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Court : Allahabad

Decided On : Feb-10-1999

Reported in : 1999(2)AWC997

Judge : Sudhir Narain, J.

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

Appeal No. : C.M.W.P. No. 4194 of 1999

Appellant : Shiv Murti Sharma and Another

Respondent : Vith Additional District Judge, Kanpur Nagar and Others

Advocate for Def. : A.C. Nigam, Adv.

Advocate for Pet/Ap. : Ajit Kumar, Adv.

Judgement :

Sudhir Narain, J.

1. This writpetition is directed against the orderof the appellate authority dated1.12.1998 allowing the appeal andreleasing the disputedaccommodation in

favour of the landlord-respondent No. 3 under Section 21 (1) (a) of U. P. Act No. 13 of 1972 (in short the Act).

2. The facts, in brief, are that respondent No. 3 purchased a portion of House No. 106/380B, Gandhi Nagar, Kanpur Nagar on 26.8.1985 of which the petitioners are tenants of a portion on the ground floor. Respondent No. 3 filed an application for release on 2.9.1993 alleging that his family consists of himself, his wife, three sons and one daughter. He is residing on the first floor and second floor. On the first floor, he has got one room and on second floor, he has got one room but on the ground floor his son has a shop carrying on business. The accommodation for him for residential purpose is insufficient. It was further stated that petitioner No. 1 was residing in Rae Bareilly as he was working as a teacher there. This application was contested by the petitioners alleging that the accommodation is more than sufficient in possession of the landlord-respondent. He has two rooms on the first floor and two rooms on the second floor and such accommodation is more than sufficient for his need. The Prescribed Authority rejected the application on 31.8.1996. Respondent No. 3 preferred an appeal. The appellate authority has allowed the appeal on 1.12.1998 releasing the accommodation in favour of respondent No. 3. This order has been challenged in the present writ petition.

3. I have heard Sri Ajit Kumar, learned counsel for the petitioners and Shri A. C. Nigam, learned counsel for the respondent.

4. Learned counsel for the petitioners contended that respondent No. 3 had concealed the accommodation in his possession. He had more than sufficient accommodation and did not require the same. The Prescribed Authority had appointed a Commissioner who had submitted a report giving details of possession with respondent No. 3. The petitioners and respondent No. 3 both have filed the objections. The objection of the petitioners was not taken into consideration by the appellate authority and this vitiates the findings recorded by the appellate authority. The report of the Commissioner has been annexed as Annexure-5 to the writ petition. It indicates that the petitioners have two rooms, verandah and store and on the second floor there are two rooms. There was a dispute regarding one room on the first floor as to whether it is owned by the

petitioners or erstwhile owner.

5. The petitioners filed objections before the Prescribed Authority, a copy of the objections filed by the petitioners is Annexure-7 to the writ petition. Their objection was that the Commissioner had indicated the size of the verandah 8 feet x 6 feet 4 inches but it is 10 feet 9 inches x 6 feet 4 inches. In the second floor there is a room 11 feet x 6 feet 10 inches and its height is 6 feet. The Prescribed Authority had considered the objections of the petitioners and took the view that the report of the Commissioner was correct. The contention of the learned counsel for the petitioners is that the appellate authority has not re-examined regarding the objections taken by the petitioners and unless the objection is taken into consideration, the findings recorded by the appellate authority are vitiated. He has placed reliance on the decisions in *Amar Nath Tandon v. G. K. Bhargava and others*, 1987 (1)ARC 297 ; *Sanjai Kumar son of Gokul Prasad and others u. Sanjai Kumar, son of Jwala Prasad and others*, 1987 (I) ARC 373 and *Harbans Lal v. Jagmohan Saran*, (1985) 4 SCC 333, wherein it has been held that unless the objection to the report of the Commissioner is considered, the findings, on the basis of the report of the Commissioner, cannot be sustained. As noted above, the Prescribed Authority had already noted his objections. The appellate authority has only affirmed. It was not necessary again to refer to the objections of the petitioners specifically to the report of the Commissioner.

6. Even taking into consideration the objection of the petitioners, the allegation was that on the first floor the size of the verandah given in the report of the Commissioner was incorrect. Instead of the size of the verandah given by 8 feet x 6 feet 4 inches, it should be taken as 10 feet 9 inches x 6 feet 4 inches. The existence of the verandah was taken into consideration by the appellate authority and it was found that this verandah is not sufficient and can be taken as a room for residential purposes. As regards the room of the second floor, it was found that one room on the second floor did not belong to respondent No. 3 as he had purchased only a portion of the house and not the entire house and the said room belonged to the erstwhile owner.

7. The next submission of the learned counsel for the petitioners is that the appellate authority has not considered specifically the reasons given by the Prescribed Authority while reversing the findings on the question of bona fide need. He has placed reliance upon the decisions in *Ramesh Chandra v. IInd Additional District Judge, Allahabad and others*, 1996 (2) ARC 617 ; *Surendra Kumar Sharma v. XIIIth Additional District Judge, Kanpur and others*, 1986 (1) ARC 204 and *Smt. Kora and others v. IVth Additional District Judge, Nainital and others*, 1988 (2) ARC 545, in support of the contention that unless the appellate authority gives thereason to reverse the findings, such order cannot be sustained in law. A perusal of the order of the Prescribed Authority indicates that he found that taking into consideration the members of the family of respondent No. 3 and the accommodation with him is sufficient. He found two rooms on the first floor and two rooms on the second floor will be made available to the landlord. The family of the landlord consists of himself, his wife, one son, who was married and two other sons and one daughter. The appellate authority has found that such accommodation is not sufficient for the family members of respondent No. 3. Respondent No. 3 is a technical supervisor and has status. He requires additional accommodation. In *Sarla Ahuja v. United India Insurance Co. Ltd.*, AIR 1999 SC 100, the Court observed that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite necessary to make an endeavour as to how else the landlord could have adjusted himself.

8. As regards the comparative hardship, it was found that respondent No. 3 would suffer a greater hardship, in case his application is rejected.

9. In view of the above, the writ petition is, accordingly, dismissed.