

Sudarshan Devi (Smt.) and ors. Vs. Smt. Bhajan Kaur and ors.

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Court : Allahabad

Decided On : Feb-18-2005

Reported in : 2005(1)ARC744; 2005(3)AWC2174

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)

Appeal No. : Civil Misc. Writ Petition No. 50677 of 2004

Appellant : Sudarshan Devi (Smt.) and ors.

Respondent : Smt. Bhajan Kaur and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : Ajay Kumar Sharma, Adv.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. This writ petition under Article 226 of the [Constitution of India](#) is directed against the order dated 4th November, 2004, passed by the appellate authority under the provisions of the U.P. Act No. XIII of 1972, whereby the appeal against the order

dated 8th January, 1999, passed by the prescribed authority, filed on behalf of the respondents-landlord has been allowed by the appellate authority,

2. The brief facts of the present case are that Sardar Indra Singh was the owner of the accommodation in question. After the death of Sardar Indra Singh, the interest of the ownership was devolved over his wife Smt. Bhajan Kaur and his five daughters, who have been arrayed as Respondents 2 to 6 in the present petition. Manohar Lal was the original tenant and after his death, the tenancy of the accommodation has been inherited by her wife Smt. Sudarshan Devi and two sons, who have been arrayed as petitioners in the present petition. It is not in dispute that before the filing of the application under Section 21 (1) (a) of the U.P. Act No. XIII of 1972, (In short 'the Act') by the landlord, Sardar Indra Singh has died and his interest has been inherited by respondents 1 to 6. The respondents 1 to 6 filed application under Section 21 (1) (a) of the Act for release of the accommodation in question under the tenancy of the petitioners-tenant on the ground that they bona fide required the aforesaid accommodation. This application has been contested by the petitioners-tenant before the prescribed authority and after the exchange of the pleadings and evidence on record, the prescribed authority vide its order dated 8th January, 1999 rejected the release application filed by the respondents-landlord. Before the prescribed authority the point that found favour was that respondents 2 to 6 are married daughters of landlord-respondent No. 1, therefore, they are not covered by the definition of 'family' within the meaning of the word used under the provisions of 'the Act', therefore, any application by respondent No. 1 (widow of landlord) for the release of the accommodation in question in order to accommodate respondents 2 to 6 would not be maintainable. Therefore, the prescribed authority rejected the release application moved on behalf of the landlord-respondents,

3. Aggrieved thereby, the landlord-respondents preferred an appeal before the appellate authority, which was decided by the appellate authority by the order impugned in the present writ petition, whereby the appellate authority accepted the appeal and set aside the order passed by the prescribed authority and allowed the release application filed by the landlord and released the accommodation in question in favour of the landlord. It is this order which has been challenged by the

petitioners-tenant by means of present writ petition,

4. Before the appellate authority, the landlord-'respondents argued that the view taken by the prescribed authority was not correct, inasmuch as the prescribed authority has rejected the release application filed by the landlord only on the ground that Respondents 2 to 6 are not covered by the definition of 'family' within the meaning of the word used under the Act. The appellate authority considered the case set up the petitioners-tenant as well as the landlord and arrived at the conclusion that view taken by the prescribed authority is not correct, inasmuch as a perusal of the application under Section 21 (1) (a) of the Act clearly demonstrates that before filing of the release application, Sardar Indra Singh, the original landlord had died, as would be clear from the assertion made in paragraphs 1 and 2 of the release application that after the death of Sardar Indra Singh, the applicants became the owner and landlord of the accommodation in dispute. This fact has not been denied in the written statement filed on behalf of the petitioners-tenant. In this view of the matter, the appellate authority, in my opinion, has rightly set aside the order passed by the prescribed authority that since respondents 2 to 6 who are daughters (married and/or widowed) of Sardar Indra Singh are not covered by the definition of 'family' within the meaning of the word used under the Act, respondent No. 1 Smt. Bhajan Kaur cannot get the accommodation released for the need of respondents 2 to 6, is patently perverse and contrary to the fact. From the facts narrated above and in the order of the appellate authority this view that all the six respondents, who are arrayed as respondents 1 to 6 are the owner and landlord, therefore, the view taken by the prescribed authority has been rightly set aside. The view taken by the appellate authority that the accommodation can not be held to be required bona fide as allegedly set up by respondent No. 1 Smt. Bhajan Kaur for the need of respondents 2 to 6. In fact this application is an application by all the co-owners for the release for their personal use and occupation, which is categorically stated in the application under Section 21 (1) (a) of the Act. After setting aside the findings recorded by the prescribed authority, the appellate authority considered the respective case of bona fide need and comparative hardship and found that according to the law laid down by this Court and the Apex Court, the need of the landlord is bona fide and submission to the contrary by the tenant is not correct.

On the comparison of the hardship, it has been found by the appellate authority that the tenant has an alternative accommodation, where he can shift, whereas the landlords do not have any such alternative accommodation, therefore the tilt of the comparative hardship is also in favour of appellants-landlords, therefore, the appellate authority allowed the appeal, set aside the order passed by the prescribed authority, allowed the release application filed by respondents to 1 to 6 and directed for release of the accommodation in question in favour of the landlords.

5. Before this Court, learned Counsel appearing on behalf of petitioners-tenant argued firstly that the view taken by the appellate authority that the respondents 2 to 6 since are not covered by the definition of 'family' within the meaning of the word used under the Act, therefore, the release for their need cannot be bona fide. Need less to say that this aspect of the matter has been dealt with by the appellate authority and I do not find that the finding arrived at by the appellate authority either suffers from the manifest error of law, or is perverse, so as to warrant any interference by this Court in exercise of power under Article 226 of the [Constitution of India](#).

6. The appellate authority having held the need of landlords to be bona fide, the comparison of hardship of the landlords viz-a-viz tenant and found that the tilt of the comparative hardship is in favour of the landlords, thus the appeal was allowed. Learned Counsel appearing on behalf the petitioners-tenant could not demonstrate any perversity or illegality in the order passed by the appellate authority with regard to comparative hardship and it is settled that this Court in exercise of power under Article 226 of the [Constitution of India](#) will not sit in appeal over the findings arrived at by the sub-ordinate authority, unless the same is demonstrated to-be perverse, or suffer from the manifest error of law. In this view of the matter and in view of the decision reported in 2004 (1) ARC 613 : 2004 (2) AWC 1721 (SC) Ranjeet Singh v. Ravi Prakash, I do not find this to be fit case for interference by this Court in exercise of power under Article 226 of the [Constitution of India](#). This writ petition, therefore, has no force and is accordingly dismissed. The interim order, if any, stands vacated. However, the parties shall bear their own costs.

