

Nand Lal Vs. Vith Additional District Judge, Varanasi and Others

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Court : Allahabad

Decided On : May-06-1999

Reported in : 1999(3)AWC1906

Judge : Yatindra Singh, J.

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

Appeal No. : C.M.W.P. No. 13621 of 1999

Appellant : Nand Lal

Respondent : Vith Additional District Judge, Varanasi and Others

Advocate for Def. : S.C. and;Pushkar Mehrotra, Adv.

Advocate for Pet/Ap. : Sankatha Rai and;Ajay Kumar Singh, Adv.

Judgement :

Yatindra Singh, J.

1. This is the tenant's writ petition against the orders dated 6.3.1999 and 16.1.1996 in proceeding under Section 21 (1A) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972 (the Act for short).

FACTS

2. Sri Keshav Prasad Srivastava (respondent No. 3) (the landlord in short) is the owner and landlord of the building, i.e., House No. A-6/14-15 situate in Mohalla Mukeemganj, district Varanasi. There are five tenants in the house in dispute. Nandlal. Ramesh Kumar. Ram Chandra and Swami Nath are the tenant of one shop each. One Bhagwan Das is the tenant in the first and second floor of this building. This is the residential portion. The tenancies in respect of five persons are separate ; though it is admitted that they are in one building. The landlord filed an application under Section 21 (1) (a) of the Act against all five tenants for the release of respective portions on the ground of personal need. Subsequently the application was amended and the release was sought under Section 21 (1A) of the Act. The landlord alleged that he was a Senior Public Prosecution Officer at district Gorakhpur and is in occupation of a public building, He said that he has to retire very soon, so entire building be released in his favour. He In fact retired during pendency of the case and at present is residing in tenanted premises. The tenants filed separate objections. The Prescribed Authority after considering the entire evidence on record allowed the application of the landlord. Aggrieved, all the five tenants filed appeals. These were dismissed by a common order. Sri Nand Lal, one of tenants has filed this writ petition. He is in occupation of a shop in the building in question.

POINTS FOR DETERMINATION

3. I have heard counsel for the parties. Following points arise for determination.

(i) The landlord filed an application on 15.4.1987. He had to retire on 31.7.1988. Whether such an application was maintainable in view of proviso to Section 21 (1A) of the Act.

(ii) Was landlord residing in a public building? Is he in a possession of an alternative accommodation? Is his need bona fide?

(iii) The landlord filed one application against five tenants though they were in the same building. Is landlord entitled to benefit Section 21 (1A) of the Act in respect

of all five tenants or is he entitled to in respect of only one tenant? Was this objection raised below? Can such objection be taken in the writ petition?

1st POINT--BAR OF PROVISIO TO

SECTION 21 (1A)

4. Section 21 (1A) permits the eviction of the tenant if the landlord was in occupation of a public building for residential purposes and had to vacate on the ground of cessation of his employment. The retirement is cessation of employment. The proviso to Section 21 (1A) permits filing of such an application one year before the expected date of cessation of employment. The proviso clarifies that in such a case, the order shall take effect on the date of the actual cessation. In the present case, the application was moved on 15.4.1987. The landlord retired on 31.7.1988. This application was one year before the cessation of the employment. According to the counsel for the tenant such an application was not maintainable.

5. The proviso nowhere says that in case an application is moved more than one year before the expected date of cessation, then the order passed therein would be illegal. The proviso uses the word, 'expected date of cessation'. The fact that the application was moved few months before the date of cessation does not affect the order : the eviction order was passed on 16.1.1996 much after the cessation of employment. Apart from it, the case initially was under Section 21 (1) (a) of the Act. No benefit of Section 21 (1A) was claimed. It was only by the amendment application dated 7.5.1994 that the claim under Section 21 (1A) was made and the claim under Section 21 (1) (a) was deleted. This claim was made much after the actual cessation of the employment. The Judgment of the Courts below cannot be faulted on this score.

2nd POINT- BONA FIDE NEED--

APPLICATION OF SECTION 21 (1A)

6. The Courts below have held that the landlord is entitled to benefit of Section 21 (1A) in view of the finding that he-

(i) was in occupation of a public building.

(ii) had to vacate on account of his retirement?

(iii) has an open piece of plot, but there is no construction over it.

(iv) is at present residing in a tenanted premises?

There is neither any illegality in the finding nor any was pointed out. It cannot be interfered in the writ jurisdiction under Article 226 of the Constitution.

IIIrd POINT--IS THE BENEFIT

AVAILABLE AGAINST ALL TENANTS

IN A BUILDING

Was this objection raised below :

7. The main objection of the counsel for the petitioner is that benefit of Section 21 (1A) can only be taken in respect of one tenant and not in respect of more than one even if all of them are tenants in one building. In order to take the advantage against the other tenants, the landlord should file an application under Section 21 (1) (a) of the Act where hardship is also to be compared. The counsel for the landlord says that such an objection was not taken in the written statement. It cannot be taken in the writ petition.

8. It is true that this objection was not taken in the written statement. But it was subsequently taken by means of separate application dated 12.1.1996. It is further true that Prescribed Authority did not discuss it. The appellate court has discussed it. It is for this reason that appellate court has not only considered the case under Section 21 (1A) but also under Section 21 (1) (a) of the Act. In any case facts are admitted. It is a question of law ; petitioner cannot be estopped from raising this point.

BENEFIT--IF LIMITED TO ONE

TENANT OR TO ONE BUILDING

9. The landlord is entitled to the benefit of Section 21 (1A) in respect of only one tenant in a building or is he entitled in respect of all tenant in the entire building is the main point in the writ petition. This assumes importance. In case under Section 21 (1) (a) the landlord not only has to prove his personal need but also has to prove greater hardship, but in case under Section 21 (1A). landlord has to prove that he was in occupation of public building and has to vacate it on cessation of his employment. He does not have to prove greater hardship. There is no direct ruling on the question involved. The counsel for the petitioner has brought to my notice Section 2 (1) (g) of the Act and a ruling reported in *Ajai Kumar v. Shant Singh*, 1998 (2) ARC 14. This Section 2 (1) (g) says the Act will not apply to any building whose monthly rent exceeds Rs. 2,000 per month. In the case there was a tenant in a building whose rent was rupees 2,000. But in the other part of the building there was another tenant. If the rent of both were clubbed, then the monthly rent exceeded rupees 2,000 per month. The question was 'Does the Act apply'. The Court in view of the purpose ; object of the Act and exemption scheme of the Act gave restricted meaning to the word 'building' otherwise the purpose of the Act was being defeated. The Court held that building in that sub-clause meant 'portion' of the building occupied by a 'tenant'. This does not mean that the same restricted meaning should be given in Section 21 (1A) and the benefit would be against one tenant. Like the ruling in this case, we have to see the intention and the purposes of Section 21 (1A).

10. Building is defined under Section 3 (1) of the Act, It means roofed structure. There is nothing to suggest that in Section 21 (1A). restricted meaning should be given. The Section 21 (1A) was inserted by U. P. Act No. 28 of 1976. Chapter IVA was also inserted by the same amending Act. This chapter provides for summary trial in certain cases. They are substantially the same regarding the landlord who is in occupation of any residential public building. Section 21 (1A) applies even to a building, which is exempt under Section 2 of the Act. Reason for including this was that the public buildings should be available for needy persons and at the same time, the landlord may also get possession of his building for his residence. Should it be restricted to a part of building. There may be many tenants : restricting it to one may not suffice for the residence of the landlord who has to leave public building. There is nothing to restrict the meaning of word 'building' to a portion of a

building.

11. It is true that Section 21 (1A) use the word 'a tenant'. It does not mean that the intention was to restrict it to one tenant. The word 'a tenant' is in singular form. But singular includes plural. This is so stated in U. P. General Clauses Act. The landlord is entitled to get building released for his residence. It is immaterial how many tenants are there in that building. This reading gives life to the law and fulfilment to its soul.

12. The appellate court has not confined it's decision to Section 21 (1A) regarding all tenants. It has considered the case as far as four tenants having one shop each namely Nandlal, Ramesh Kumar, Ram Chandra and Swami Nath under Section 21 (1) (a) also and has held that the need of the landlord bonafide and greater hardship will occasion to him in case his application is rejected. Petitioner's case has been considered under Section 21 (1) (a) also. There is no illegality in the order.

CONCLUSION

13. There is no merit in the writ petition. It is dismissed. However, the petitioner is granted six months time to vacate the premises in dispute provided he files an undertaking within a month from today before the Prescribed Authority concerned that he will handover peaceful possession of the premises in dispute within six months and the pay the rent for the period of his occupation.

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