

Surendra Kumar Vs. Xith Addl. District Judge, Kanpur Nagar and Others

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Court : Allahabad

Decided On : Mar-04-1998

Reported in : 1998(2)AWC1163

Judge : J.C. Gupta, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 3, 3(1) and 21(1)

Appeal No. : C.M.W.P. No. 6802 of 1998

Appellant : Surendra Kumar

Respondent : Xith Addl. District Judge, Kanpur Nagar and Others

Advocate for Def. : S.C. and ;Rajesh Srivastava, Adv.

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

Judgement :

J. C. Gupta, J.

1. Heard petitioner's counsel. Shri Vijay Bahadur holding brief of Shri Rajesh Srivastava. learned counsel for the respondent No. 3. Is alsopresent.

2. This is a petition challenging the order dated 17.1.1998 passed by respondent No. 1. rejecting the review application filed by the petitioner. It may be relevant to

put the facts in brief. An application under Section 21 (1) (a), of the Act was moved by the landlord against the original tenant Kalka Prasad on the ground of bona fide need, and the same was rejected. An appeal was filed by the landlord against the said order and during the pendency of the appeal, the tenant Kalka Prasad died on 4.3.1992. His wife through her daughter as guardian was brought on record as the tenant of the accommodation in question. Appeal was allowed. Against this order the writ petition filed by the wife of the deceased-tenant before this Court was dismissed on 29th September, 1994. After dismissal of the writ petition, the son of the deceased-tenant, the present petitioner, filed a review application before the appellate authority stating therein that he was residing with the deceased-tenant in the disputed house and since he was not -brought on the record, the order passed by the appellate court was a nullity. This review application was rejected by the lower appellate court by the order dated 7.12.1994. The petitioner challenged the said order in Writ Petition No. 40874 of 1994 and it was urged before this Court at that time that the review application of the petitioner was rejected only on the ground that the appeal was not pending and no finding was recorded on the questions as to whether the petitioner was residing with his father at the time of his death and whether he had knowledge of the proceeding in appeal and whether his sister had colluded with the landlord. This Court found force in the above submission of the petitioner and set aside the order dated 7.12.94 and directed the lower appellate court to decide the review petition afresh.

3. After the remand of the case by this Court, the lower appellate court went into the merit of the review application and has rejected the same by the impugned order which has been challenged in this writ petition.

4. A perusal of the impugned order would indicate that the Court below has come to a finding that it was not proved that the petitioner was normally residing with his father in the disputed house at the time of his death. It has also been found that it was not proved that there was any collusion between the sister of the petitioner and the landlord. On Issue No. 3 also, the finding has been recorded against the petitioner that he had the knowledge of the pendency of the appeal.

5. Learned counsel for the petitioner contended before me that the petitioner, who was posted at Saharanpur in service, was often coming in the disputed house and was residing with his father at the time of his death. He also contended that the finding recorded contrary to this assertion of the petitioner is perverse.

6. Section 3 (a), defines the word 'tenant' as follows :

' 'Tenant' in relation to a building, means a person by whom rent is payable, and on the tenant's death :

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death ;

(2) in the case of a non-residential building, his heirs.'

7. A bare perusal of the above provision as contained in Section 3 (a) (1) would show that a tenant in relation to a residential building will include only such of his heirs of the deceased-tenant as normally resided with him in the building at the time of his death.

8. The finding of fact recorded by the lower appellate court is that at the time of the death of Kalka Prasad (deceased), the petitioner was posted at Saharanpur and he was transferred to Kanpur and was relieved from Saharanpur after the death of his father. Further finding is that he was not normally residing with his father in the disputed house at Kanpur at the time of the death of the deceased-tenant.

9. In the aforesaid definition of tenant, the Legislature with some object has used the word 'normally'. As per the Oxford Dictionary, the word 'normally' means in a normal manner or usually. Only such heirs of the deceased-tenant would acquire the status of joint tenant who resided with him normally at the time of his death in the tenanted accommodation and not those heirs, who casually or temporarily came to stay with him at the time of his death. If all the legal heirs were to be included in the definition of tenant, the same language which has been used in sub-clause (2) of Section 3 (a) of the Act. must have been used by the Legislature. The Legislature made a marked distinction between the cases of residential building and of non-residential building. In the former case, the Legislature has

restricted the definition of tenant to Include only those heirs of the deceased-tenant who normally resided with him at the time of his death, while in the case of non-residential building all the legal heirs of the deceased-tenant irrespective of whether they resided with the deceased-tenant or not are covered in the definition. In cases of residential building, the heirs who were residing separately with the deceased-tenant in another district on account of their service or otherwise, will not be covered by the definition of tenant under clause (1) of Section 3 (a) of the Act. Similar view was expressed in the decisions in Smt. Sarwari Begum v. District Judge, Moradabad and others, 1981 ARC 186 and Smt. Asha Devi v. Vth Addl. District Judge, Gorakhpur and another, 1991 (II) ARC 172.

10. Hon'ble Sudhir Narain, J., in a recent decision in the case of Dr. RamNarain Bagley v. District Judge, Saharanpur and others, 1997 (I) ARC 199, has also expressed the same view. It was held by the Hon'ble Judge as under :

'It is, therefore, clear that under Section 3 (a) (i), of the Act. there is a specific provision that in case of residential building only such heir will inherit tenancy rights who resided in the building at the time of death of the tenant. Further, under this provision there is no distinction between contractual and statutory tenant to inherit tenancy rights of the tenant. Even otherwise after the death of the tenant if an application is allowed against the tenant under Section 21 (1) (a) of the Act his tenancy stands determined after expiry of 30 days and the heirs would be only statutory tenants. It has been held in various decisions of this Court that in a case of residential building only such heirs of the deceased tenant would Inherit the tenancy rights who were normally residing with him in the building at the time of his death. In this view of the matter and specific provisions of the Act only such heirs would inherit the tenancy rights of the deceased tenant who normally resided with him in residential building at the time of his death.'

11. In view of the findings of fact recorded by the lower appellate court that the petitioner was not proved to be normally residing with the deceased-tenant in the disputed building at the time of his death, he is not covered by the definition of the 'tenant' and unless he is so covered, he can have no right to challenge the judgment passed in the Rent Control Appeal filed by the landlord merely on the

basis of his being the son of the deceased. This finding is based on appraisal of evidence and is not amenable to challenge before this Court in writ jurisdiction. No infirmity or perversity could be pointed out justifying the intervention by this Court.

12. For the above reasons, this writ petition is liable to be dismissed in limine.

13. Learned counsel for the petitioner then made a prayer that since after the death of his father, the petitioner's family has been residing in the disputed accommodation and as they have no other occupation, the petitioner may be given a reasonable time to vacate the premises in question. Learned counsel for the respondents, on the other hand, contended that the proceedings were initially contested by the sister of the petitioner on behalf of her mother upto this Court but having lost all the battles, a frivolous review petition was moved by the petitioner in order to delay the enforcement of the release order.

14. Having regard to the facts and circumstances of the case, the petitioner is allowed 3 months' time to vacate the disputed accommodation and deliver the possession to the landlord subject to the condition that the petitioner shall file an undertaking in writing on affidavit before the prescribed authority within 3 weeks from today to the effect that he shall handover vacant possession of the disputed accommodation to the landlord on or before 15.6.1998 and shall not induct any other person in the premises in question.

15. In case the required undertaking as aforesaid is not filed within the said period of three weeks, the landlord shall be at liberty to get the order of eviction enforced forthwith.

With the above observations, this writ petition is dismissed in limine.