

(2002) 01 AHC CK 0060

Allahabad High Court

Case No: C.M.W.P. No. 226 of 2002

Udai Singh Bhanuvanshi

APPELLANT

Vs

Kunj Behari Tewari

RESPONDENT

Date of Decision: Jan. 7, 2002**Acts Referred:**

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1), 3

Citation: (2002) 1 AWC 647**Hon'ble Judges:** A.K. Yog, J**Bench:** Single Bench**Advocate:** Raj Kumar Jain and Rahul Jain, for the Appellant;**Final Decision:** Dismissed

Judgement

A.K. Yog, J.

Udai Singh Bhanuvanshi, petitioner, who is the tenant of residential accommodation on the first floor of house No. 118/408, Kaushalpur, Kanpur Nagar (for short called "the accommodation") comprising of two rooms, one store doohatti verandah, aangan and bath room at the rate of Rs. 60 per month, has approached this Court by filing present writ petition under Article 226 of the Constitution of India and seeks to challenge the judgment and order dated August 25, 2001 (Annexure-7 to the writ petition) allowing landlords' Rent Appeal No. 243 of 1995, Kunj Behari Tewari v. Udai Singh Bhanuvanshi, u/s 22 U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. U.P. Act No. 13 of 1972 (for short called "the Act") arising out of the judgment and order dated November 8, 1995 passed by Prescribed Authority u/s 21 (1)(a) of the Act in Rent Control Case No. 157 of 1993, Kunj Behari v. Udai Singh, dismissing the release application filed by the landlord Kunj Behari, son of Brahm Dutt Tewari, u/s 21(1)(a) of the Act (Annexure-6 to the writ petition).

2. Admittedly, the petitioner shows that the "accommodation" is in the tenancy of the petitioner. Father of the petitioner was tenant and Smt. Sukh Devi and Ram Dayal Awasthi were the landlords. Aforementioned Ram Dayal Awasthi executed a "Will" with respect to the premises including "the accommodation" in favour of Vinod Behari and Shyam Behari sons of Brahm Dutt. Ram Dayal Awasthi having died, said Vinod Behari and Shyam Behari inherited the property through the "Will". Kunj Behari Tewari respondent. another son of said Brahm Dutt Tewari (real brother of Vinod Behari and Shyam Behari) claimed to be the owner landlord of certain property including "the accommodation" by virtue of Court decree dated 14.1.1991 in Suit No, 1310 of 1989, Kunj Behari v. Shyam Behari. passed by 1st Additional Civil Judge, Kanpur Nagar. The said Kunj Behari filed release application dated 2.4.1994 before the Prescribed Authority u/s 21 of the Act claiming to be the landlord.

3. It is categorically mentioned in the release application that registered notice dated September 3, 1993 was sent through advocate to the petitioner-tenant and the same was served upon the petitioner on September 9, 1993 (Para 2 of the release application Annexure-2 to the writ petition pp. 31 of the writ paper book). Release claimed for personal use of the landlord vide release application u/s 21 of the Act. The contesting respondent petitioner-tenant filed written statement. Parties led evidence in support of their respective cases.

4. The Prescribed Authority rejected the release application primarily on the ground that Kunj Behari Tewari failed to establish his status as owner landlord.

5. Feeling aggrieved, Kunj Behari Tewari filed Rent Appeal No. 243 of 1995 and the said rent appeal has been allowed by Additional District Judge, Court No. 8, Kanpur Nagar, vide judgment and order dated 25.8.2001.

6. After discussing the effect of the partition decree between Kunj Behari Tewari and aforementioned Vinod Behari and Shyam Behari as well as the registered notice dated September 3, 1993, sent to the tenant-petitioner by registered post, keeping in view the fact that Kunj Behari Tewari was authorised/ assigned the rights to realise rent as "landlord" of the accommodation from the tenant with respect to the accommodation in question and the tenant was further required to pay rent to said Kunj Behari Tewari.

7. In lower appellate court's Judgment (at particular page 66 of the writ petition) shows that Kunj Behari Tewari was authorised not only to realise the "rent" but also authorised to realise the same in his capacity as landlord of the accommodation vis-a-vis the tenant-petitioner.

8. The learned counsel for the petitioner submitted that u/s 21(1)(a) of the Act the landlord alone, who is the owner of the accommodation, can maintain application for release u/s 21(1)(a) of the Act against his tenant. The learned counsel for the petitioner has laid emphasis on the expression "occupation by himself used in Section 21(1)(a) of the Act and argued that it is the owner as landlord who can claim

release of an accommodation in possession of some one as tenant ; and not a person who is authorised merely to realise rent or accept rent on behalf of owner/landlord.

9. I am not in agreement with the submissions made on behalf of the petitioner in this respect being misconceived.

10. Relevant extract of Section 21(1)(a) of the Act read as :

"The Prescribed Authority may on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists namely....."

11. Section 3(j) of the Act defines the term "landlord" and reads :

"3(j) "landlord" in relation to a building, means a person to whom its rent is or if the building were let, would be, payable and includes, except in Clause (g), the agent or attorney, or such person."

12. If the expression "except in Clause (g)" is extracted from the aforesaid definition, of the term "landlord" will read "a person to whom its rent is payable and includes the agent or attorney or such person".

13. Nowhere under the Act, term "owner" has been used. Thus, the concept of "ownership" has to nexus nor relevant while dealing with the expression "landlord", "tenant" or their inter se rights and obligations. There is no ambiguity in the relevant provisions of the Act. Hence this Court has no occasion to interpret the said Act by adding or extracting or otherwise to ascertain intention of the Legislature while interpreting aforementioned provisions in "the Act".

14. The learned counsel for the petitioner

emphasised that in the instant case, Kunj Behari Tewari was given limited/restricted right only to realise "rent" on behalf of the landlord and, therefore, he cannot claim to be treated as "landlord" for the purposes of maintaining "release application" u/s 21 of the Act.

15. The aforesaid submission of the learned counsel for the petitioner is in ignorance of the appellate court finding in its judgment to the effect that Kunj Behari Tewari was authorised to realise rent as landlord". The observation of the said Court on the basis of the registered notice dated September 3, 1993, has not been assailed before me. There is no pleading or ground to assail thfs finding in the writ petition. Petitioner has not filed copy of the "said notice" along with the writ petition to enable the Court to peruse the contents of the said notice of its own and to find out for itself whether said finding is against record. Petitioner has made no grievance against the observation of the appellate court on the above point.

16. Learned counsel for the petitioner seeks to place reliance on the following decisions ;

(1) Prem Chandra Pachit v. IInd Additional District Judge, Saharanpur and Ors. 1978 ARC 394 ;

(2) Smt. Sughra Begum v. Sri Ram and Ors. 1983 (2) ARC 143:

(3) Smt. Ved Rani Diwan and Anr. v. VIIIth Additional District Judge, Ghaziabad and Ors. 1996 (2) AWC 2129 (NOC): 1996 (2) ARC 14;

(4) [M.M. Quasim Vs. Manohar Lal Sharma and others,](#)

17. The decision in the case of Prem Chandra Pachit (supra) lays down that the need of "Manager" required for running a "Lodge" by the landlord cannot be equated with the need of the "landlord".

18. I am not in agreement with the ratio of the aforesaid decision since, in my opinion, need of the landlord for accommodating "Manager" would be the need of the landlord himself. This Court has consistently held that the accommodation required by the landlord for his family members, like mother-in-law, daughter-in-law, etc. (not strictly covered by the definition of family in the Act, the requirement or need in lieu of landlords' guest, attendant, servant, etc.) shall be the need of landlord. Reference may be made to the following decisions of this Court :

[Shiromani Kant alias Mani Kant and others Vs. Additional District Judge, Meerut and others,](#)

19. Since the aforesaid question is not arising it is not necessary for me to decide this question in this case and or refer the matter for hearing by larger Bench. The "question" regarding correctness of the ratio laid down in the case of Prem Chand Pachit may be decided in some other appropriate case and occasion.

20. In the cases of Smt. Sughra Begum, Smt. Ved Rani Diwan and M.M. Quasim (supra), this Court held that an "agent" or such other person cannot maintain release application u/s 21(1)(a) of the Act. The facts of the above cases are clearly distinguishable from the facts of the case in hand. In the present case in hand. "Kunj Behari Tewari", who filed release application, was authorised to realise rent as "landlord" and thus his status as the owner/ landlord of the accommodation as already discussed above, cannot be questioned or assailed in the present proceedings.

21. No other point has been raised or pressed.

22. The writ petition falls and dismissed in limine.

23. No order as to costs.