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Court : Allahabad

Decided On : Nov-13-1998

Reported in : 1998(4)AWC662

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972
- Sections 11(1), 13, 16, 16(1) and 21(1)

Appeal No. : C.M.W.P. No. 1474 of 1997

Appellant : Shafique Ahmed

Respondent : Additional District Judge (E.C. Act), Dehradun and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Yogesh Kumar Saxena, Adv.

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the order dated 14.10.1988 passed by the Prescribed Authority allowing the application for release of the disputed shop in

favour of the landlord-respondent No. 3 and the order of the appellate authority dated 30.11.1996 dismissing the appeal against the aforesaid order.

2. The petitioner is a tenant of the shop in question of which respondent No.. 3 is the landlord. Respondent No. 3 filed an application for release of the shop in question under Section 21 (1) (a) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972 [hereinafter referred to as the Act) on the allegation that he was carrying on the business of selling pens and key-rings by putting a table on the street. His family consists of himself, his wife and 4 children who are receiving education. He is unable to carry on business during the rainy season or when there is extreme cold in Dehradun. This application was opposed by the petitioner who alleged that the landlord-respondent is already carrying on business and does not require the shop in question. It was further stated that there was an agreement between the petitioner and respondent No. 3 whereby the disputed shop was let out to him and in the agreement, it was provided that so long the tenant-petitioner pays the rent, the landlord shall not get him evicted. He further alleged that in case the petitioner is evicted, he would suffer a greater hardship.

3. The Prescribed Authority, on the finding that respondent No. 3 has no shop to carry on business and he requires the disputed shop for carrying on his business, released the same in his favour vide order dated 14.10.1988. The petitioner filed an appeal against the said order which was dismissed by respondent No. 1 on 30.11.1996.

4. Sri Yogesh Kumar Saxena, learned counsel for the petitioner contended that respondent No. 3 had executed an agreement on 20.4.1976 wherein he agreed that so long the petitioner pays the rent, he will not be evicted and in pursuance of the said agreement, the application under Section 21 (1) (a) of the Act is not maintainable. This document is admittedly not a registered one and no permanent lease deed can be executed unless it is registered. In *Zarif Ahmad and another v. Satish Kumar and another*, 1983 ARC 776, it has been held that except in case of leases which are from year to year or for a term exceeding one year, or reserving a yearly lease, all other leases can be made either--(i) by registered Instrument, or (ii) by an oral agreement accompanied by delivery of possession. If the lease is to

continue exceeding period of one year. It has to be by registered instrument. The term of the agreement which permits a tenant to continue permanently should be evidenced by a registered instrument. Secondly, there is no clause in the agreement which provides that the landlord shall not be entitled to file application under Section 21 (1) (a) of the Act. It is not a case where the landlord has waived right under the statute to evict the tenant-petitioner where his need is bona fide for his personal requirement. The application filed by the landlord-respondent in these circumstances was maintainable under Section 21 (1) (a) of the Act.

5. The next submission of learned counsel for the petitioner is that the petitioner having entered into the contract of tenancy and occupied the disputed accommodation without any order of allotment passed by the District Magistrate as contemplated under Section 16 (1) of the Act, his possession was unauthorised and cannot be treated as a tenant under law. He has placed reliance upon the decision in *Nutan Kumar and others v. IInd Additional District Judge, Banda and others*, 1993 (2) ARC 204 (FB), wherein it has been held that if a tenant has occupied without any allotment order, his possession shall be deemed to be unauthorised under Section 13 of the Act. This decision was considered in *Brij Nandan Sahai Hajela v. IIIrd Additional District Judge, Sahjahanpur and others*, 1996 (1) ARC 165, wherein it was held that if the tenant has not raised this plea when an application under Section 21 was filed and accepted himself as a tenant, such question cannot be raised by him subsequently. The petitioner in the present case having never raised this question that he is unauthorised occupant, it is not open now to him to urge that the application under Section 21 (1) (a) of the Act is not maintainable. In case the petitioner had alleged that he was in unauthorised occupation, it was open to the landlord-respondent to file application for release under Section 16 (1) (b) of the Act.

6. The last submission of learned counsel for the petitioner is that the landlord has been carrying on his business of selling pens and keys-rings on the street for many years and there is no justification now for him to get the shop in question released for his business purpose. It is not denied by the petitioner that the respondent has no other shop in his ownership for occupation. He is carrying on business by putting a table nearby the road or near the clock tower as alleged by

him. He is unable to carry on his business during extreme cold in winters or in rainy season at Dehradun. Considering the entire facts and circumstances of the case, both the authorities have recorded concurrent finding that the need of respondent No. 3 is bona fide. I do not find any legal infirmity in this finding.

7. It is further urged that the petitioner shall suffer a greater hardship in case he is evicted from the shop in question as he has no other alternative accommodation to carry on the business. The tenant will normally suffer a hardship whenever he is evicted and has no other alternative accommodation. This itself is not ground for rejecting the application filed by the landlord when it is found that the need of the landlord is bona fide, genuine and pressing. In *Bega Begum v. Abdul Ahad Khan*, AIR 1979 SC 272, the Supreme Court observed as under :

'It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the Legislature when Section 11 (1) (h) of the Act was introduced in the Act. This by itself would not be a valid ground for refusing the plaintiffs a decree for eviction.'

The hardship of the tenant, however, is to be considered in comparison to the hardship which the landlord would suffer. Each party has to prove its advantage and disadvantages. The Supreme Court in *Bega Begum's* case (*supra*), observed that in deciding this aspect of the matter each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the tenant and that they are remedial. The respondent had filed application for release in the year 1985 and he could have, made sincere effort to find out alternative accommodation.

8. In the end, learned counsel for the petitioner prayed that some time may be granted to the petitioner to vacate the accommodation in question. Considering the facts and circumstances of the case, the petitioner is granted six months' time to vacate the disputed accommodation provided he gives a written undertaking on affidavit within three weeks from today before respondent No. 2 that he would vacate the disputed accommodation within the time granted by this Court and will

handover its peaceful possession to the landlord-respondent.

9. The writ petition is accordingly, dismissed subject to the observations made above.

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