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Smt. Vidya Sinha Vs. Vth Additional District Judge, Varanasi and Others

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Court : Allahabad

Decided On : Jul-28-1999

Reported in : 1999(3)AWC2611

Judge : A.K. Yog, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21 (1) and 22; Constitution of India - Article 226

Appeal No. : C.M.W.P. No. 30741 of 1999

Appellant : Smt. Vidya Sinha

Respondent : Vth Additional District Judge, Varanasi and Others

Advocate for Def. : Rohit Agrawal and ;Vivek Saran, Advs.

Advocate for Pet/Ap. : T.N. Tiwari, Adv.

Judgement :

A.K. Yog, J.

1. This petition, under Article 226, Constitution of India, arises out of proceedings initiated by Shyam Shankar Srivastava and his two sons by filing release application under Section 21 (1) (a) of the U. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act. 1972 (U. P. Act No. XIII of 1972) (for short called

the 'Act') before prescribed authority appointed under the Act. The Landlord claimed that he required premises No. S/6/12. Mohalla Miana Mohal, Orderly Bazar. Varanasi, wherein Smt. Vidya Sinha (petitioner) was a tenant at the rate ofRs. 35 per month. Release was also sought for other portion in the said premises in the tenancy of Smt. Madhuri Singh. After parties led evidence, the prescribed authority urde judgment and order dated 10th May, 1995 (Annexure-5 to the petition) allowed release application granting two months to the tenant (petitioner) to vacate said accommodation and hand over vacant possession to the landlord. During the pendency of the proceedings before prescribed authority, Smt. Madhuri Singh, aforementioned had given possession to the landlord.

2. Smt. Vidya Sinha, thereafterfiled Rent Control Appeal No. 157 of1995, under Section 22 of the Act.The said appeal has also beendismissed by the appellate authority(respondent No. 1) vide judgment andorder dated 28th May, 1999 (Annexure-6 to the petition). The Lower Appellate Court affirmed the Judgment of the prescribed authority, who had, after perusing the evidence and material on record on the question of bona fide need, found that the requirement of the Landlord was genuine and bona fide. In view of thefact that AJay Shankar Srivastava,son of the Landlord, was married andunemployed and that other son ManoJShanker Srivastava, who had passedM.Sc. in First Division was entitled to carry on proposed business accordingto his liking and he could not becompelled to remain in service asClass III employees, which was notaccording to the status of his family,i.e., his father was Principal of DegreeCollege and grand-father was arenowned Advocate of DistrictGhazipur. The prescribed authorityhas also noted that the releaseapplication remained pending for 12years and during which the situationwas bound to change. The prescribedauthority has also found that tenanthad made no effort whatsoever forobtaining alternative accommodation.In view of it, prescribed authorityheld hardship which was going to becaused to the Landlord by rejectingrelease application will be more thanthat which will be suffered by thetenant in case of release beingallowed. The Lower Appellate Courtconsidered the evidence and materialon record Independently and concurred with the findings recorded by prescribed authority. The tenant has, thus, come up before this Court by filing present petition.

3. I have heard Sr. T. N. Tewari, learned counsel for the petitioner and Sri Rohit Agrawal, holding brief of Sri Vivek Saran, learned counsel for Caveator-Respondent No. 3. The present writ petition is being heard at admission stage and finally decided.

4. No notice required to be given to respondent Nos. 4, 5 and 6 since the interest of these respondents is fully represented by Ajay Shankar Srivastava, respondent No. 3, and also that no order adverse to them is being passed.

5. Learned counsel for the petitioner has not been able to point out any specific ground in the petition to indicate that findings of fact, recorded by two Courts below are vitiated in any manner warranting interference by this Court in exercise of its jurisdiction under Article 226, Constitution of India. After perusing the documents filed along with writ petition, this Court finds that no ground has been made out to challenge the finding recorded on the question of 'bona fide need' and 'comparative hardship'.

6. Learned counsel for the petitioner, however, then raised a legal question to the effect alleging that residential accommodation could not be released for non-residential purpose, in view of Section 21 (1), Proviso III (ii) of the Act, which reads :

'Provided also that no application under clause (a) shallbe entertained-- (ii) In the case of any residential building, for occupation for business purposes;'

7. This aspect has been considered by the prescribed authority (Annexure-5, particular page 54 of writ paper book). The prescribed authority has placed reliance upon the decision in Smt.Ram Kali v. IVth Additional District Judge, Kanpur, 1985 (2) ARC 385. paras 1 and 2. The Lower Appellate Court has dealt with this aspect of the matter in its judgment (Annexure-6, particular page 77 of the writ paper book). The aforementioned provisions under the Act, came up for consideration before this Court and it Is held that release application in respect of residential building shall be entertained and the bar contained aforementioned will not come into play if the landlord seeks release both for residential as well as business purposes. It is a matter of common knowledge that a landlord may use

his residential premises for residential, purpose, which may not be purely residential in nature and/or the alleged use may be such, which may be carried on along with residential use. For example, an Advocate may require an accommodation for residential purpose, but still he may use a portion of it for a professional use. Similarly, there may be cases that landlord may generally desire to carry on some activity, which may conveniently be carried in a portion of a room, e.g., plastic moulding machine for manufacturing small items like refills and plastic cases of clinical thermometer. The above examples are not exhaustive.

8. Learned counsel for the respondent has referred to the decision in Chhedi Lal and another v. Vth Additional District Judge, Kanpur and others. 1985 AWC 967. In para 8. learned single Judge in the case of Chhedi Lal (supra) has taken similar view, which was taken by this Court in the case of Ram Kali (supra). The ratio laid down therein cannot be said to be applicable to the facts of present case. The said decision can be relied for limited purpose ; i.e., there is no complete ban, as such for residential premises being used for both residential and non-residential purposes.

9. In my opinion, the view taken in the case of Ram Kali (supra) is fully applicable to the facts of present petition. I find no reason to take different view. Perusal of the releaseapplication to the present case showsthat landlord requiredaccommodation for residentialpurpose and certain portion of it fornon-residential purposes. Theprohibition In III Proviso clause (ii) ofSection 21 (1) of the Act will notapply to the case where applicationhas been filed primarily forresidential purpose and only aportion is required by landlord fornon-residential purpose.

10. In view of the above, submission of the learned counsel for the petitioner in this respect is devoid of merit.

11. No other point has either been raised for pressed at this stage.

12. The case was heard finally on 27th July, 1999. Learned counsel for the petitioner at this stage sought time in order to enable to contact his client for seeking instructions. The case is being taken up on 28th July, 1999. Learned

counsel for the petitioner informs that on instruction from the petitioner, he is prepared to give an undertaking on behalf of the petitioner that the petitioner shall vacate the accommodation in question and deliver vacant possession to the landlord-respondent Nos. 3, 4 and 5 subject to following conditions provided ; that petitioner is not dispossessed from the accommodation for the period upto 31st January, 2000 and he Is allowed to retain possession of the accommodation in her tenancy in premises No. S/6/12, Mohalla Miana Mohal, Orderly Bazar, Varanasi, which is subject-matter of P.A. Case No. 15 of 1983. Shyam Shanker Srivastava and others, since deceased through legal representative v. Vidya Sinha and another, subject to the compliance of the conditions given hereunder :

1. The tenant-petitioner/s file/s before concerned prescribed authority, on or before 31st August, 1999. an application along with his affidavit giving an unconditional undertaking to comply with all the conditions mentioned hereinafter :

2. Petitioner-tenant shall not beevicted from theaccommodation in histenancy for six months, i.e.,upto 31st January, 2000.Tenant-petitioner, hisrepresentative /assignee, etc.,claiming through him orotherwise, if any, shall vacatewithout objection andpeacefully deliver vacantpossession of theaccommodation in questionon or before 31st January,2000 to the landlord orlandlord's nominee/representative (if any.appointed and intimated bythe landlord) by giving prioradvance notice and notifyingthe to landlord by RegisteredA.D. post (on his last knownaddress or as may bedisclosed in advance by thelandlord in writing before theconcerned prescribedauthority), time and date onwhich Landlord is to takepossession from the tenant.

3. Petitioners shall on or before 31st -August. 1999 deposit entire amount due towards rent etc. up to date. i.e., entire arrears of the past, if any, as well as the rent for the period ending on the 31st January, 2000.

4. Petitioners and everyoneclaiming under him undertakenot to 'change' or 'damage' ortransfer/alienate/assign inany manner, theaccommodation in question.

5. In case tenant-petitionersfalls to comply with any of theconditions or directionscontained in this order,landlord shall be entitled toevict the tenant-

petitionersforthwith from theaccommodation in questionby seeking police forcethrough concerned prescribedauthority.

6. Defaulting party shall pay Rs. 25,000 (Rupees Twenty-five thousand only) as damages tothe other party if there is violation of the undertaking or anyone or more of the conditions contained in this order.

13. This writ petition is dismissedsubject to the observations andconditions mentioned above. No orderas to costs.

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