

Mahendra Kumar Singh Vs. Xiith Additional District Judge and ors.

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Court : Allahabad

Decided On : Feb-04-2005

Reported in : 2005(1)ARC613

Judge : Anjani Kumar, J.

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

Appeal No. : Civil Misc. Writ Petition No. 47285 of 2004

Appellant : Mahendra Kumar Singh

Respondent : Xiith Additional District Judge and ors.

Advocate for Def. : Pankaj Bhatia, S.C.

Advocate for Pet/Ap. : Shashi Nandan and ;P.K. Srivastava, Advs.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. This writ petition under Article 226 of the [Constitution of India](#) filed by the petitioner-tenant challenges the orders passed by the prescribed authority as well as the appellate authority under the provisions of the U.P. Act No. 13 of 1972.

2. The facts leading to the filing of the present writ petition are that landlady Smt. Shakuntala Devi Jain filed an application under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 (in short 'the Act') for the release of the accommodation in possession of the petitioner-tenant on the ground of her personal requirement. The landlady has stated in her application under Section 21 (1) (a) of the Act that the family of the landlady Smt. Shakuntala Devi Jain consists of (a) herself, aged about 75 years; (b) Sri A.K. Jain, son; (c) Smt. Kamini Jain, wife of A.K. Jain; (d) Km. Manisha Jain, daughter of A.K. Jain, aged 19 years; (e) Km. Nashima Jain, daughter of A.K. Jain, aged 17 years; (f) Km. Ashima Jain, daughter of A.K. Jain, aged 15 years; (g) Km. Monika Jain, daughter of A.K. Jain, aged 13 years; (h) Km. Soma Jain, daughter of A.K. Jain, aged 11 years and (i) Master Abhishek Jain, son of A.K. Jain, aged 7 years. The landlady further stated in her application that the petitioner is in possession of five rooms, varandah, one kitchen, two court-yards, two bath cum latrine, one bathroom, one latrine and the said accommodation is on the first floor of the premises No. 104/430 P Road, Kanpur. The need set up by the landlady in Paragraph 11 of the release application is that one room to be used for self, one room to be used as Puja Ghar, one room to be used for Sri A.K. Jain as bed-room, one room to be used as drawing room, one room to be used as dining room, one room to be used as store room, one room to be used as study-room of the school/college going children, five rooms to be used separately by all the five grand-daughters. Thus, the landlady requires minimum 12 rooms as against five rooms, which are in her possession. The petitioner-tenant contested the aforesaid application filed by the landlady denying the allegations made in the release application.

3. The prescribed authority after the exchange of the pleadings by the parties and evidence have considered the respective case of the parties and arrived at the finding that the need of the landlady is bonafide and the comparison of hardship is also in favour of the landlady, thus, directed release of the accommodation in question by the order dated 15th May, 2000 in favour of the landlady, copy whereof is annexed as Annexure-'9' to the writ petition.

4. Aggrieved thereby, the petitioner-tenant preferred an appeal before the appellate authority as contemplated under Section 22 of the Act'. Before the

appellate authority, the petitioner-tenant filed an application that during the pendency of the proceedings, landlady Smt. Shakuntala Devi Jain died, therefore, the need set up by Smt. Shakuntala Devi Jain dies with her death and the application is liable to be rejected. The petitioner-tenant also contested the right of Sri A.K. Jain, who was looking the interest of Smt. Shakuntala Devi Jain, but ultimately A.K. Jain succeeded in getting himself impleaded in place of Smt. Shakuntala Devi Jain. Before the appellate authority, the argument advanced that the need of landlady Smt. Shakuntala Devi Jain died and since Sri A.K. Jain has not set up any additional need, the application therefore, is liable to be rejected. The appellate authority dealt with the argument advanced and found that in the application itself, the need of the landlady was set up as already stated above in this judgment not only for herself but also for son, daughter-in-law and the grandchildren. Thus, this argument, in my opinion, has rightly been rejected by the appellate authority. The appellate authority vide order dated 8 October, 2004 dismissed the appeal filed by the petitioner-tenant and affirmed the findings arrived at by the prescribed authority with regard to bonafide need as well as the comparative hardship, copy whereof is annexed as Annexure-'21' to the writ petition.

5. Learned Counsel appearing on behalf of the petitioner-tenant argued as has been argued before the appellate authority that the requirement of the landlady has been shown to be exaggerated, particularly in view of the fact that she had already five rooms in her possession. The appellate authority relying upon a decision of this Court has found that the requirement of the landlady has to be considered according to the social status of the landlord and has dealt with according to the facts of the case and found that the need set up by the landlady cannot be said to be arbitrary or mere fancy desire and thus up held the finding with regard to the bonafide need arrived at by the prescribed authority.

6. Learned Counsel for the petitioner-tenant also argued before the appellate authority that in case the landlady really wants an additional accommodation, she could have utilised the accommodation, which was vacated by the Vipin Bihari Lal Nigam, but instead of that the landlady's son is utilising his aforesaid accommodation for non-residential purposes. The appellate authority has rejected

the aforesaid argument that the aforesaid accommodation was released 25 years ago and in view of the decisions of this Court reported in 1990 AWC Page 77, *Km. Bosia Bano v. A.D.J., Lucknow*, this argument deserves to be repelled and has rightly been repelled by the appellate authority. The appellate authority has also found that during the pendency of the appeal before the appellate authority one daughter of the tenant has already been married and settled with her in-laws house and the son of the tenant has already shifted to Bangalore in the year 2002. The family of the petitioner-tenant now consists of tenant himself, his wife and even if the mother of the tenant is included as member of his family, which according to the appellate authority has been found as of fact that the mother of the tenant is living with other brother of the tenant, therefore, there are only two members in the family of the petitioner-tenant and the accommodation at the disposal of the tenant is more than sufficient that the tenant can be shifted to the alternative accommodation suggested as would be clear from the evidence on record, thus the appellate authority found that the tilt of the comparative hardship is also in favour of the landlady. Before the appellate authority it has also been argued on behalf of learned Counsel for the petitioner-tenant that one of the daughters of Sri A.K. Jain has completed her M.B.B.S. and when she will take admission in Post Graduate course, she will have to live outside Kanpur Nagar. The other daughter of Sri A.K. Jain is doing her M.B.B.S., therefore, she also does not require any accommodation in the accommodation in dispute. The appellate authority has dealt with the aforesaid argument and found that firstly there is no evidence of the aforesaid fact and secondly merely because they are living temporarily outside Kanpur, it cannot be said that they do not require the accommodation in question as set up by the landlady. It has also been argued on behalf of learned Counsel for the petitioner-tenant that during the pendency of the appeal, efforts have been made to find out an alternative accommodation, but he failed to get a suitable accommodation. Before this Court, learned Counsel for tenant repeated the same arguments, but in view of the law laid down by the Apex Court in the case reported in 2004 (1) ARC 613 : (2004) 3 SCC 682 *Ranjeet Singh v. Ravi Prakash*, this Court cannot sit in appeal over the findings arrived at by the sub-ordinate authority in exercise of jurisdiction under Article 226 of the [Constitution of India](#), unless the findings are perverse or are suffering from

manifest error of law. Nothing has been brought to the notice of this Court by learned Counsel for the petitioner, which may warrant interference under Article 226 of the [Constitution of India](#). In this view of the matter, all the arguments advanced on behalf of learned Counsel for the petitioner-tenant are rightly rejected by the appellate authority.

7. In view of what has been stated above, 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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