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Court : Allahabad

Decided On : Feb-04-2005

Reported in : 2005(1)ARC576; 2005(2)AWC1514

Judge : Anjani Kumar, J.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21, 21(1) and 22

Appeal No. : Civil Misc. Writ Petition No. 45619 of 2004

Appellant : Vinod Kumar

Respondent : Nathu Ram

Advocate for Def. : Neeraj Agarwal, Adv.

Advocate for Pet/Ap. : H.M. Srivastava and ;Neeraj Srivastava, Advs.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. By means of present writ petition under Article 226 of the [Constitution of India](#), the petitioner-tenant challenges the orders passed by the prescribed authority as well as by the appellate authority under the provisions of U.P. Act No. XIII of 1972.

2. The facts leading of the filing of present writ petition are that the respondent-landlord filed an application under Section 21 (1) (a) of the U.P. Act No. XIII of 1972, here-in-after referred to as 'the Act', before the prescribed authority for the release of the accommodation in question in possession of the petitioner-tenant on the ground that at the time when the accommodation was let out to the petitioner, the children of the landlord were minor and the landlord was in possession of one room accommodation on the first floor, whereas the tenant was in possession of ground floor room. It has been further asserted in the release application that the landlord has three sons aged about 28 years, 25 years and 20 years, respectively and two daughters aged about 22 years and 14 years, respectively, apart from the landlord and his wife. That the large family of the landlord feels difficulties in residing in one room on the first floor portion and because of the paucity of the accommodation, the grown up sons could not be married and their marriage are being postponed. It is further asserted by the landlord that the petitioner-tenant has purchased a double story building in the same municipality of Kasganj in Mohalla Jai Jai Ram by registered sale deed dated 23rd June, 1998 in the name of his son, namely, Vivek Kumar Bansal and is also the possession of the aforesaid accommodation was delivered to be son of the tenant. It was therefore, prayed that in case the accommodation in question is release in favour of the landlord, the tenant can comfortably shift in the accommodation acquired by the tenant as the tenant and his son are not separate and are living jointly.

3. The petitioner-tenant contested the aforesaid release application filed by the landlord-respondent and denied the allegations made in the application under Section 21 (1) (a) of the Act. Before the prescribed authority, the parties have exchanged their pleadings and adduced evidence and the prescribed authority after considering the arguments advanced on behalf of the parties and the materials on record have recorded a finding that the need of the landlord is bonafide and further that since the tenant has acquired another house in Mohalla Jai Jai Ram in the same municipality in the name of his son, who is living with the landlord, therefore, he can comfortably shift to that house, which is purchased in the name of his son. The prescribed authority further found that since the petitioner-tenant has not made any effort to find out any alternative accommodation after the filing of the application under Section 21 (1) (a) of the Act

by the landlord, therefore, in view of the law laid down by this Court in the case reported in 1984 (1) A.R.C., 113-N.S. Datta and Ors. v. The VIIIth Addl. District Judge, Allahabad and Ors., the tenant cannot take defence regarding his alleged hardship. The prescribed authority therefore, vide order dated 23rd November, 2002, copy whereof is annexed as Annexure-'13' to the writ petition, allowed the application filed by the landlord and released the accommodation in question in favour of the landlord.

4. Aggrieved thereby, the petitioner-tenant preferred an appeal before the appellate authority under Section 22 of the Act, which has been registered as Appeal No. 5 of 2002. Before the Appellate Authority, the same arguments were advanced and the appellate authority affirmed the finding with regard to bonafide requirement of the landlord arrived at by the prescribed authority. On the question of comparative hardship, since the tenant has already purchased another house in the name of his son in Mohalla Jai Jai Ram in the same municipality by sale deed dated 23rd June, 1998 and is in possession of the same, which fact has not been denied by the tenant, except that the aforesaid is in dilapidated condition. The accommodation acquired by the petitioner-tenant consists of two rooms on the ground floor, two rooms on the first floor along with other amenities as such on the question of comparative hardship, the appellate authority found that the findings arrived at by the prescribed authority do not warrant any interference in view of the provision of Explanation to Section 21 of the U.P. Act No. XIII of 1972, which is reproduced below:-

'21. Proceedings for release of building under occupation of tenant.--

(1)Explanation.--In the case of a residential building:-

(i) where the tenant or any member of his family ((who has been normally residing with or is wholly dependent on him)) has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained;(ii)

.....

5. In this view of the matter, the appellate authority vide order dated 6th October, 2004, copy whereof is annexed as Annexure-'16' to the writ petition, dismissed the appeal filed by the petitioner-tenant and affirmed the findings arrived at the prescribed authority. Learned Counsel appearing on behalf of the petitioner-tenant argued before me on the basis of some transfer application filed by him against the prescribed authority in which no interim order was passed and tries to make out a case that the prescribed authority was acting malafide inasmuch as in spite of the pendency of transfer application, the prescribed authority has proceeded with the disposal of the application under Section 21

(1) (a) of the Act filed by respondent-landlord. Learned Counsel for the petitioner submitted that in all fairness the prescribed authority ought not have proceeded with the disposal of the release application once he was informed of the fact that transfer application seeking transfer of the proceedings are pending. This contention of learned Counsel for the petitioner cannot be accepted. It is not disputed that there was no interim order from any authority or from this Court staying the hearing and disposal of the release application, the prescribed authority, in my opinion, has not committed any illegality if proceeded with the disposal of the release application. On the question of the order passed by the appellate authority, nothing has been argued except the facts and questions of law, which have already been discussed above by the appellate authority and the appellate authority affirmed the findings arrived by the prescribed authority. Learned Counsel for the petitioner could not demonstrate that the findings arrived at by the prescribed authority and affirmed by the appellate authority suffer from any error, much less manifest error of law or that the findings arrived at by the prescribed authority and affirmed by the appellate authority are perverse. In this view of the matter and in view of the law laid down by the apex Court reported in, 2003

(2) ARC 385 : (2003) 6 S.C.C. Page 675, Surya Dev Rai v. Ram Chander Rai and Ors.; and 2004

(1) ARC 613 : 2004

(2) A.W.C., Page 1721 (SC), Ranjet Singh v. Ravi Prakash, I do not find this to be a fit case for interference by this Court in exercise of power under Article 226 of the Constitution of India, thus, in my opinion this writ petition has no force and is accordingly dismissed. The interim order if any, stands vacated. However, the parties shall bear their own costs.

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