

Smt. Chanda Devi (D) Through L.R. Vs. Vith Additional District and Sessions Judge and ors.

Smt. Chanda Devi (D) Through L.R. Vs. Vith Additional District and Sessions Judge and ors.

SooperKanoon Citation : sooperkanoon.com/490937

Court : Allahabad

Decided On : Jul-25-2007

Reported in : 2007(4)AWC3689

Judge : Rakesh Tiwari, J.

Appellant : Smt. Chanda Devi (D) Through L.R.

Respondent : Vith Additional District and Sessions Judge and ors.

Advocate for Def. : Sri. A.N. Sinha

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard learned Counsel for the parties and perused the record.
2. By means of this writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 19.7.1999 and 4.5.2000 passed by the Rent Control and Eviction Officer/1st Additional City Magistrate, Kanpur Nagar and the Vith Additional District and Sessions Judge, Kanpur Nagar respectively.

3. The petitioner is the owner and landlady of House No. 85/168, Laxmi Purwa P.S. Rai Purwa, Kanpur Nagar. Part of the aforesaid house was given in tenancy of one Prem Singh at the rate of Rs. 15 per month who was living alongwith his 5 sons. The petitioner moved a release application dated 1.9.1997 under Section 16(1) (B) of the U.P. Act No. XIII of 1972 which was registered as Misc. Case No. 24 of 1997. The Rent Control Inspector made a spot inspection and submitted his report dated 2.9.1997 in respect of the vacancy said to have been caused due to the shifting of Sri Prem Singh in House No. 620-D, Vishwa Bank Colony, Barra. It is stated that 3 sons of the tenant with the passage of time became independent and were living separately from him and they have constructed their own house, as such vacancy has been caused in the tenanted portion as the tenant Sri Prem Singh, father of respondent Nos. 3 and 4 were living there.

4. Sri A.N. Sinha, learned Counsel for the respondents has drawn the attention of the Court to Section 16(9)(b) and Explanation thereto as under under:

Allotment and release of vacant building.--(1) Subject to the provisions of the Act, the District Magistrate may by order

(a) ...

(b) ...

Provided that....

(2) ...

(3) ...

(4) ...

(9) The District Magistrate shall, while making an order under Clause (a) of Sub-section (1), also require the allottee to pay to the landlord an advance, equivalent to,

(a) where the building is situated in a hill municipality, one-half of the yearly presumptive rent; and

(b) in any other case, one month's presumptive rent, and on his failure to make or offer the payment within a week thereof, rescind the allotment order.

Explanation.--In this subsection the expression 'presumptive rent' means ; an amount of rent which the District Magistrate prima facie considers reasonable having regard to the provisions of Sub-sections (2) and (2A) of Section 9, provided that such amount shall not be less than the amount of rent which was payable by the last tenant if any.

5. He submits that if a member of the family is not dependent upon the family, this Section would not come into play but in case the member of the family who is dependent upon the tenant has otherwise acquired a residential building, the provisions would be applicable to him. His submission therefore is that if the member of the family of the tenant who is dependent upon him acquires a house only then the vacancy would occur otherwise not. The definition of 'Family' has been given in Section 3 (g) as under:

'Family', in relation to a landlord or tenant of a building, means, his or her--

(i) spouse;

(ii) male lineal descendants;

(iii) such parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her, and includes, in relation to a landlord, any female having a legal right of residence in that building.

6. In the instant case it is admitted by Sri A.N. Sinha that one of the sons Sri Chandra Pal has built and acquired House No. 620-D, Vishwa Bank Colony. Barra and the other son Sri Narendra Singh has also acquired House No. 86/186, Laxmi Purwa, Kanpur Nagar, but he submits that as they are independently living from the tenant, provisions of Section 16 readwith Section 3(b) and (c) would not apply and the tenanted accommodation under the tenancy of their father would not be declared as vacant.

7. Thus, the defence of the tenant is that both his aforesaid two sons who have acquired independent houses were not dependent upon the tenant and were living separately, hence there was no vacancy of the tenanted accommodation. In support of his submissions Sri A.N. Sinha relied upon the decision of this Court rendered in *Harish Tandon v. Additional District Judge, Allahabad* 1995 (1) ARC 220 : 1995 (1) AWC 106 (SC) (Para 19) as under:

Sub-section (3) of Section 12, does not conceive that if one of the sons living with the tenant, who is not wholly dependent on such tenant, acquires any other residential building in the same city or town, then even the original tenant shall be deemed to have ceased to occupy the building in question. This is apparent from Explanation (b) to said Subsection (3). In view of the Explanation any member of the family mentioned in Sub-section (3) shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant acquires or gets any residential building in the same city or town, there is no question of the tenant deeming to have ceased to occupy the building under Sub-section (3) of Section 12.

A perusal of paragraph 19 of the aforesaid decision shows that the observations made therein were in respect of the facts and circumstances of that case.

8. The provisions of Sub-section (3) of Section 12 and Explanation thereto is as under:

12. Deemed vacancy of building in certain cases.--(1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if

(3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy:

Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant

shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.

Explanation.--For the purposes of this sub-section

(a) a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee:

(b) the expression 'any member of family', in relation to a tenant shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant.

9. The facts which distinguish the present case from the case cited by Sri A. N. Sinha are that in the instant case the tenant has shifted and was living with of his sons. This also appears from the statement of the landlord referred to in paragraph 6 of the report of the Rent Control Inspector. Relevant extract of paragraph 6 of his report is as under:

6- iz'uxr Hkkx ds IEcU/k es Jherh pUnk nsOh ifRu Jh HkxhjFk fuoklh&85@168] y{eh iqjok] dkuiqj dk ,d iwoZ fyf[kr c;ku dk;kZy; es izLrqr fd;k x;k ftles mYys[k fd;k x;k gS fd ^^edku ua0 85@168 y{ehiqjok] dkuiqj&uxj; dh edku ekyfdu g SA mDr Hkou mlus ctfj;s jft LVMZ c;ukek Jherh ek;knsOh ifRu Jh lkfyx jke ls---rFkk mldk uke uxj fuxe ~ ~ ~ ~ ~ es Hkh ntZ g SA mDr edku ds izFke [k.M+ es fLFkr nks dejs] NTtk mles IEcfU/kr NksVk lk vkaxu xyh ds fdjk;snkj] Jh izse flag gS tks fdjk;k nsrs Fks A mDr fdjk;snkj ds ikWap iq= gS ftles ls nks fouksn flag rFkk ftrsUnz flag fdjk;snkj okys Hkkx es fuokl djrs g SA RkFkk ckdh rhu iq=ks us vyx&vyx; edku uEcj 620] lsDVj &Mh0; fo'o cSad dkyksuh] cjZ dkuiqj okys edku es vius iq= pUnziky flag ds lkFk jg jgs gS tcfD ,d iq= ujsUnz flag edku la;k 85@168] y{ehiqjok es jg jgs g SA vr% fdjk;snkj }kjk blh 'kgj es dbZ Hkou dbZ Hkou ys ysus ls mldk Hkou fjdR g SA rFkk mlds edku dk Hkw&[k.M+ dk vkxs dk Hkkx O;kikfjd iz;ksx es pliy dkj[kkus ds :i es mldk ifr thfodksiktZu gsrq iz;ksx dj jgk gS D;ksfd vk; dk dksbZ vU; lk/ku ugh gS vr% ikap izFke [k.M+ ds ,d dejs es mldks rFkk ifjokj dks rFkk ifjokj ds vko';drk ds vk/kkj ij mDr Hkkx dks fof/k :i ls fjdR gksus dkj.k fueZqfDr fd;s tkus gsrq izkFkZuk&i;= fn;k g SA^^ blds c;ku ij Jh eFkqjk izlkn fuoklh 85@229] y{ehiqjok

}kjk iqf'V vafdr dh x;h gS A buds }kjk iqf'V vafdr dh x;h g SA buds }kjk c;ku ds gkml VSDI dh jlhn fnukad 13-9-1990] 10-9-1991] 10-1-1994 izLrq dh x;h g SA budk c;ku ewy:i ewy:i es voyksdukFkZ layXu gS A

vLrq ekSds dh tkap ,oa miyC/k c;kuks ds vk/kkj ij iz'uxr Hkkx ds fjDrrk fcUnq ij mHk; lk{kks dks lquus ,oa rF;ks dks lqfuf'pr djus gsrq vk[;k vko';d vfxze dk;Zokgh gsrq vkidh lsok es izsf'kr g SA

layXu% ;Fkksifj 24 iUus A

g0 vLi'V

22-2-1997

10. For the reasons stated above the decision relied upon by the learned Counsel for the respondents is of no use to him and the Hon'ble Court did not discuss the same but only considered and had given an hypothetical example. The 2 sons of Sri Prem Singh who had built their own house, the tenancy in the facts and circumstances would now devolve upon them being in the accommodation in dispute as the original tenant Prem Singh had himself left the house. Though the tenant had earlier denied that his sons had not built any house or acquired any vacant possession but later on resiled from his statement. Thus, it appears that the intention of the tenant was not bona fide and he had not come to the Court with clean hands.

11. In Khursheed Khan v. S.J.A.D.S. Nainital 1996 (2) ARC 449, after relying upon the Full Bench decision of this High Court in Talih Hasan and Anr. v. 1st A.D.J., Nainital and others, as well as Supreme Court judgment in Bijai Kumar Sankar v. Sachet District Judge and others, it has been held that an unauthorized occupant or a prospective allottee has no right to contest the release application of the landlord.

12. This Court in Rakesh Chandra Dubey v. Rent Control and Eviction Officer A.D.M. (Civil Defence), Kanpur Nagar and others, has observed as under:

If we proceed on the assumption and on the premises that the petitioner's occupation in the premises in question is that of a trespasser, this Court in exercise of its jurisdiction will not come to the rescue of such a person whose hands are themselves soiled with dirty water. The Court helps only those bona fide persons whose hands are clean and where their enforceable rights have been infringed resulting in injustice to them. Where a police officer, who is himself a custodian of law trespasses in another's property and then approaches this Court to exercise its jurisdiction under Article 226/227 of the Constitution for protecting his unauthorized occupation, this Court will regard with disquiet such a dissolute prayer. It is well established law that a writ of certiorari is not a writ or right and Court may refuse to quash an order which even may look to be not very sound, the reason that by doing so the Court will allow and that illegal act to be perpetuated.

13. Justice and equity cannot be with a person who does not come with clean hands before the Court. The findings recorded by the courts below based on voters' list cannot be said to be incorrigible proof of evidence and cannot be said to be correct.

14. Per contra, the contention of the learned Counsel for the petitioner that Prem Singh has shifted and his name was removed from the voters' list and he got his name included in the voters' list at Barra on which the release order has been passed by the courts below appears to be very credible.

15. In any case 3 sons of Sri Prem Singh having acquired their own house, even though they may not be independent but the tenant being wholly dependent upon them, cannot get benefit of Section 20 (4) of the Act.

16. The petition is accordingly allowed. The impugned orders are quashed. The respondent-tenants are granted two months' time to vacate the house in dispute and handover its peaceful vacant possession to the petitioner- landlady.