

Ram Nath Gupta and ors. Vs. Second Additional District Judge and ors.

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Court : Allahabad

Decided On : Jan-08-1975

Reported in : AIR1975All217

Judge : R.L. Gulati, J.

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

Appeal No. : Civil Misc. Writ No. 4519 of 1974

Appellant : Ram Nath Gupta and ors.

Respondent : Second Additional District Judge and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : K.B. Mathur, Adv.

Disposition : Petition allowed

Judgement :

ORDER

R.L. Gulati, J.

1. The petitioners Nos. 1 to 3 are the sons and petitioner No. 4 is the widow of one Mohan Lal. They are residing in a rented house in Old Katra, Allahabad, on a rent

of Rs. 11 per month. The third respondent, Smt Inder Devi is the owner of this house, she has been living with her two sons, Mahesh Prasad and Ganesh Prasad, in a rented house on a monthly rent of Rs. 10. Ganesh Prasad has built a house in Mumfordganj locality at Allahabad. A part of the house is in the occupation of Ganesh Prasad and the rest has been let out to tenants. Inder Devi moved an application under Section 21 of the U. P. Urban Buildings (Regulation of Letting Rent and Eviction) Act (Act No. XIII of 1971) seeking ejectment of the petitioners on the ground that she wanted the house in their possession for her own personal occupation as the house in which she was living was too small for her family consisting of herself, her son, his wife and three children. The petitioners filed objections stating that they had been living in the house since 1924, their family was large having nine members and their income was large being only Rs. 125/- per month and that they had no alternative accommodation where they could shift. The prescribed authority rejected the application holding that the need of the landlady was not genuine, bona fide and pressing. There was not much difference in the accommodation in which she was living and the accommodation in which the petitioners were living. She appealed against that order. The Second Additional District Judge, Allahabad, has allowed the appeal and has directed the petitioners to vacate the house within three months. The petitioners are aggrieved and have approached this Court under Article 226 of the Constitution.

2. Section 21 enumerates the circumstances under which the Prescribed Authority may order the eviction of a tenant. One of such grounds is contained in clause (a) which provides that if a building is bona fide required by the landlord for his personal occupation, the Prescribed Authority may order the eviction of the tenant. Rules have been framed to carry out the purpose of the Act. Rule 16 relates to Section 21 and provides:--

'In considering the requirements of personal occupation for purposes of residence by the landlord or any member of his family, the prescribed authority shall, except in cases provided for in the explanation to Section 21 (1), take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the Landlord from the refusal of the application and for that purpose

shall also have regard to such facts as the following:-- (a) Where the landlord already has adequate and reasonable suitable accommodation having regard to the number of members of his family and their respective ages and his means and social status, his claim for additional requirements shall be construed strictly.'

3. From a reading of the section and the rules together it is clear that a landlord can succeed in ejecting his tenant only if he proves that he bona fide needs the accommodation for his personal use and that the likely hardship which shall be caused to him, if his application is rejected, will be more than the likely hardship that would be caused to the tenant, in case his application is allowed. Another factor which, has to be taken into consideration is as to whether the landlord has in his possession other suitable accommodation having regard to the members of his family etc. If he has such an accommodation then his claim for additional accommodation shall be construed strictly. The order of the learned Additional District Judge shows that his approach has been erroneous. He has not kept in view all the requirements of the law as enumerated above. The Prescribed Authority has found that the accommodation in the house which she wants to occupy is almost the same as the accommodation in the house in which she is presently living. The rent of the two houses is almost equal being Rs. 10 and Rs. 11 respectively. These were relevant circumstances bearing upon the genuineness and bona fide nature of her claim. The learned District Judge has not taken into consideration these circumstances. It has also been found as a fact that one of the sons of the landlady has constructed a big house, a part of which has been let out to tenants. The house has been constructed out of the funds provided by the landlady. This fact has also been admitted by Mahesh Prasad in his affidavit filed before the Prescribed Authority, it is clear therefore that the landlady has an alternative accommodation where she can reside as a matter of right even if she wants to or is forced to leave the house in which she is presently residing. In reply to the argument that had the landlady bona fide wanted to live in her own house, she would not have allowed her son to let out a portion of the newly built house, this is what the learned District Judge has stated:

'Obviously that portion has been let out at a considerable higher rent than the accommodation in question fetches. I do not think that the intention of the

legislature was to force a person to occupy the house which can profitably be let out.'

Now, it is true that a landlord cannot be restrained from letting out his house, but if he constructs a new house and lets it out to tenants, it would be a material circumstance bearing upon the genuineness and bona fide nature of his claim to eject a sitting tenant on the ground that he wants to use that house for his personal occupation. The view of the learned Judge that such a circumstance is wholly immaterial is not correct. Further down in the same paragraph the learned Judge has made the following observation:

'Even if the newly constructed house was available to the appellant then also in my opinion she could not be forced to go and live in that house. It is her choice to live in the house she likes. If she likes to live in the house in question, it is not for any one to tell her that she should not live in that house.'

This approach is again wrong. If a landlord had unfettered right to live in his own house, which is in the occupation of a tenant, there was hardly any need for the legislature to enact Section 21. That section, no doubt, permits a landlord to eject his tenant if he wants to occupy the house himself. But the Legislature in its wisdom has placed certain restrictions on that right. The first restriction is that he must prove that he needs the house bona fide for his personal occupation and secondly he has to show that the hardship likely to be caused to him, in case he is not allowed to occupy his own house, will be greater than the hardship caused to the tenant, if he is evicted. The law clearly militates against the view that a landlord has the unfettered right to occupy his own house after ejecting a tenant. The learned Judge seems to be of the opinion that all the landlord has to do is to ask for the eviction of his tenant on the ground of his personal need and such a request is bound to be allowed. This view is palpably erroneous and contrary to the spirit and the letter of the law.

4. Although the learned Judge has taken note of Rule 16, but he has not compared the likely hardship of the landlady and the tenant. He has found that the number of the members of the family of the landlady is six while the number of the members of the petitioner is nine. He has also found that the petitioners are not of

affluent circumstances. They are living in the house since long. He has not found that there is a suitable alternative accommodation to which they could shift. If they are evicted they might be on the road and being men of poor means they would not be able to find a house on a rent which they can afford. The landlady on the other hand is living in a rented house even though she says that she has been served with a notice of ejectment by the landlord yet she has an alternative house in Mumfordganj where she can live as a matter of right. The learned Judge had to take these facts into consideration before coming to a finding as to who was likely to suffer more hardship the landlady or the tenant. The learned Judge has no doubt recorded a finding that the need of the two are balanced but this finding does not appear to have been recorded after taking into consideration all the facts and circumstances, as are required to be considered under Rule 16. The order of the learned Judge, therefore, suffers from manifest error and cannot be upheld.

5. It may be mentioned that the learned counsel appearing for the respondents urged that the landlady wanted to demolish the house and reconstruct it and, as such, her case was covered by Clause (b) of Section 21 (1) which provides that the Prescribed Authority may order eviction of a tenant if the building is in dilapidated condition and is required for the purpose of demolition and new construction. In the first place, this ground does not seem to have been pressed before the Prescribed Authority because I find no mention about it in its order even though a faint suggestion was made in the application under Section 21 that she wanted to live in the house after reconstructing it; secondly, before an accommodation is released in favour of the landlord on this ground the requirements of Rule 17 have to be satisfied, which reads:--

'17. APPLICATION FOR RELEASE ON THE GROUND OF DEMOLITION AND NEW CONSTRUCTION (Section 21 (1) (b) and Section 34 (8))-

(1) Before allowing an application for release of a building under Section 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 requires 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 authority 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.'

None of these requirements have been found by the Prescribed Authority, obviously because such a ground was not pressed nor such ground appears to be pressed on appeal as there is no mention of it in the impugned order of the learned Additional District Judge. In these circumstances it is not possible to entertain such a plea at this stage.

6. In the result the petition succeeds and is allowed. The order of the Second Additional District Judge, Allahabad dated 14th May, 1974 (a copy of which is Annexure '5' to the writ petition) is quashed. He is directed to restore the appeal to its original number and to decide the same afresh in accordance with law and in the light of the observations made above. The petitioners are entitled to their costs.

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