

Allahabad High Court

Yogendra Nath Jain vs Iiird Additional District Judge, ... on 18 March, 1998

Equivalent citations: 1998 (2) AWC 1186

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JUDGMENT J.C. Gupta, J.

1. Heard.

2. The order dated 6.7.92 passed by the respondent No. 1 in an appeal filed by respondent No. 2 under Section 22 of the U. P. Act No. 13 of 1972 (hereinafter referred to as the 'Act'), is under challenge in this writ petition.

3. Respondent No. 2 after purchasing Taj Building, Cantt., Meerut, on 27.10.76 moved application for release of the disputed portion after serving the notice as contemplated by the proviso to Section 21 (1) (a) of the Act. The need alleged was that the accommodation already in occupation of the landlord-respondent No. 1 was inadequate and insufficient to cater the requirement of his family members, who were twenty-one in number. It was further alleged that the tenant-in-Chief, Nemnath, the brother of the petitioner has constructed his own house in the same city and has shifted therein as such, no objection against the release application was maintainable in view of Explanation (i) to Section 21 (1) (a) of the Act. The petitioner was alleged to be sub-tenant.

4. Nemnath did not contest the application and only the petitioner filed his reply stating therein that his father, Chunnl Lal, was the original tenant and after his death, the tenancy rights were inherited by him and his brother Nemnath, respondent No. 3. He is in occupation of the disputed portion as a co-tenant and not as sub-tenant. He further alleged that Nemnath had already shifted in his newly constructed house much before the death of his father as such Explanation (i) was not applicable.

5. The prescribed authority rejected the release application holding that the landlord besides having two rooms and one Barsati in the building in question was also having two-rooms accommodation in the ancestral house at 280. Dholki Mohalla, Meerut. as such, he was not in need of any additional accommodation. Aggrieved by the order, the landlord filed appeal which has been allowed by the impugned order.

6. The lower appellate authority-respondent No. 1 has held that the conclusion arrived at by the prescribed authority regarding the availability of two-rooms accommodation in House No. 280, Dholki Mohalla was against the weight of evidence on record, as the landlord was only having a share in that -house and was not in actual occupation of any portion therein. This finding is well supported by the evidence on record. Respondent No. 1 has also recorded a specific finding that the landlord has in his occupation only two rooms and one Barsati in the other portion of the building in question, which was insufficient and inadequate to cater the need of twenty-one family members of the landlord. The need of the landlord thus, has been found to be bohajide. This finding is based on appraisal of evidence on record and could not be shown to be erroneous on any ground whatsoever by the learned counsel for the petitioner.

7. Learned counsel for the petitioner argued that the lower appellate authority has committed a gross error of law in taking the view that Explanation (i) to Section 21 (1) (a) of the Act is attracted to the facts of the present case. The Explanation states that in the case of a 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.

8. Under the last proviso to Section 21 (1) (a) of the Act, the prescribed authority is bound to compare the likely hardship of the landlord and the tenant except in cases provided for in the Explanation, meaning thereby that if Explanation is attracted, no likely hardship of the tenant shall be taken into account and he has no right to be heard on the question of hardship, and he goes out of the picture.

9. Learned counsel for the petitioner submitted that in the present case, the respondent No. 1 has recorded a finding "Thus it is proved that Nemnath alone is the owner of newly constructed house No. B-75 and that he alone is living there". On the basis of this. It has been argued that after recording this finding, there was hardly any scope for applying the Explanation. For the applicability of this Explanation, it is essential to see if the member who has constructed his own house and has shifted there had been normally residing with the tenant and has been wholly dependent on such tenant, i.e., both the conditions should be shown to exist. It is well-established that where the literal interpretation of the language leads to an absurd or unintended result, the language of the Statute should be interpreted to accord with the intention of the Legislature and to avoid absurdity. The word 'or' used in the Explanation after the expression "who has been normally residing with" and before the expression "is wholly dependent on him" is to be read as 'and'. Any other Interpretation of the language used in the Explanation will lead to absurd results which could never have been contemplated by the Legislature. I would support my view by an illustration. Suppose 'A' who was the tenant in a building, dies leaving behind three sons. But one of his sons, who is not dependant upon his other brothers separates himself from his other brothers and shifts in his own newly built house, that would not bring about cessation of tenancy nor the Explanation will get attracted, otherwise if in such a situation the Explanation is applied to, other brothers would be put to miserable plight and would be visited with hardships knowing no bounds.

10. Thus testing the above problem in the light of this logical interpretation, Explanation (i) could not be applied to the facts of the present case.

11. Learned counsel for the respondent, however, argued that even if the said Explanation is excluded from consideration, the judgment of the respondent No. 1 is not vitiated as the lower appellate court has also gone into the question of comparative hardship of the parties and after weighing relevant factors has recorded a clear finding that the landlord was likely to suffer a greater hardship than that of the petitioner in case his application was not allowed. This submission of the learned counsel is correct. The lower appellate court has specifically gone into the question of comparative hardship and after evaluating the facts and circumstances, it came to the conclusion that the balance of hardship tilts in favour of the landlord. This finding of the Court below is also

based on appreciation of evidence and material on record and could not be shown to be suffering from any infirmity, by the learned counsel for the petitioner.

12. After examining the record and on a consideration of the contentions advanced by the parties' counsel, this Court finds that the conclusions arrived at by the respondent No. 1 both on the questions of bona fide need and comparative hardship are based upon appreciation of evidence and material on record and while exercising powers under Article 226 of the Constitution, this Court normally does not interfere with the findings of the fact unless they are shown to be perverse or suffering from any serious infirmity, which in the present case are absent. The writ petition is, therefore, liable to be dismissed.

13. At this stage, the learned counsel for the petitioner submitted that some reasonable time may be allowed to the petitioner to vacate the premises in question. The counsel for the respondent opposed this prayer stating that the release application was filed in the year 1979 and though a period of nineteen years has lapsed, but the landlord has not been able to get the possession of the disputed portion of the house.

14. Considering the facts and circumstances, the petitioner is allowed time upto 30th June, 1998 to vacate the premises in question subject to his filing an undertaking in writing before the prescribed authority within a period of three weeks' from today to the effect that he shall hand-over the vacant possession of the accommodation in question to the landlord on or before the aforesaid date and shall not induct any other person in the premises and shall go on paying rent whenever the same becomes due. In case, the required undertaking is filed within the time allowed aforesaid, the execution of the release order shall remain suspended upto 30th June, 1998. In case, no such undertaking is filed, it shall be open to the landlord to enforce the release order forthwith.

15. Accordingly, the writ petition is dismissed. The stay order is hereby vacated. Under the circumstances, the parties are directed to bear their own costs.