

Smt. Parmeshwari Devi Vs. the Second Addl. District Judge, Meerut and ors.

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Court : Allahabad

Decided On : Aug-23-1976

Reported in : AIR1976All552

Judge : P.N. Bakshi, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 3, 21 and 31

Appeal No. : Civil Misc. Writ No. 4197 of 1975

Appellant : Smt. Parmeshwari Devi

Respondent : The Second Addl. District Judge, Meerut and ors.

Advocate for Def. : A.D. Prabhakar, ;Baldev Raj, Advs. and ;Standing Counsel

Advocate for Pet/Ap. : R.P. Goyal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

P.N. Bakshi, J.

1. The petitioner Smt. Parmeshwari Devi widow of Dilawar Singh is the owner of Kothi No. 182, Prempuri Railway Road, Meerut which comprises of two separate

and distinct residential accommodations. One such accommodation is the main bungalow which has been let out for the office of District Agricultural Officer, Meerut on a monthly rent of Rs. 250/-. The other accommodation consists of four rooms in a row each of 19' X 16' dimension with an attached latrine and bathroom. The two residential accommodations are separated by a lane 10' in width. The petitioner claims to be living in three out of four rooms aforesaid along with ten other members of her family. The 4th room has been let out to respondent No. 3 on a monthly rent of Rs. 25/-. The tenancy of respondent No. 3 was terminated by the petitioner by a notice dated 25-1-1972. In the compound of the Kothi mentioned above, there was a vacant piece of land measuring 65 sq. yards. It has been gifted by the petitioner by a registered sale deed dated 19-8-1968 for the construction of a temple in memory of her deceased husband. On this land a temple has been constructed and Sri Baijnath Tewari, the Guruji of the petitioner is doing the Sewa and Puja of the deity in this temple. It is alleged that the accommodation in the possession of the petitioner was most inadequate to accommodate eleven members of her family who are huddled up in most uncongenial conditions. It is further urged that Rajendra Prasad Gautam her son was working as the Labour Officer in Sriram Chemical Industries, Kota till 1971. He resigned that job and established himself as the legal practitioner at Meerut. The accommodation in question was acquired for his professional work as well. That all her family members named in paragraph 4 of Annexure '5' filed along with petition were actually residing in accommodation at present available with the petitioner. The petitioner desired to renovate and remodel the entire accommodation to suit her family needs. The petitioner thus requires the accommodation for her bona fide need.

2. An application was filed under Section 3 of the Rent Control and Eviction Act, 1947 for permission to file a suit for ejectment of respondent No. 3 from the premises in question. After the coming into force of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, the said application was allowed to be converted into one under Section 21 of the new Act 13 of 1972 vide Annexure '8' filed along with the writ petition.

3. The application was contested by Miss Sheela Bhatia respondent No. 3 on the ground inter alia that the need of the landlord was not genuine. The contesting respondent resided in the premises along with her father and two brothers. One of whom was disabled. That she has no other accommodation wherein she could live, and that the accommodation in the possession of the petitioner was sufficient for her needs.

4. The Prescribed Authority rejected the application of the landlady (petitioner) vide his order dated 23-10-1973. Aggrieved thereby, an appeal was filed before the Additional District Judge, Meerut which was also dismissed on 10-1-1975; hence this petition.

5. I have heard counsel for the parties at considerable length and have also perused the documents on record. One of the main questions which has been considered by the District Judge is whether the eleven persons residing with the applicant belong to her 'family'. Section 21 of the Act XIII of 1972 authorises a landlord or landlady to apply for release of accommodation in the occupation of a tenant on the ground that the building is bona fide required either in its existing form or after demolition and new construction by the landlord/landlady for occupation by herself or any member of her family.

6. According to the admitted case of the parties, the petitioner was the wife of Dilawar Singh. Her husband Dilawar Singh had a second wife Smt. Saraswati Devi. Rajendra Kumar Gautam is the son of Dilawar Singh from Smt. Saraswati Devi the second wife of Dilawar Singh. Smt. Kamlesh Gautam is the wife of Rajendra Kumar Gautam. Arun Gautam and Km. Anita Gautam are the son and daughter of Dilawar Singh through Smt. Saraswati Rajendra Prasad Gautam Advocate is the son of Dilawar Singh through the petitioner. Smt. Meena Gautam is the wife of Rajendra Prasad Gautam. Amitab Gautam and Annees Gautam are the minor sons of Rajendra Prasad Gautam. Km. Asheesh Gautam is the daughter of Rajendra Prasad Gautam. These are the ten members living along with the petitioner, in the premises in question. An analyst of the above indicates that the petitioner Smt. Parmeshwari Devi and Smt. Saraswati Devi are the two wives of the late Sri Dilawar Singh, who are living in the three Kothris in their possession.

The son of the petitioner, her daughter-in-law and her three grand children are also living there. The son, daughter-in-law and the grand-children of Saraswati Devi also reside in this premises. The question for consideration, therefore, is whether the second wife of Dilawar Singhand her children would be covered by the definition of the word. 'Family' as laid down in Section 3 (g) of the said Act. Section 3 (g) of the said Act runs as follows:--

'Family' in relation to a landlord or tenant of a building, means his or her:--

(i) Spouse.

(ii) Male lineal descendants;

(iii) such parents', grand-parents and any unmarried or widowed or divorced or judicially separated daughter, or daughter of a male lineal descendant, as may have been normally residing with him or her, and includes, in relation to a landlord, any female having a legal right of residence in that building.'

7. The District Judge has held, in the impugned order dated 10-1-1975 that Smt. Saraswati second wife of Dilawar Singh, Rajendra Kumar Gautam, Smt. Kamlesh Gautam, Arun Gautam and Km. Anita Gautam cannot be said to be members of the family of Smt. Parmeshwari Devi the petitioner. AS such, he has excluded these five persons, and held, that the accommodation, in the possession of the landlady is sufficient to meet her need and that of her son and grand children. In my opinion this is an erroneous view of the law. It is not disputed that all the ten members above named are residing along with Parmeshwari Devi in the three Kothris in their possession. It is not disputed that Smt. Saraswati Devi is the second wife of Dilawar Singh. It is not contested that she has not been legally wedded to him. We have therefore, to accept that both Parmeshwari Devi and Smt. Saraswati Devi are the legal wedded wives of the deceased Dilawar Singh. Being the legal wedded' wife, Smt. Saraswati Devi would certainly have a legal right of residence in the premises which admittedly belonged to her deceased husband Dilawar Singh. Even if she is messing separately from Smt. Parmeshwari, her legal right of residence in the property left by her deceased husband, would not be lost. In other words, she would also acquire the status of a

landlord of the Kothi which includes the entire accommodation in question. In this view of the matter her sons and grandsons who are living in the three Kothris would be covered by the expression male lineal descendants as laid down in Section 3 (g) (ii) of the Act.

8. This question can also be considered from another angle. The son and grandson of Smt. Saraswati would in law be the step son and step grandson: of Smt. Parmeshwari Devi. There is no provision in Act XIII of 1972 which prohibits the step son and step grandson from taking advantage of its provisions. In my view, a step son and a step grandson would be considered as a male lineal descendant, as much as the son and grandson of the landlady. In law as it exists at present, no distinction can be made in these two categories of 'male lineal descendant'. The District Judge has acted illegally in excluding them from consideration while assessing the bona fide need of the landlady Smt. Parmeshwari Devi.

9. For the reasons given above, I am of the opinion that this case should be remanded back to the District Judge, Meerut to consider the bona fide need of the landlord, and the comparative hardship to the tenant, afresh, in the light of my abovementioned observations.

10. I may also point out that in the para. 15 of the rejoinder affidavit it has been sworn on personal knowledge by Rajendra Prasad Gautam that the father of the answering respondent does not live with her. He is living in Rastogi Ki Dharmshala behind Octroi Post, City Railway Station, Meerut for the last seven years. It has also been vouched that one of the brothers of the answering respondent, Sri Krishna Kumar Bhatia was married on 12-4-1975 and since May 1975 he is residing in a separate house in Mohalla Chandra Lok opposite Sain Baba 'ka school, Meerut along with his wife. It is further stated that the other brother is not invalid and has taken up employment with the Tatas and is living permanently in Shadrah, Delhi, These averments have been made in the rejoinder affidavit. The answering respondent has had no opportunity to reply to them. Since I am remanding the case to the court below, it shall be open to the District Judge to give an opportunity to the parties to lead whatever evidence they desire on this aspect

of the case.

11. Learned counsel for the petitioner has also argued that the bona fide requirement of the landlord has been the subject-matter of interpretation by several courts except our own. He has cited some cases before me. Reference in this connection may be made to a decision of the Delhi High Court reported in (1969 Ren CJ 360) Panjmal v. Smt. S. L. Keshwani, I have perused that decision and I am in agreement with the views expressed therein. Chief Justice Dua, has observed as follows:--

'The expression 'bona fide requires' has been used designedly. Neither the word 'desires' nor the word 'needs' has been used and this should negative the two extreme views which are not infrequently canvassed in cases arising under this clause. Mere desires or absolute need or necessity are both erroneous approaches on the plain language of the provision. For the purpose of finding the bona fide requirement of the landlord, all relevant facts and circumstances including his status, position, social obligation etc., have to be taken into account as reasonably influencing the individual landlord's requirements.'

12. The court below is also directed to keep the aforesaid observations in mind while deciding the appeal.

13. This writ petition is accordingly allowed. The impugned order of the District Judge, Meerut dated 10-1-1975 is set aside and the case is remanded back to him for a decision in accordance with law in the light of the observations made by me above. Costs of this petition shall abide the result.

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