

Ram Janki (Smt.) and ors. Vs. Iind Additional District Judge and ors.

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Court : Allahabad

Decided On : Dec-23-2004

Reported in : 2005(1)ARC399; 2005(3)AWC2311

Judge : Anjani Kumar, J.

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

Appeal No. : Civil Misc. Writ Petition No. 40515 of 2000

Appellant : Ram Janki (Smt.) and ors.

Respondent : Iind Additional District Judge and ors.

Advocate for Def. : S.C.

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

Disposition : Petition allowed

Judgement :

Anjani Kumar, J.

1. This writ petition under Article 226 of the [Constitution of India](#) filed by the petitioner-landlord challenges the order passed by the appellate authority under Section 22 of the U.P. Act No. 22 of 1972 whereby the appeal filed by the

petitioner-landlord against the order of the prescribed authority was dismissed.

2. In short the facts leading to filing of the present writ petition are that the petitioners are admittedly owner and landlord of the House No. 673 K.L. Kydganj, Allahabad. Late Laxmi Sahai Saxena was the tenant of the ground floor portion of the house in dispute. The landlord filed an application under Section 21 (1) (a) of U.P. Act No. 13 of 1972 for release of ground floor portion in favour of the landlord before the prescribed authority which was registered as P.A. Case No. 117 of 1989. The prescribed authority rejected the application. Though the prescribed authority has recorded a finding that as comparative hardship of the tenant has not been considered in view of the Explanation to the Section 21 (1) of the U.P. Act No. 13 of 1972 has been attracted to the controversy in dispute but nonetheless in view of the Division Bench decision of this Court reported in 1984 ARC (2) 245; Smt. Kamta Devi Jain v. Additional District Judge, Dehradun and Ors. wherein the Division Bench after considering the Explanation 1 to Section 21 which reads as under wherein Section 21 alongwith its Explanation has been considered by the Division Bench where a tenant or any member of his family who has been normally residing with or is wholly dependent on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained.

3. The landlord filed another application for the release of first floor portion of the same house which was under the tenancy of late Bhagwan Sahai Saxena who was brother of late Laxmi Sahai Saxena. This case was registered as P.A. Case No. 118 of 1989. Late Bhagwan Sahai Saxena claimed that he has never accepted the tenancy of the first floor portion. The prescribed authority by its order dated 3.9.1996 has found that the need of the landlord is bonafide and on comparison since the case is also covered by the Explanation 1 to Section 21 (1), released the accommodation situated at the first floor in favour of the landlord. Aggrieved by the order of the prescribed authority in both the cases the landlord and the tenant filed appeals being RCA No. 81 of 1997 against Smt. Malti Saxena who died during the pendency of the litigation. Three appeals were filed one by Smt. Malti Saxena being appeal No. 269 of 1996; Smt. Malti Devi v. Smt. Ram

Janki Devi and Ors., second by Smt. Asha Saxena being appeal No. 270 of 1996; Smt. Asha Saxena v. Smt Ram Janki Devi and Ors. and third by Smt. Ram Janki Devi appeal No. 81 of 1997; Smt. Ramjanki Devi v. Smt. Malti Saxena. Rent Control Appeal Nos. 269 of 1996 and 81 of 1997 filed by both the parties against the judgment and order dated 3.9.1996 arising out of P.A. Case No. 117 of 1989 and appeal No. 270 of 1996 arising out of P.A. case No. 118 of 1989. The District Judge found that the need of the landlord is bonafide he therefore, released the first floor portion of the disputed house which was under the tenancy of Smt. Asha Saxena wife of late Bhagwan Sahai Saxena and dismissed the appeal filed by the petitioner against the order arising out of P.A. Case No. 118 of 1989.

4. In short the case of the landlord is that the landlord filed P.A. Case No. 117 of 1989 and 118 of 1989 for the release of the ground floor and first floor portion respectively which were part of the same house No. 673 K.L. Kydganj, Allahabad under the tenancy of two brothers. The appellate authority allowed the appeal No. 269 of 1996; Smt. Malti Devi v. Smt. Ram Janki Devi and appeal No. 270 of 1996; Smt. Asha Saxena v. Smt. Ram Janki Devi and dismissed the appeal No. 81 of 1997; Smt. Ram Janki Devi and Ors. v. Smt. Malti Devi was dismissed. Thus, this writ petition.

5. This writ petition challenges the order passed by the appellate authority by the common judgment. This Court while admitting the writ petition issued notice to the respondents some of them were served and some were unserved. This Court vide order dated 13.3.2003 directed the petitioner to take steps for service by way publication in the daily newspaper Northern India Patrika which was published in the said newspaper as would be clear from the affidavit of service. Thus, the notice on all the respondents are held sufficient. But in spite of service none appeared for the respondents to contest this writ petition.

6. I have heard learned Counsel appearing on behalf of petitioner. Learned Counsel for the petitioner submitted that the landlady Smt. Ramjanki Devi filed two applications under Section 21 (1) (a) for the same house which consists of ground floor and first floor showing that the first floor was under the tenancy of Bhanwan Sahai Saxena and ground floor was under the tenancy of Laxmi Sahai Saxena for

the release of the house for bonafide need in case No. 117 of 1989 the case of the landlord is that the ground floor portion was under the tenancy of Late Laxmi Sahai Saxena and first floor was under the tenancy of Smt. Asha Devi Saxena against whom P.A. Case No. 118 of 1989 was filed. It is not disputed that Laxmi Sahai Saxena and Bhagwan Sahai Saxena were brothers. Late Bhagwan Sahai Saxena left behind him her wife Smt. Asha Devi Saxena and Late Laxmi Sahai Saxena left behind him her wife Smt. Malti Devi Saxena. It was the case of the landlord that Sri Laxmi Sahai Saxena and Bhagwan Sahai Saxena were real brothers. They were living in the same house. Sri Laxmi Sahai Saxena was the tenant in the aforesaid house No. 673 K.L. Kydganj, Allahabad and Bhagwan Sahai Saxena being his brother was living with him. It is not disputed that in both the applications almost similar case was set up for release of the accommodation in question by the landlord. In case No. 117 of 1989 it has been stated by the landlord that Laxmi Sahai Saxena and his heirs were the tenant of the ground floor portion of the disputed house at the rent of Rs. 50/- per month. That the family of the landlord consists of 35 members. The details of the members and their age is given which clearly demonstrates that the majority of the members are either adult or are grown up enough. It is also stated that the son of the landlord. Shiv Chand has completed his L.L.B. And he has just entered in the profession of law he requires accommodation for his consultation chamber. Landlady had two married daughters married in the same city of Allahabad who visit her mother often alongwith their children therefore, she requires some accommodation to accommodate these married daughters. That the husband of the landlord died 20 years ago. It is also stated that the landlady and family members at the present living at house No. 54 Karanpur, Prayag, Allahabad. It has been stated that the accommodation available to the landlady in the house No. 54 Karanpur, Prayag, Allahabad is too short and entire family cannot be accommodated. They are somehow living there. It has been stated that two more sons who are applicant Nos. 8 and 9 are of marriageable age and likely to be married. The applicant Nos. 9, 10 and 11 are also student and they require some accommodation for studies in separate rooms. Apart from children mentioned in the total members of the family it has also been stated that though the landlady has one more residential accommodation House No. 65, Mirganj, Allahabad which is situated in the red light

area. One shop is in the occupation of one tenant who is carrying on his own business from the said shop and other shops are in possession of the landlady. Thus, this house is not fit for residential purposes. It has been stated by the landlady that late Laxmi Sahai Saxena has purchased his own house No. C-825 MIG, G.T.B. Nagar, Kareilly, Allahabad and he is living alongwith his family members in the said house and in fact Laxmi Sahai Saxena does not require any house particularly the house in dispute. It was therefore, stated that the need of the landlord is bonafide and since he case of the tenant is covered by Explanation 1 to Section 21 of U.P. Act No. 13 of 1972 the compensation of the need is not required in view of the Division Bench decision of Kanta Devi (supra). In PA case No. 118 of 1989; Smt. Ram Janki Devi and Ors. v. Smt. Asha Devi the case of the landlady is that Smt. Asha Devi wife of late Bhagwan Sahai Saxena who is residing at the first floor portion of the house No. 673 K.L. Kydganj, Allahabad. Bhagwan Sahai Saxena died in the year, 1987 and the same facts have been reiterated so far as the bonafide is concerned the case of the landlady is the same as stated in PA Case No. 117 of 1989. The tenant of Case No. 118 of 1989 has also acquired his own house No. 513 K.L. Kydganj, Allahabad and living comfortably there and tenant of Case No. 48 of 1989 is not living in the disputed house. In fact none of the tenants requires the accommodation in dispute. The tenants of both the accommodations have denied that the landlady has bonafide need of the accommodation in dispute and they have also tried to demonstrate that though Bhagwan Sahai Saxena was living with Laxmi Sahai Saxena. That when in 1969-70 Laxmi Sahai Saxena purchased his own house he is not living in the disputed accommodation. The tenant has opposed the application filed by the landlady denying that there are 35 members in the family of the landlady. It is also stated by the tenant that the House No. 54, Karanpur Prayag, Allahabad consists 20 rooms and other amenities. It is also stated that the landlady apart from House No. 54, Karanpur, Prayag Allahabad owns house No. 65, Mirganj, Allahabad and another House No. 39-E Moti Lal Nehru Road, Allahabad, House No. 41-D/8, Moti Lal Nehru Road, Allahabad, House No. 305/138-A. Chandpur Salori, Allahabad and House No. 21-A, Chatem Lines, Allahabad. Thus, the tenant has set up the case that the need of the landlady is not bonafide and further in companson to the need of the tenant the need of the landlady cannot be said to be more pressing. It

is denied that the tenants have shifted to newly constructed accommodated which is situated in the same municipal area of Allahabad. The appellate authority before whom two appeals were filed one by Smt. Malti Devi i.e. Rent Control Appeal No. 269 of 1996 and other by Smt. Ram Janki Devi i.e. Rent Control Appeal No. 81 of 1997. First of all we have to discuss as to whether the landlady bonafide requires the accommodation in dispute or not. The prescribed authority arrived at the conclusion on the basis of three other accommodations owned by the landlady that the need of the landlady cannot be said to be bonafide. Though the appellate authority refer to the case reported in 1992 (2) ARC Page 273; Smt. Saraswati Devi v. Ist Additional District Judge and also the case reported in 1985 (2) ARC 250 Mohd. Ali v. IVth Additional District Judge, Kanpur but without discussing the law laid down in the case of Saraswati Devi (supra) has held that the need of the landlady cannot be said to be bonafide simply because that the landlady is the owner of the other house referred by the tenant. A perusal of the case of the Saraswati Devi (supra) and the later decisions clearly demonstrates that the question of the bonafide cannot be adjudged on the ground that the landlady has chosen to get the accommodation vacated from the tenant inspite of the fact that there are alternative accommodations available to him. In the present case the landlady by means of the affidavits on record has demonstrated that the alternative accommodations as suggested by the tenant were not suitable for residential purposes and given cogent reasons as would be clear from the commissioner's report also on record. That the House No. 54, Karanpur Prayag, Allahabad consists of 9 rooms. Apart from the house No. 54, Karanpur Prayag, Allahabad the landlady has House No. 41-D/8 Moti Lal Nehru Road, Allahabad, House No. 21 -A, Chatemlines, Allahabad and House No. 305, Chandpur Salori, Allahabad. As far as House No. 41-D/8 Moti Lal Nehru Road, Allahabad is concerned, the said house is utilized for non-residential purposes and therefore, is not fit for landlady to reside. Apart from that the entire family of the landlady cannot be accommodated and the same is the position with regard to the House No. 21-A, Chatemlines, Allahabad. That house also consists of only two rooms and House. No. 305, Chandpur Salori, Allahabad. The prescribed authority has not gone into the case set up by the landlady as to whether the houses which are suggested as alternative accommodations are such houses in which the entire

family of the landlady can comfortably live. Apart from above, it is settled that it is for the landlord to decide as to which house he will use for residential purposes if he is the owner of more than one house. On the other hand, it is on record that the tenant has the alternative accommodations therefore, it is submitted by learned Counsel for the petitioner that in view of the law laid down by this Court reported in ARC 1986 (1) 432; Hira Lal v. Illrd Additional District Judge, Banda. In this view of the matter, in my opinion, the findings arrived at by the appellate authority with regard to bonafide need deserves to be set aside and is hereby set aside. Once I come to the conclusion that the findings arrived at by the appellate authority regarding bonafide requirement of the landlady deserves to be set aside, the matter should be remanded back to the appellate authority to be decided afresh first by determining the bonafide requirement of the landlady. Learned Counsel for the petitioner has submitted from the fact that the tenant has already acquired a house where they have already shifted and coupled with the fact that they have not contested the present writ petition clearly demonstrated that the tenant has no interest to contest the present writ petition and thus in the light of the fact once the need of the landlady is demonstrates to be bonafide as is apparent from the law laid down referred to above and in the judgment of the appellate authority the application of the landlady deserves to be allowed and the order of the prescribed authority in both the appeals deserves to be set aside to me it appears that in view of the law referred to above and in fact and circumstances of the present case the order impugned in the writ petition passed by the appellate authority deserves to be set aside and so is with the order of the prescribed authority in Both the appeals the matter is remanded back to the appellate authority to be decided afresh in accordance with law and in the light of the observations made in this judgment.

7. This writ petition therefore, succeeds and is allowed and the order of the appellate authority is quashed. The matter is remanded back to the appellate authority to be decided afresh in the light of the observations made in this judgment. Since the matter is fairly old, the appellate authority is directed to decide the same within three months from the date of presentation of certified copy of this order.

