

Uttam Chandra Vs. Viiiith Additional District Judge and ors.

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Court : Allahabad

Decided On : Mar-05-2002

Reported in : 2002(2)AWC1366

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 14 and 21

Appeal No. : C.M.W.P. No. 8546 of 1991

Appellant : Uttam Chandra

Respondent : Viiiith Additional District Judge and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Pradeep Kumar and ;Swapnil Kumar, Advs.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. This is a tenant's writ petition arising out of an application under Section 21 (1) (a) of U. P. Act No. 13 of 1972 with regard to non-residential premises for release in favour of the landlord.

2. The application was filed by the landlord for the need of his son and augmenting the income of family which was contested by the petitioner.

3. Prescribed authority has found that the shop was originally let out to one Basu Deo who admittedly died and petitioner. Uttam Chandra is neither an heir nor a family member. Petitioner contested the aforesaid case set up by the landlord that he is the real brother's son of the deceased. Basu Deo and he was carrying on the business with Basu Deo and thereafter he himself is carrying on the business in the capacity of karta of an undivided Hindu Family. The prescribed authority after considering the material on record arrived at the conclusion that the need of the landlord is bona fide and genuine.

4. On the aforesaid pleadings, the prescribed authority considered the case and found that Uttam Chandra, petitioner admittedly is not the family member of Basu Deo and further that Uttam Chandra failed to demonstrate that he is a person on whom the tenancy of the shop in question will devolve after the death of Basu Deo. The finding of the lower court was affirmed by the appellate court and, therefore, Uttam Chandra cannot be said to be a tenant of the accommodation in question. On the question of bona fide need, the trial court after considering the matter arrived at the conclusion that the landlord's need is genuine and requires the shop in question. On the question of comparative hardship since the prescribed authority has held that the petitioner is not a family member of Basu Deo, hence he cannot inherit the tenancy rights. Prescribed authority allowed the application. Uttam Chandra preferred an appeal. The appellate court affirmed the view taken by the prescribed authority and it is this order against which this writ petition is filed.

5. I have heard Shri Swapnil Kumar in support of his writ petition who tried to make out a case that the findings recorded by the prescribed authority on the bona fide need of the landlord suffers from error of law. But he could not point out any such error. This Court will not sit in appeal over the findings recorded by the prescribed authority and appellate authority. The prescribed authority has made categorical finding that the need of the landlord is bona fide and genuine. Since Uttam Chandra cannot be said to have inherited the tenancy of Basu Deo and, in my

opinion rightly, the comparison of needs does not arise.

6. Shri Swapnil Kumar wanted to raise objection that in any view of the matter, the possession of Uttam Chandra should be deemed to have been regularised under Section 14 of U. P. Act No. 13 of 1972. This point has not been raised either before the prescribed authority or before the appellate authority.

7. In this view of the matter, the petitioner cannot be permitted to raise a point which requires evidence after a gap of about 22 years of filing application under Section 21 (1) (a) of U. P. Act No. 13 of 1972.

8. In view of the aforesaid discussion, the petition is dismissed. There will, however, be order as to cost.

9. Shri Swapnil Kumar requested that the tenant may be granted sometime to vacate the shop in question. Shri Prakash Gupta has not objected to this. I think in the interest of justice four months' time may be granted from today to petitioner to vacate the accommodation in question and hand over the vacant possession of accommodation provided Uttam Chandra deposits the mean profit at the rate of then existing rent along with interest at bank rate and the landlord is entitled to withdraw the same along with usual undertaking before the prescribed authority within 15 days from today.

10. The petition is dismissed except with the afore said observations.

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