

Jagdish Prasad Vs. Xth Additional District Judge, Sitapur and Others

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Court : Allahabad

Decided On : May-29-1997

Reported in : 1998(1)AWC103

Judge : Amarbir Singh Gill, J.

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

Appeal No. : Writ Petition No. 6004 of 1985

Appellant : Jagdish Prasad

Respondent : Xth Additional District Judge, Sitapur and Others

Advocate for Def. : C.S.C. and ;H.S. Sahai, Adv.

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

Judgement :

Amarbir Singh Gill, J.

1. The petitioner has challenged the order dated 31st October, 1985 of Xth Additional District Judge, Sitapur, whereby the appeal against the Judgment of the Prescribed Authority has been allowed.

2. Brief facts of the case are that the petitioner Jagdish Prasad and one Akhtar Khan were inducted as tenants in two shops by its owner Raja Charan. The shops were situated in Tamsen Ganj, Sitapur. The shops were under mortgage with Smt. Kokila Devi and both the tenants including the petitioner, were paying rent to the said mortgagee. Mohammad Suleman on payment of mortgage amount to Smt. Kokila Devi, stepped into her shoes. Said Mohammad Suleman in his own rights, moved an application under Section 21 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U. P. Act No. XIII of 1972) for eviction of both these tenants on the ground of personal necessity. He' claimed that he has no other shop in this town and he is doing business of manufacturing and also of boxes in the house, which is not suitable for his business. Besides, that the house in which he is doing his business of manufacturing and selling of boxes is too small and he along with his family members, which consisted of 3 brothers and other members, resides in the same. On the personal requirement of the shop he requested the tenants to vacate the premises several times earlier to the filing of the application. Both the tenants contested the claim. The other tenant Akhtar Khan in his written statement claimed that he is petty Tea Seller since 1954 and he has no other place where he can shift his business and it would be case of more hardship in case his eviction is passed. He, however, admitted that the applicant was manufacturing and selling boxes. The Prescribed Authority after considering the case of Akhtar Khan tenant on the basis of comparative hardship alone rejected the claim of his eviction.

3. The present petitioner, who is the tenant in other shop in his written statement filed his objections to his eviction claiming that the brothers of the applicant were doing their business separately and have no concern with the residential accommodation, he has a residential house in Mohalla Alam Nagar and an Industry of preparing and selling of boxes in that Mohalla. He claimed that he has no other shop and he is doing the business of selling aluminiumutensils and work of 'Gillet' in the shop. He denied if the need or requirement of the applicant was bona fide or genuine one.

4. On the evidence adduced before the trial court, the application against the petitioner was dismissed. In appeal the learned Additional District Judge, however,

accepted the application for release against the present petitioner, mainly, on the ground of bona fide requirement for personal use and present petitioner whereas it was dismissed against the other tenant. The petitioner being aggrieved of the aforesaid decision has sought the quashing of the same in this writ petition.

5. The learned counsel for the parties have been heard.

6. There is not much of dispute on factual position as stated above, in this case, the learned counsel for the petitioner has mainly confined his contentions, so far as the application of proviso to Section 21 (1) of the Act No. XIII of 1972 was concerned. Section 21 (1) of U. P. Act No. XIII of 1972 enumerates the grounds available to a landlord on the basis of which he can seek eviction of a tenant from the building under his tenancy. The first ground under Section 21 (1) (a) refers to the bona fide requirement of a landlord for occupation of the rented premises and the first proviso to Section 21 (1) provides as under :

'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.'

7. Although no such plea or objection was raised to the application of the landlord, but such a question was raised only before the appellate court and it has been considered that the applicant admittedly purchased the mortgagee right and thereby did not become owner of the shops in any manner. The learned counsel for the petitioner has contended that since the application has been moved on the basis of sale deed in favour of the applicant, a notice was required to be issued to the tenants before filing of the application as required under the proviso to Section 21 (1) (b) as referred to above. He has also relied upon the decision in Abdul Jabbar v. VIIIth Additional District Judge. Gorakhpur and others, 1989 (1) ARC 277. On the other hand, the learned counsel for the opposite parties has contended that it was not a case of purchase rather the applicant had purchased

the mortgagee rights from the earlier mortgagee and ownership remains still with the owner Raja Charan Tewari. It was not a case of transfer of possession. However, in order to appreciate the intention, one has to peruse the application under Section 21 moved by Mohammad Suleman opposite party. In the very first para of the application, he claimed himself to have become owner of the shops on account of registered sale deed in his favour executed by Raja Chand Tewari, in which the opposite parties were tenants. Para No. 2 of the application finds mention that the aforesaid shops were on mortgage with Smt. Kokila Devi wife of Mohal Prasad, resident of Garhiyana, Sitapur with possession, which the applicant has redeemed on 30.4.81 on payment of mortgage amount and Kokila Devi has left no interest in the same. The averments made in the application under Section 21 of the aforesaid Act refer to claim of transfer of ownership in the shop and also redeeming of mortgage on the basis of which the tenants in the shops were paying rent to mortgagee Kokila Devi. This implies that the applicant admittedly claimed transfer of title in the shops in his favour free from all encumbrances and, thus, was required to follow the requirement of proviso to Section 21 (1), referred to above. Admittedly in view of the aforesaid proviso, he could not have moved any application for eviction of the tenants till the expiry of three years from the date of purchase and besides he was required to give notice in that behalf to the tenants. Admittedly, no such notice was issued to the tenants before filing of the application. The applicant did not disclose the date of the sale deed in his favour, but even if it is not disclosed, the mandatory notice was to be issued of transfer of title in his favour after 3 years of sale deed in his favour.

8. The proviso to Section 21 aforesaid prohibits entertaining of any such applications in the absence of aforesaid notices. The application on that account was not competent and could not have been entertained in the aforesaid circumstances. It would be useful to note that the bar of entertaining such petitions as provided in proviso one to Section 21 (1) is available even though the landlord has bona fide or genuine requirement for occupation of the rented building. The learned Additional District Judge only considered that since that applicant has redeemed the mortgage, which is neither a sale or purchase but the learned Judge did not consider that redeeming of mortgage can only be by the owner. He has failed to address itself to the facts pleaded by the applicant himself. The

requirements under proviso one to Section 21 (1) of the Act are mandatory in nature, the landlord having not complied with the same, his application for eviction of the tenants, thus, was not competent and could not have been entertained. The judgment dated 31st October, 1985 of the learned Additional District Judge, Sitapur being contrary to the provisions of the Act cannot sustain and is required to be quashed.

9. In the light of discussions above, this writ petition is allowed and the Judgment dated 31st October, 1985, passed by the Additional District Judge, Sitapur, Annexure 4 is hereby quashed.

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