is already running a business in the accommodation. The fact that the landlord is occupying the house of which the disputed accommodation is a part is absolutely irrelevant.

7. Learned Counsel for the respondent has argued that the Commissioner and the State Government had in mind Section 21 of the New Act viz., the U P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. If this is true, then the approach is wholly erroneous. Section 21 of the New Act could not be applied to a case which was to be decided under the provisions of the old Rent Control and Eviction Act, The learned Counsel then stated that this Court should take into consideration Section 21 of the New Act because it is now in force. In support of this submission, he has relied upon the decision of the Supreme Court in *Qudrat Ullah v. Municipal Board, Bareilly*, AIR 1974 SC 396.

8. Now, a change of law can certainly be taken into consideration in pending proceedings. The proceedings under the U, P. Control of Rent and Eviction Act are all over. Those proceedings are no longer pending. The present petition is under Article 226 of the Constitution and cannot at all be a proceeding either under the old Act or the new Act. As such there is no question of the provisions of the New Act being taken into consideration. Moreover, there is a procedure for converting the proceedings) under the Old Act to proceedings under the New Act which has not been followed in the instant case. This Court cannot make such a conversion. Certain findings necessary for the applicability of Section 21 of the New Act are also missing.

9. For the reasons stated above, this petition must succeed and is allowed. The orders of the Commissioner, Bareilly, dated 25th February, 1970, and of the State Government dated 26th November, 1971, are quashed. The petitioner is entitled to his costs.

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