

Narendra Kumar Vs. Viiiith Addl. District Judge and anr.

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Court : Allahabad

Decided On : Jan-22-2007

Reported in : 2007(2)AWC1703

Judge : Rakesh Tiwari, J.

Appellant : Narendra Kumar

Respondent : Viiiith Addl. District Judge and anr.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard learned Counsel for the parties and perused the record.
2. This writ petition has been filed praying for a direction for quashing of two impugned orders both dated 21.11.1988, appended as Annexures-7 and 8 to the writ petition passed by the VIIIth Additional District Judge, Meerut.
3. The facts of the case in brief are that the petitioner applied for allotment of the accommodation in dispute which had fallen vacant for the reason that the erstwhile tenant Sri Rakesh Kumar had vacated the same. The Rent Control Inspector made spot inspection and submitted his report that the accommodation in dispute was vacant.

4. It appears that a release application was also filed by the landlord on the ground that the accommodation in dispute was required for the living of pujari of the Shiv Mandir belonging to him. The release application was considered by the District Supply Officer/Delegated Authority who vide his order dated 12.10.1983, rejected the release application filed by the landlord on the ground that the accommodation in dispute was not bona fide required by the landlord for his own use. It was further held by the Delegated Authority that the pujari does not come within the meaning of word 'family' as defined under Section 3(g) of U.P. Act No. XIII of 1972. The Delegated Authority also gave a finding that the requirement of the Pujari for the temple is doubtful as he has his own house at 270, Multan Nagar, Meerut and the Shiv temple being more than 100 year old and being in ruinous condition does not require any pujari.

5. It is alleged by the respondent-landlord that the delegated authority while rejecting the release application filed by him has neither taken into account the affidavits filed by him nor the allegations made by him.

6. Aggrieved by the order of the delegated authority dated 12.10.1983 the respondent-landlord filed two revisions, i.e. Revision Nos. 518 of 1983 and 519 of 1983 before the District Judge, Meerut. Revision No. 518 of 1983 was filed by the respondent-landlord under Section 18 of the Act against the allotment of the accommodation in dispute in favour of the petitioner while Revision No. 519 of 1983 was filed by the respondent-landlord against rejection of his release application. Both the revisions were connected and came up for consideration before the VIIth Additional District Judge, Meerut who by his judgment and order dated 17.4.1986, allowed the revisions.

7. Aggrieved by the aforesaid order dated 17.4.1986, the petitioner-prospective allottee filed Writ Petition No. 13887 of 1986 which was allowed and the matter was remanded to the revisional court.

8. After remand both the revisions came up for consideration before the VIIIth Additional District Judge, Meerut, who connected them together and after hearing the rival parties and appraisal of evidence adduced by the parties allowed both the revisions vide impugned judgments and orders both dated 21.11.1988. By allowing

Revision No. 519 of 1983 the VIIIth Additional District Judge released the accommodation in dispute in favour of the respondent-landlord and by allowing Revision No. 518 of 1983 the allotment of the accommodation in dispute in favour of the petitioner-prospective allottee was set aside.

9. The contention of the learned Counsel for the petitioner-prospective allottee is that he is occupying the accommodation in dispute as such. It is submitted that the impugned order has been passed by the VIIIth Additional District Judge in Revision No. 519 of 1983 releasing the accommodation in dispute in favour of the respondent-landlord by taking a wrong view that the pujari also comes within the meaning of Section 16(1)(b) of U.P. Act No. XIII of 1972 and the impugned order passed on Revision No. 518 of 1983 setting aside/cancelling the allotment order in favour of the petitioner on the ground that since the release application filed by the landlord has been allowed the question of allotment of the accommodation in dispute in favour of the petitioner did not arise, are illegal.

10. It is further submitted that the respondent-landlord is a rich man and has various houses at Pattharwala, Subhash Bazar and at Ramlila Ground, as such he has no bona fide need of the accommodation in dispute for the pujari. It is urged that Section 16(1)(b) of the Act contemplates bona fide need of either of the landlord or any of his family members and that pujari not being covered by the definition of 'family' under Section 3(g) of the Act the release application could not have been allowed.

11. It is urged that the VIIIth Additional District Judge while recording his finding in the impugned order has misread the report of the Rent Control Inspector and. has passed the impugned order without any jurisdiction by reappraisal of the evidence.

12. The learned Counsel for the petitioner has argued no other point.

13. The learned Counsel for the respondent has filed counter-affidavit alongwith stay vacation application.

14. No rejoinder-affidavit has been filed by the learned Counsel for the petitioner denying the averments made in the counter-affidavit that the allotment order was

procured without following the rules or procedure laid down in Rules 8 and 9 read with Rule 10(5)(d) of the Rules framed under the Act, hence the petitioner was not entitled for allotment of the accommodation in dispute. It is further stated that the petitioner is in occupation of the accommodation in dispute.

15. The contention of the learned Counsel for the petitioner that the landlord is a rich person or has some other properties available to him is irrelevant.

16. In any case this Court in *Misri Lal v. Special Judge (Additional District Judge), Gorakhpur and Ors.* 1988 (2) ARC 430, has held:..the expression 'for occupation by himself used in Clause (a) of Sub-section (1) of Section 21 has been a subject-matter of judicial consideration in several cases before this Court. It has consistently been held that the said phrase cannot be construed very narrowly to mean that the landlord should live in isolation or by himself only. In other words, the expression within its ambit includes the personal requirement of a landlord. It may include landlord's servant, some other person or persons, who look after him and take care and whose company and assistance is or has become necessary though technically they may not be members of his family and defined in the Act. Thus, needs for such others, whose assistance is required to the landlord, although they may not be included in the term 'family' in this Act, is the own need of the landlord....

17. In the other decision relied upon by the learned Counsel for the respondent, i.e., *Ram Mohan Bajpai v. Vth Additional District Judge, Kanpur and Ors.* 1980 AWC 355, it has been held:..what follows from the decision of the Supreme Court is that the Code have no beneficial enjoyment and that a gift of the properties to the idol does not confer any benefit on the God. The position, therefore, is that the true beneficiaries are the persons other than the God. In case of a private trust, the beneficiaries are the members of the family or those who are specified in the document itself. If the intention is to confer benefit on specified persons, such a trust would be considered as a private trust not intended to the benefit of the general body of public see *Deokinandan v. Murlidhar*. In the instance case, the properties had been gifted to the idols installed in a room of the house. The gift deed further showed that the benefit of the dedication had to be confined to the

person of the family. It was, thus, a private trust. The beneficiaries were, the individuals specified who had the right of worship at the shrine. Some of these members of the family were made sarvarakars. They had been conferred the rights to manage the properties and to make arrangement for the worship and puja of the God. In this view of the matter, it appears to me that the application under Section 21(1)(a) could be filed by the sarvarakar. A sarvarakar has a right of residence in the house dedicated to the deity. Such a provision has been made in the deed of dedication itself. It has been held In *Gyanendra Nath v. Surendra Nath* AIR 1920 PC 27, that the usual practice to provide for a right of residence to the shebait In a deed itself does not detract the transaction from the absoluteness of the dedication.

18. On the basis of the averments made therein he submits that the accommodation in dispute was initially under the tenancy of one Sri Rakesh Kumar against whom proceedings for arrears of rent and eviction were initiated by him and vide judgment and order dated 2.8.1980 the IVth Additional District Judge, Meerut, decided these proceedings In favour of the respondent-landlord. It is submitted that by means of the aforesaid judgment and order dated 2.8.1980 which has become final the rent of the accommodation In dispute was held to be Rs. 125 per month. It is also stated that the Rent Control and Eviction Officer was wrongly Informed by the petitioner that Sri Rakesh Kumar was paying rent of the accommodation in dispute at the rate of Rs. 25 per month.

19. It is contended by the learned Counsel for the respondent that after the vacancy was declared and notified, respondent No. 2 moved an application under Section 16(1)(b) of the Act for release of the accommodation in dispute for residential purposes of the pujari of the Shiv Mandir which is situated adjacent to it. As the pujari or priest had to come all the way from Village Maliana to look after the temple it was very difficult for him in absence of any residential accommodation near the temple. He further states that it has also come on record that the petitioner has unauthorizedly occupied the accommodation in dispute and taken up its possession illegally from the erstwhile tenant Sri Rakesh Kumar without any allotment order or permission of the landlord.

20. The allotment order appears to have been passed without following the Rules 8 and 9 of the Rules framed under the Act and in contravention of Rule 10(5)(d) of the Rules framed under the Act.

21. How the petitioner has come in possession of the accommodation in dispute without following the procedure prescribed in the rules could not explained by the learned Counsel for the petitioner. Admittedly there is no allotment order in favour of the petitioner and the contention of the learned Counsel for the respondent-landlord that he has taken possession illegally from the erstwhile tenant Sri Rakesh Kumar appears to be correct. It is also admitted that the pujari had to come from his village Maliana far away from the city of Meerut to perform pooja.

22. The Delegated Authority in the circumstances had no jurisdiction to pass allotment order in contravention of the procedure prescribed for allotment and fixing Rs. 50 as the rent while the erstwhile tenant Sri Rakesh Kumar was paying Rs. 125 per month to the respondent-landlord which is evident from Annexure-1 to the writ petition.

23. Since no rejoinder-affidavit has been filed in rebuttal to counter-affidavit, as such the averments made in the counter-affidavit are treated to be correct In view of settled law propounded by the Hon'ble Supreme Court in Choksi Tube Co. Ltd. v. Union of India : 1979 CriLJ41 and Naseem Bano v. State of U.P. and Ors. : (1994)ILLJ84SC . The petitioner cannot become a tenant in legal sense unless his allotment was in accordance with Rules and he was handed over possession accordingly by the landlord. He cannot become a tenant merely because the erstwhile tenant while being evicted on the basis of an allotment order which appears to have been procured by him in collusion and in contravention of the Rules as stated above.

24. It may also be noted that Section 11 of the U.P. Act No. XIII of 1972, prohibits letting out without allotment order except as provided under Section 16 of the Act. Section 16 deals with allotment of vacant building/accommodation. The object of Section 11 read with Section 16 is that allotment is to be made according to the provisions of the Act and Rules framed thereunder which lays down the procedure for allotment that is to say that the allotment order issued under Section 11 of the

Act is to be treated as a valid order and not obtained by misrepresentation, fraud, collusion or possession of the building/accommodation taken illegally.

25. As stated above, the allotment order was a procured one in collusion with the authorities and was obtained without following the procedure; hence the same cannot be termed as a valid allotment order under Section 11 of the Act and the petitioner will not vest any right of legal tenancy, i.e., once the tenancy in pursuance of an allotment order is found to be not in accordance with law even though in pursuance of the allotment order procured or otherwise cannot be cured and regularized as a tenancy in accordance with law merely because there exists an allotment order. In such circumstances it has been held in *Jeep Industrial Syndicate Ltd. v. Rent Control and Eviction Officer* 1982 ALJ 857, that the accommodation is to be treated as vacant by the authorities, even a contract of tenancy between a landlord and tenant otherwise than the order in case the building would not be binding upon the parties.

26. In view of the decision in *Misri Lal* (supra) that : 'it may include landlord's servant, some other person or persons, who look after him and take care and whose company and assistance is or has become necessary though technically they may not be members of his family and defined in the Act. Thus, needs for such others, whose assistance is required to the landlord, although they may not be included in the term 'family' in this Act is the own need of the landlord', pujari cannot be denied to be not necessary for a landlord who has an old temple to be managed and looked after.

27. As held in the other decision in *Ram Mohan Bajpai* (supra) it has been held that a sarvarakar has a right of residence in the house dedicated to the deity.

28. In view of the above, the writ petition is devoid of merits and is liable to be dismissed.

29. For the reasons stated above, the impugned orders do not suffer from any illegality.

30. The writ petition is accordingly dismissed. The petitioner will handover peaceful vacant possession to the respondent-landlord within one month from the date of production of a certified copy of this order.

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