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Court : Allahabad

Decided On : Jul-05-2002

Reported in : 2002(3)AWC2383

Judge : Anjani Kumar, J.

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

Appeal No. : C.M.W.P. No. 23479 of 1990

Appellant : Smt. Sundari Devi and ors.

Respondent : Viith Additional District Judge and ors.

Advocate for Def. : B.D. Mandhyan, S.C.

Advocate for Pet/Ap. : Dilip Gupta, Adv.

Disposition : Writ petitions dismissed

Judgement :

Anjani Kumar, J.

1. By means of the present writ petition under Article 226 of the Constitution of India, petitioners are challenging the order dated 4.8.1990, Annexure-6 to the writ petition, passed by respondent No. 1 in Appeal No. 74 of 1985. whereby appeal

filed by the landlord has been allowed and the order dated 30.10.1985 passed by respondent No. 2 has been set aside.

2. The facts leading to the filing of present writ petition are that the landlord was residing according to own admission of the petitioners-tenants, in a rented accommodation at Agra when he purchased this building in question in the year 1979. He thereafter filed an application under Section 21 (1) (a) of the U. P. Act No. 13 of 1972, (hereinafter referred to as the 'Act'), for release of the building in question for personal requirement, as stated above in the year 1980, which was in occupation of the tenants. The first objection that has been taken by the petitioners-tenants is that the application under Section 21 (1) (a) of the Act having been filed within one year of purchase of the building in question was not maintainable as there is a statutory bar of three years for a transferee landlord, but this argument has not been pressed during the course of the hearing of the writ petition. In view of the law settled by this Court that the bar of three years would apply not on the date of the filing of the application, but on the date when the application is decided. Before the Prescribed Authority, the petitioners-tenants raised an objection that in fact from the perusal of Section 21 (1) (a) of the Act, it is clear that the need set up by the landlord is not bond fide, inasmuch as it has been stated that the family of the landlord consists of himself, his wife and his mother and father only. The landlord further stated that his family was residing in a rented house bearing municipal No. 27/8 North Vijay Nagar Colony, Agra. It is admitted fact that during the pendency of the application under Section 21 (1) (a) of the Act, the father of the landlord died. The tenants have put up defence that the landlord has purchased the building in question only for the purposes of re-sale after getting evicted the petitioners-tenants and he had absolutely no intention to set up any alleged industry at Agra, whereas the landlord has stated in the application that he is taking training of running and managing an industry at Delhi and as soon as he completes his training or the building in question is released, he will be shifting to Agra for establishment of the industry. It would not be out of place to mention that the application was filed in the year 1980 and we are now in the year 2002, till date the building in question has not been adjudicated upon. In this context, the stand taken by the tenants that the landlord in fact is permanently settled at Delhi and he had absolutely no intention to settle down at Agra or

establishing any Industry as alleged by him because had it been the real intention of the landlord to set up an industry at Agra, he would have done some ground work or would have established industry, but since then nothing has been done. The stand taken before the Prescribed Authority by the petitioners-tenants is further substantiated that during these 22 years and odd, nothing has been done by the landlord. Coming back to the facts of the case, the Prescribed Authority after considering the evidence and pleadings of the parties arrived at the conclusion that the parents of the landlord are living in a separate accommodation at Agra and landlord is not residing with his family at Agra, therefore, he has no bona fide requirement of the building in question for residence and tilt of the comparative hardship is also in favour of the tenants.

3. Aggrieved by the order passed by the Prescribed Authority, the landlord filed an appeal under Section 22 of the Act before the appellate authority. Before the appellate authority, arguments were advanced and the appellate authority after considering the arguments advanced by the parties reversed the findings recorded by the prescribed authority on the question of bona fide need and also on the question of comparative hardship and allowed the appeal after setting aside the order passed by the prescribed authority, hence this writ petition by the petitioners-tenants.

4. Before this Court, Sri Dilip Gupta, learned counsel for the petitioners-tenants reiterated the same arguments as were advanced before the authorities below, which have been replied to by Sri B. D. Mandhyan, learned counsel for the contesting respondent-landlord. Sri Dilip Gupta has stated that the allegation in the application under Section 21 (1) fa) of the Act that the landlord requires to set up an industry and, therefore, he requires the building in question, which is a residential accommodation, without specifying as to what industry he will set up, is wholly vague allegation. Sri Gupta further substantiated his argument that after the lapse of more than 20 years since nothing has been done by the landlord and landlord is permanently settled at Delhi as would be clear from the extract of Telephone Directory and further the stand taken by the tenants-petitioners should be upheld that the landlord in fact has no pressing need, which can be presumed as bona fide need. Sri Gupta has placed several decisions in support of his

arguments.

5. In my opinion, the arguments advanced by Sri Gupta and the decisions cited by him do not apply to the facts of the present case. The landlord has moved the application under Section 21 (1) (a) of the Act for the release of the residential accommodation for the purposes of his residence and not for an industry. He has categorically stated that he is undergoing the training at Delhi to run and manage an industry and as soon as the building in question is released, he will be living permanently at Agra and will be establishing an industry. In this view of the statement, which has been upheld by the appellate court, the argument advanced by Sri Gupta is misconceived to the extent that nothing has been done so far for establishing of an industry. The requirement sought to by the landlord was to not run an industry and possibly it cannot be, because the accommodation in question is purely a residential accommodation. The further submission of Sri Gupta is that since the landlord has in fact vacated the tenanted accommodation also after the death of his father and that he is permanently residing at Delhi, therefore, the application should not and could not have been allowed, is again misconceived. The rented accommodation has been vacated because the landlord is in a pious hope that his application under Section 21 (1) (a) of the Act would be allowed for settling down in his own house, which he has purchased in the year 1979. He has also stated that the residence at Delhi is admittedly comes, if ultimately he has to settle down at Agra, but since the accommodation is not released, he has taken a rented accommodation. These findings were upheld by the appellate authority in the contest of arriving at the conclusion that the need of the landlord is bona fide.

6. In the teeth of these concurrent findings regarding bona fide need and the comparative hardship, this Court in exercise of its powers under Article 226 of the Constitution of India will not sit in appeal over the findings recorded by the authorities below when the same have not been shown as suffering from any error of law or any perversity. In this view of the matter, this Court refuses to exercise its discretionary power under Article 226 of the Constitution of India in favour of the petitioners and the writ petition therefore, deserves to be dismissed and is hereby dismissed. The interim order, if any, stands vacated. However, on the facts and circumstances of the case, the parties shall bear their own costs.

