

Mohinder Singh and Another Vs. Vith Addl. District Judge, Meerut and Others

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Court : Allahabad

Decided On : Aug-25-1998

Reported in : 1998(3)AWC2388

Judge : J.C. Gupta, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1) and 22; [Constitution of India](#) - Articles 226 and 227

Appeal No. : C.M.W.P. No. 11044 of 1982

Appellant : Mohinder Singh and Another

Respondent : Vith Addl. District Judge, Meerut and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : M.A. Qadeer, Adv.

Judgement :

J.C. Gupta, J.

1. Heard parties' counsel.

2. This is tenants' writ petition directed against the order dated 5.9.1983 passed by respondent No. 1 whereby the appeal filed by the landlord was allowed.

3. The dispute relates to a residential house which was in the tenancy of the petitioners' father and another tenant Ram Chander. The accommodation which was in occupation of Luxman Singh, the father of the petitioners, consisted of two rooms and one kitchen in the ground floor while the accommodation in possession of another tenant Ram Chander consisted of one room and one tin-shed in the first floor. The landlord filed an application for release under Section 21 (1) (a) of the U. P. Act No. 13 of 1972 for the release of the entire house which was in occupation of the aforesaid two tenants on the ground that since a partition has taken place amongst the co-sharers of the joint family and the house in question having fallen in the exclusive share of the landlords, they have no other accommodation to reside as of right. The release application was contested by both the tenants and it was pleaded that partition was false and the landlords have sufficient accommodation with them and their requirement of the house in question was not bona fide.

4. The Prescribed Authority rejected the landlord's application holding that there was no documentary evidence on the record to prove the alleged partition and since the landlords were living with other co-sharers in another house having sufficient accommodation, their need for the house in question was not bona fide. Finding on the question of comparative hardship was also recorded in favour of the tenants.

5. Aggrieved by the order of the Prescribed Authority, the landlords filed an appeal under Section 22 of the Act. Before the Appellate Authority, the landlords with the permission of the Appellate Authority brought on record documents in support of their case of partition, which included certified copy of the decree of civil suit by which the partition amongst the co-sharers was recognized and declared. The landlords also brought on record documentary proof in relation to a subsequent event that the father of the petitioners, namely, Luxman Singh, after the decision of the Prescribed Authority, purchased another house in the same city and, therefore, no objection of the tenants could be entertained.

6. The Appellate Authority on a consideration of entire material on record has recorded a categorical finding that the need of the landlord for the release of the house in question is bona fide. There appears to be no error in the said finding inasmuch as after when the partition had taken place, the present landlords were left with no rights in other joint family properties including the ancestral house and only the house in question fell into their share. The mere fact that they continued their living in ancestral house cannot deprive them of their right to ask for the house in question for their own personal living specially when they were left with no rights in the ancestral house on account of the partition. It is not the requirement of law that before applying for release a landlord should first come on streets. The occupation of the landlords in the ancestral house after the partition would only be in the capacity of licensee and they could not be compelled to continue to live there against the wishes of other co-sharers.

7. Learned counsel for the petitioner contended before this Court that the Appellate Authority should not have admitted the documents regarding partition because no reason was shown for not filing those documents before the Prescribed Authority. It may be suffice to mention here that the documents which were brought on record were either public documents or part of judicial record and, therefore, they could neither be manufactured nor manoeuvred after the date of the decision of the Prescribed Authority. It was rightly opined by the lower Appellate Authority that those documents were necessary for a just decision of the case and the tenants were compensated in terms of money by way of costs which were paid and accepted by the tenants without any protest. The Appellate Authority also gave opportunity to the petitioners to file evidence in rebuttal to those documents but no such evidence was filed, with the result the said documents remained unchallenged and uncontroverted. It is well established law that a writ of certiorari is not a writ of right and where substantial justice has been done, this Court would not interfere. It has been next argued by the petitioners' counsel that while recording finding on the question of comparative hardship, the Appellate Authority has wrongly applied Explanation 1 to Section 21 (1) (a) to the facts of the present case. This argument of the learned counsel also does not carry weight inasmuch as it was never disputed before the Appellate Authority that no sale deed was executed in favour of Luxman Singh and his wife. A perusal of

the copy of the sale deed which has been annexed with the counter-affidavit in this writ petition indicates that the purchasers (Luxman Singh and his wife) got vacant possession of a house covered by the sale deed. Even against this document, no evidence in rebuttal was adduced on behalf of the tenant before the Appellate Authority. It appears that it was argued before the Appellate Authority that since the house purchased by the tenant and his wife consisted of only one small room, the same was not sufficient to meet out the need of all the members of his family. In the writ petition also, it has been admitted by the petitioners themselves that after the execution of the sale deed, their mother, the respondent No. 5, has come into occupation of the purchased house but the same was hardly sufficient to accommodate her as well as her two sons, namely, the petitioners. It may be noted here that Luxman Singh died during the pendency of the appeal and the petitioners and their mother were brought on record as his legal representatives.

8. In order to attract Explanation 1, the only requirement is that after the date of commencement of the Act, the tenants or any member of his family has acquired in a vacant state any residential building in the same city, municipality, etc. The question whether the accommodation in the acquired house is sufficient or not is of no consequence. The Explanation aforesaid was fully attracted to the present case and accordingly as far as the question of hardship is concerned, the petitioners could not be heard to say anything with regard to their hardship which was likely to occur on account of their eviction. The object of Explanation I obviously seems to be that when the tenant has with him his own house, he should not be permitted to raise objection on the question of hardship. The view taken by the lower Appellate Authority is, thus, perfectly legal.

9. It has also been argued by Mr. Qadeer, learned counsel for the petitioners, that during the pendency of this writ petition, the father of the landlords-respondent Nos. 2 and 3, has died and, therefore, they have again inherited by succession, rights in the property left by their father. Under the provisions of the Act, the order made under Section 22 of the Act becomes final and once finality is reached to the decision made by the Appellate Authority, any event occurring subsequently cannot be taken into consideration by this Court in exercise of its writ jurisdiction and I am fortified in my view by the decision of the Apex Court rendered in the

case of Kamleshwar Prasad v. Pradumanju Agrawal and others. JT 1997 (4) SC 425, wherein it was held that under the Act, the order of the Appellate Authority is final and the said order is a decree of the civil court and a decree of a competent court having become final cannot be interfered with by the High Court in exercise of its power of Superintendence under Articles 226 and 227 of the Constitution by taking into account any subsequent event which might have happened. Apart from this, in the circumstances, where the proceedings have remained pending for more than 22 years, it will not be just and proper to send back the case for an inquiry as to how much share, if any, has been inherited by the present landlords on account of the death of their father, specially when the tenants have already acquired in a vacant state a residential house in the same city.

10. For the reasons stated above, this writ petition is dismissed with no order as to costs. Stay Order dated 13.9.1983 stands vacated.

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