

Smt. Krishna Devi Vs. Additional District Judge and anr.

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Court : Allahabad

Decided On : Jul-05-2002

Reported in : 2002(3)AWC2470

Judge : Anjani Kumar, J.

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

Appeal No. : C.M.W.P. No. 11171 of 2002

Appellant : Smt. Krishna Devi

Respondent : Additional District Judge and anr.

Advocate for Def. : R.R. Agrawal, S.C.

Advocate for Pet/Ap. : Pramod Kumar Jain, Adv.

Disposition : Writ petition dismissed

Judgement :

Anjani Kumar, J.

1. By means of the present writ petition under Article 226 of the [Constitution of India](#), petitioner has challenged the order dated 4.2.2002, passed by the appellate authority in Civil Appeal No. 84 of 2000 under Section 22 of the U. P. Act No. 13 of

1972.

2. The facts leading to the filing of present writ petition are that admittedly petitioner is the tenant and the contesting respondent is landlord of the accommodation in question. The landlord filed an application under Section 21 (1) (a) of the U. P. Act No. 13 of 1972 (hereinafter shall be referred to as the 'Act'), for the release of the accommodation in question before the Prescribed Authority on the ground that the accommodation under the tenancy of the petitioner tenant is bona fide required by the landlord as the landlord is in the requirement of an additional accommodation because of the growing family. The release application further reveals that the tilt of the comparative hardship is also in favour of the landlord, Inasmuch as the tenant's elder son, namely. Narendra Kumar has already occupied another accommodation in the same municipality where he is living along with his family members and in case, the accommodation is released, the tenant can also easily shift there. The contesting respondent-landlord with regard to the Explanation of Section 21 of the Act has argued that tenant has stopped from raising the defence because of the application of the aforesaid Explanation in the circumstances stated in the application that the son of the tenant has acquired a vacant building in the same municipality and Explanation of Section 21 of the Act would apply and the application of the landlord deserves to be allowed and the accommodation in occupation of the tenant deserves to be released.

3. The petitioner-tenant raised an objection that the application is mala fide and originally the tenancy is coming down from her father since past 50 years and after purchase of the building by the present landlord in the year 1970, no notice is required in the case of transferee landlord to have been given as required under the Act. The so-called need set up by the landlord is neither bona fide, nor genuine and in fact mala fide. The accommodation of Narendra Kumar, which has been referred to as an alternative accommodation, is also not available to the tenant because since Narendra Kumar is married out of caste, therefore, he is living separately since long and because of the strained relations with daughter-in-law with the petitioner-tenant, the accommodation occupied by Narendra Kumar cannot be treated to be an alternative accommodation as suggested by the

landlord. Thus, the tilts of the comparison of hardship are also in favour of the tenant.

4. The Prescribed Authority after hearing the parties has decided the application in favour of the tenant and dismissed the release application holding that the Explanation of Section 21 of the Act is not applicable. The need of the landlord is not bona fide and though the Prescribed Authority has held that since it has come to the conclusion that the need of the landlord is not bona fide, he should enter into the comparison of the hardship, but even the Prescribed Authority found that the tilt of the hardship is in favour of the tenants. Thus, the Prescribed Authority, as stated above, has dismissed the application filed by the landlord under Section 21 (1) (a) of the Act vide its order dated 29.2.2000.

5. Aggrieved by the order of the Prescribed Authority, the landlord preferred an appeal under Section 22 of the Act before the appellate authority. The appellate authority after considering the materials on record including the evidence has found that the view taken by the Prescribed Authority that Explanation of Section 21 is not attracted because of the suitability or otherwise of the accommodation in which Narendra Kumar, son of the tenant is living, should not be taken into consideration by the Prescribed Authority and the Prescribed Authority, therefore, has erred in law in holding that the Explanation of Section 21 is not attracted. The appellate authority, therefore, reversed the findings with regard to the applicability of Section 21 and also with regard to the bona fide requirement of the landlord. According to the appellate authority, the view taken by the Prescribed Authority that the landlord does not bona fide require the accommodation in question, is not in accordance with law and, therefore, deserves to be set aside and has been set aside by the appellate court and the appellate court arrived at the findings after consideration of the evidence on record that the landlord requires accommodation in question bona fide. With regard to the tilt of comparison of the comparative hardship the appellate authority rebut the findings recorded by the Prescribed Authority and found that because of the facts and circumstances of the case and because of the availability of an alternative accommodation, the need set up by the landlord is bona fide and more pressing and the tilt of the comparative hardship is also in favour of the landlord. The appellate authority, therefore, set

aside the order passed by the Prescribed Authority and allowed the appeal tiled by the landlord and released the accommodation in question in favour of the landlord. It is against this order the present writ petition has been filed.

6. Learned counsel for the petitioner has advanced the same arguments as were advanced before the Prescribed Authority and emphasise that the view taken by the appellate authority that Explanation of Section 21 of the Act is not applicable is the correct view and the appellate authority has erred in law. Further what has been stated above. I do not agree with the argument advanced on behalf of the petitioner-tenant that the view taken by the appellate authority with regard to the applicability of Explanation of Section 21 suffers from any manifest error of law.

7. The appellate authority has reversed the findings of bona fide need and comparative hardship arrived at by the Prescribed Authority after considering the evidence and materials on record, which need not be required to discuss as it is settled that this Court will not sit in appeal over the findings arrived at by the authorities below. It is also settled that if two views are possible and the appellate authority has taken one view, this cannot be said to be error so as to warrant any interference under Article 226 of the [Constitution of India](#).

8. In this view of the matter, the findings arrived at by the appellate authority after reversing the findings recorded by the Prescribed Authority : do not warrant any interference by this Court in exercise of its powers under Article 226 of the [Constitution of India](#).

9. In view of what has been stated above, it is clear that the order impugned in the present writ petition does not warrant any interference by this Court, thus this writ petition deserves to be dismissed and is hereby dismissed. The interim order, if any, stands vacated. However, the parties shall bear their own costs.

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