

Rajeshwar Prasad Shukla Vs. Smt. Vimla Devi and ors.

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Court : Allahabad

Decided On : Sep-22-2006

Reported in : 2007(2)AWC1267

Judge : Anjani Kumar, J.

Appellant : Rajeshwar Prasad Shukla

Respondent : Smt. Vimla Devi and ors.

Judgement :

ORDER

Anjani Kumar, J.

1. The petitioner, in this writ petition being tenant of the accommodation in question, aggrieved by the order passed by the prescribed authority dated 3.8.2004, whereby the application for release of the accommodation in question filed by the landlady under Section 21(1)(a) of the U.P. Act No. XIII of 1972 (In short 'the Act'), has been allowed after adjudicating the rival pro and cons of the parties. On the basis of the evidence on record, the prescribed authority came to the conclusion that the need of the landlady for the accommodation in question is bona fide and further that the comparative hardship also tilts in favour of the landlady. Aggrieved by the order passed by the prescribed authority, the petitioner preferred an appeal as contemplated under Section 22 of 'the Act' before the appellate court, which has been registered as Rent Appeal No. 67 of 2004. Before

the appellate authority, the same arguments were advanced as were advanced, before the prescribed authority, namely, the landlady has concealed the actual accommodation in her possession in order to make out a flimsy ground for bona fide in the name of family members shown in the release application, who are not covered under the definition of the 'family' as contemplated under Section 3(g) of 'the Act'. Learned Counsel for the petitioner therefore submitted that the need of the landlady was not bona fide, what to say a pressing, thus the view taken by the prescribed authority deserves to be set aside. It has been argued on behalf of the landlady that the tenant has its own accommodation in the same municipal limit, therefore the case will be covered by Explanation (i) of Section 21(1)(a) of the Act', which provides that in the case of residential building 'where the 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.' Both the authorities, namely, the appellate authority as well as the prescribed authority after considering the evidence on record have arrived at the conclusion that in fact the tenant is covered by the aforesaid Explanation and therefore the objection of the tenant cannot be considered while allowing the application under Section 21(1)(a) of the Act' filed by the landlady. The appellate authority, therefore, dismissed the appeal preferred by petitioner-tenant vide its order dated 17.9.2005, thus writ petition.

2. Heard learned Counsel appearing on behalf of the parties.

3. Before this Court also, the same arguments were advanced as were advanced before both the authorities below, namely, the prescribed authority as well as before the appellate authority, who have recorded categorical findings that the case of the petitioner is covered by the aforesaid Explanation (i) of Section 21(1)(a) of 'the Act'. These findings have neither been demonstrated to be either perverse, or suffer from any error, much less error apparent on the face of record. In this view of the matter, these concurrent findings do not require any interference by this Court in exercise of Jurisdiction under Article 226 of the Constitution of India, particularly in view of the law laid down by the Apex Court in the case of

Ranjeet Singh v. Ravi Prakash : AIR 2004 SC3892 . No other argument was advanced on behalf of learned Counsel for the petitioner. This writ petition therefore has no force and is liable to be dismissed.

4. Lastly, it has been submitted by learned Counsel for the petitioner-tenant that since the petitioner-tenant is residing in the accommodation in dispute, therefore he may be granted some reasonable time to vacate the same.

5. Considering the facts and circumstances of the case as also in the interest of justice, I direct that the petitioner-tenant shall not be evicted from the accommodation in dispute pursuant to the impugned orders for a period of one year from today, provided:

(1) Petitioner-tenant furnishes an undertaking before the prescribed authority within one month from today that he will hand over peaceful vacant possession to the landlady on or before the expiry of one year from today; and

(2) Petitioner-tenant pays to the landlady or deposit the entire arrears of rent/damages, if not already paid to the landlady or deposited before the prescribed authority, at the rate of rent till date within one month from today and continues to pay or deposit the same by first week of every succeeding month so long he remains in possession or till one year, whichever is earlier. The landlady will be entitled to withdraw the amount so deposited by the petitioner-tenant.

(3) In the event of default of any of the conditions referred to above, it will be open to the respondent-landlady to get the decree executed.

6. With the aforesaid observation, this writ petition is dismissed. The interim order, if any, stands vacated. However, there will be no order' as to costs.