

Mahadeo Vs. Rahamatullah and Others

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Court : Allahabad

Decided On : Mar-07-2000

Reported in : 2000(2)AWC1405

Judge : Sudhir Narian, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and ;Eviction) Act, 1972 - Sections 3, 20, 21(1) and 29A(1) and (6) - Rule 16(2);

Appeal No. : C.M.W.P. No. 23492 of 1999

Appellant : Mahadeo

Respondent : Rahamatullah and Others

Advocate for Def. : Faheem Ahmad, ;S.C.

Advocate for Pet/Ap. : K.R. Sirohi, Adv.

Judgement :

Sudhir Narain, J.

1. This writ petition is directed agafnst the order dated 25.3.1996 passed by the Prescribed Authority allowing the release application filed by the landlord-respondent No. 1 and the order of the appellate authority dated 14.5.1999 dismissing the appeal against the aforesaid order.

2. Respondent No. 1 filed an application for release of the disputed accommodation under Section 21 (1) (a) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act) with the allegations that his family consists of 21 members and he requires the disputed accommodation for residential purposes. He is residing on the first floor of House No. 24/133 situate in Mohalla Khwajpura, Varanasi. which is hardly sufficient for 21 members of his family. The petitioner contested the application alleging that the landlord has sufficient accommodation in House No. 24/133. The Prescribed Authority, on consideration of material evidence on record, came to the conclusion that the need of the landlord was bona fide for the disputed accommodation for residential purposes keeping in view large number of his family members and he will suffer a greater hardship in case his application was rejected. The petitioner preferred an appeal, which was dismissed on 26.3.1996. He filed Writ Petition No. 13538 of 1996. This Court allowed the writ petition on 16.11.1998 and remanded the matter to consider the applicability of Section 29A of the Act and also to record a finding as to whether Abdul Wahid, another tenant of the landlord of House No. G-24/96 had vacated his accommodation and delivered possession to the landlord. The appellate authority, after remand considered the matter and dismissed the appeal on 14.5.1999.

3. Sri K. R. Slohi. learned counsel for the petitioner has submitted that the petitioner had taken an open piece of land on rent from respondent No. 1 and thereafter had constructed the boundary wall and tin shed from his own pocket. He is not liable for eviction in view of Section 29A of the Act. This Section was introduced by U. P. Act No. 28 of 1976 with a view to extend same protection available to the tenants of a building, to the tenants of land on which the building exists. Section 29A (1) of the Act reads as under :

'For the purposes of this Section, the expressions 'tenant' and 'landlord' shall have the meanings respectively assigned to them in clauses (a) and (j) of Section 3 with the substitution of the word 'land' for the word 'building'.

4. The contention of the learned counsel for the petitioner is that subsection (3) of Section 29A of the Act provides that Section 20 of the Act shall apply in relation to

any land referred to in sub-section (2) as they apply in relation to any building but none of the sub-sections has made Section 21 of the Act applicable to any construction existing on the land raised by a tenant on the land let out to him. Sub-section (3) of Section 29A of the Act was in reference to the eviction proceedings which might be taken against the petitioner under sub-section (6) of Section 29A of the Act. Sub-section (1) provides that for the purposes of this Section, the expressions 'tenant' and 'landlord' shall have the meanings respectively assigned to them in clauses (a) and (f) of Section 3 with the substitution of the word 'land' for the word 'building'. This clearly contemplates the situation that the tenancy shall be treated in relation to a building and not land and similarly the expression 'tenant' and 'landlord' shall be in respect of a building. The provisions of the Act are made applicable in respect of the building. Section 21 of the Act provides for eviction of a tenant from the building under the tenancy or any specified part thereof. The word 'building' for the land as provided under subsection (1) of Section 29A of the Act cannot be restricted to any specific Section of the Act. All the provisions of the Act will be applicable which are in respect of a building. The mere fact that sub-section (3) specifically provides that a tenant can be evicted from such building on a ground mentioned under Section 20 of the Act. does not exclude the applicability of other provisions of the Act which are applicable in relation to a building. If the landlord requires the building for his bona fide need, there is no provision under the Act, which bars filing of an application by him under Section 21 of the Act. Section 29A of the Act was introduced with a purpose to give protection to a tenant of land from eviction. If the tenant is not granted that protection, he could be evicted on filing of a suit by a landlord after terminating his tenancy. Section 20 (13) restricts the right of the landlord for eviction unless one of the grounds mentioned under Section 20 of the Act exists. If a tenant can be evicted on any of the grounds mentioned under Section 20 of the Act, there is no reason why he cannot be evicted on a ground mentioned under Section 21 of the Act.

5. In *Lala Data Ram Gupta v. Hart Krishna and others*. 1981 (1) ARC 298, it was observed that U. P. Act No. 28 of 1976 introduced Section 29A in 1972 Act so as to extend the protection against eviction to tenants of open sites on which tenants have put up constructions. The word 'building' in Section 3 of Act 1972, was

substituted by the word 'land'. In view of the definition contained in sub-section (1) of Section 29A of the Act, the building in question can be released under Section 21 (1) (a) of the Act.

6. On facts. It has been found that one Sita Ram was tenant of the disputed premises. He was operating 'Ata Chakki' in such premises. He vacated in the year 1956. The contention of the landlord-respondent is that he had constructed the premises and let it out to Sita Ram. He vacated it in the year 1956 and thereafter it was let out to the petitioner. It was denied that the petitioner had raised any construction as alleged by him. The disputed premises consists of a boundary wall and a tin shed room. It is not necessary to go into the question of fact as to what constructions have been made by the petitioner as the view taken by me above, the application for eviction from disputed premises is maintainable under Section 21 (1) (a) of the Act against the tenant even if he had raised some construction on open site which was let out to him.

7. The petitioner has also assailed the finding recorded by the authorities below on the question of bona fide need. It is contended that the landlord has sufficient accommodation in House No. 24/133 situated in Mohalla Khwajpura. Varanasi city. The authorities below have found that there are about 21 members in the family of the petitioner and taking into account the total number of rooms in the said house, the accommodation with him is insufficient.

8. It is contended that one Abdul Wahid was a tenant and that accommodation was available to respondent No. 1. It has been found that the application under Section 21 of the Act was filed in the year 1983. The wife of respondent No. 1 died during the pendency of the case but his other members of the family were married. The authorities below have also taken into account the fact that the brother of respondent No. 1 had sold his portion of house No. 24/133. Respondent No. 1 had himself indicated that he was residing with his family in House No. 24/133 but taking into account the accommodation in the said house also, the accommodation which he had purchased, still the members of the family further require the disputed accommodation. Respondent No. 1 has five sons. His first son Abdul Rashid has six sons, and four daughters out of which two sons are married, two

other sons are major and two sons are minor, one daughter is married but was divorced. His second son Mohammad Bashir has one daughter and one son who is married. His third son Mohammad Hanif has nine children and his two sons are major and the daughter is also major. His fourth son Wali Mohammad has three children, two sons and one daughter. His fifth son Chhotak is major but unmarried. Considering the number of the total rooms and number of family members of respondent No. 1. both the authorities have found that the need of the respondent No. 1 is bona fide and genuine for additional accommodation. This finding does not suffer from any legal infirmity.

9. The last submission of the learned counsel for the petitioner is that the authorities below failed to consider clause (a) of sub-rule (2) of Rule 16 framed under the Act which provides that the greater the period since when the tenant has been carrying on his business in that building, the less the justification for allowing the application and this has vitiated their order. The disputed premises consists of a boundary wall and a tin shed. The application was filed in the year 1983 on the ground that the landlord requires the disputed accommodation for residential purposes. The family of respondent No. 1 has increased during the last 15 years. The petitioner has not shown that he made any effort to find out any alternative accommodation. The mere fact that the petitioner is carrying on business in the premises in dispute, does not itself create any right in favour of the petitioner to carry on business continuously when the landlord requires the premises in question bona fide for his personal need. The length of occupation is a relevant consideration but this itself cannot be a ground to reject an application filed by a landlord under Section 21 (1) (a) of the Act.

10. In view of the above, I do not find any merit in the writ petition and it is, accordingly, dismissed.