

Daya Shanker Vs. Rent Control and Eviction Officer and anr.

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Court : Allahabad

Decided On : May-10-2004

Reported in : 2004(3)AWC2356

Judge : Tarun Agarwala, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 16(2); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules - Rule 13

Appeal No. : C.M.W.P. No. 5093 of 1985

Appellant : Daya Shanker

Respondent : Rent Control and Eviction Officer and anr.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : S.M. Dayal, Adv.

Disposition : Writ petition allowed

Judgement :

Tarun Agarwala, J.

1. The petitioner is the landlord and owner of the premises No. 67 of 310, Kanchhiyana Mohal, Kanpur and is residing on the first floor with his family. The

accommodation in occupation of the petitioner consists of two rooms, which are interconnected, a covered Verandah, latrine and bathroom. The family of the petitioner consists of self, wife, 4 sons, daughter-in-law, and an unmarried daughter. On the second floor, there is one room which, was in the occupancy of a tenant Sri Bhal Chand. He fell in arrears of rent and, accordingly, the petitioner filed a suit for recovery of rent and for ejectment against the said tenant and for possession. This suit was decreed on 21.1.1978 and the petitioner was delivered possession pursuant to the execution of the decree. The petitioner as, a law abiding citizen, intimated the vacancy to the Rent Control and Eviction Officer on 1.2.1978 and also filed an application for the release of the room vacated by the tenant under Section 16 (1) (b) of the U. P. Act No. 13 of 1972.

2. The petitioner in his application submitted that his need for the room was genuine and bona fide and that the room was required for the members of his family. It was stated that one of his sons had got married and that he required a separate room for himself and for his wife. The daughter had also grown up and she too required some privacy.

3. The Rent Control and Eviction Officer by order dated 28.9.1978 rejected the release application of the petitioner on the ground that his need was not bona fide as he had let out the premises three year ago. The revisional court allowed the petitioner's revision and the order of the Rent Control and Eviction Officer was set aside and the matter was remanded back to the Rent Control and Eviction Officer to decide the need of the petitioner.

4. On remand, the Rent Control and Eviction Officer by its order dated 30.5.1979 again rejected the release application of the petitioner on the ground that the daughter of the petitioner has now been married, and therefore there is no requirement of the room for the daughter. The Rent Control and Eviction Officer further held that the petitioner had let out the room to the tenant a couple of years back and therefore, the need of the petitioner does not exist.

5. Aggrieved by the decision of the Rent Control and Eviction Officer, the petitioner filed a revision under Section 18 of the Act, which was also dismissed by a non-speaking order dated 31.3.1985, holding that the findings of the Rent Control and

Eviction Officer cannot be challenged in the revision.

6. The petitioner has now filed the writ petition for quashing of the orders passed by the Rent Control and Eviction Officer and by the revisional court.

7. Heard Sri S.M. Dayal, the learned counsel for the petitioner.

8. Under Section 16 (2) (b) of the Act, the Authority is only required to consider the bona fide requirement of the landlord's release application. As per Rule 13 of the Rules, the grounds for release of the premises are spelt out in the release application. The authority is, therefore, required to consider whether the ground for release of the premises is bona fide or not. The authority is not required to consider any other aspect. If the landlord's need is bona fide, i.e., genuine, honest or reasonable, the Authority is duty bound to release the premises in favour of the landlord. The word 'bona fide' is opposed to 'mala fide'. Therefore, the limited enquiry, which the Authority has to consider is whether the release application of the landlord is mala fide or not. If, it is mala fide, the Authority would reject the application. But, if the release application is genuine, and the need of the landlord is bona fide, the Authority is required to release the premises in favour of the landlord. In my view, the Authority is not required to assess the sufficiency of the accommodation with the landlord. In any case, in the present case, the petitioner has come out with a clear case that he requires the accommodation for his family members. Admittedly, the petitioner has only two rooms, which are interconnected and has one exit door only. One son is already married. The other son is of marriageable age. The mere fact that the daughter has got married does not mean that the need of the petitioner has come to an end. The petitioner's need was not confined for his daughter alone. The need was set up for the entire members of his family. In my opinion, the bona fide requirement shown by the petitioner was genuine and honest and was not tainted with any oblique motive nor it was a mere wish or desire. The mere fact, that the petitioner had let out the premises a couple of years ago does not mean that he has no need for the premises. The need of the petitioner changes with the passage of time. Earlier, the need of the petitioner was not existing as his children were young, but by passage of time, each child grew up and his or her own space and privacy and therefore, the need arose for a

requirement of an additional room.

9. In my view, the approach adopted by the authority was wholly erroneous. The revisional court also failed to exercise its jurisdiction in not correcting the order of the Rent Control and Eviction Officer.

10. In the result, the writ petition is allowed. The order dated 30.5.1979 passed by the Rent Control and Eviction Officer and the order dated 21.3.1985 passed by the 9th Additional District Judge, Kanpur are quashed and the room in question is released in favour of the petitioner. In the circumstances of the case, there shall be no order as to cost.

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