

(1998) 11 AHC CK 0048

Allahabad High Court

Case No: C.M.W.P. No. 21556 of 1997

Shiromani Kant alias Mani Kant
and others

APPELLANT

Vs

Additional District Judge, Meerut
and others

RESPONDENT

Date of Decision: Nov. 26, 1998

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1), 3, 30
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 16(2)

Citation: (1999) 1 AWC 795

Hon'ble Judges: Sudhir Narain, J

Bench: Single Bench

Advocate: K.K. Arora, for the Appellant; S.C. and Rajesh Tandon, for the Respondent

Final Decision: Dismissed

Judgement

Sudhir Narain, J.

This writ petition is directed against the order dated 8.10.1996 passed by the Prescribed Authority allowing the release application filed by the landlord-respondents u/s 21 (1) (a) of U. P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) and the order of the Appellate Authority dated 31.5.1997 dismissing the appeal against the said order.

2. Jagdish Singh was the landlord of the premises in question. He filed an application for release of the shop in question on the ground that he wants to settle his grandson. Alok Kumar, in business of general merchandise and for that purpose he bona fide requires the shop in question. During the pendency of the proceedings, Jagdish Singh, the landlord died and his heirs were substituted. He died leaving

behind him four sons, namely. Ramesh Chand. Subhash Chand. Nek Chand and Manak Chand. An application for amendment to the application for release was filed and the applicants set up the need for Akshay Kumar son of Nek Chand and it was stated that Alok Kumar, another son of Nek Chand is carrying on business which was being carried on by late Jagdish Singh.

3. The release application was contested by the petitioners. It was stated that there was a partition in the family and the shop in question had fallen in the share of Manak Chand and the release application cannot be allowed for the need of his nephew. It was further asserted that Akshay Kumar was assisting his father in the business and he is not unemployed and in any case various other shops were vacant in which he can carry on his business. The Prescribed Authority, considering all the aspects, found that the need of Akshay Kumar was bona fide and genuine and released the shop in favour of respondents on 8.10.1996. It came to the conclusion that the petitioners failed to prove that there was a partition in the family. Akshay Kumar was not assisting his father and there was no other vacant accommodation in which Akshay Kumar can carry on business. The petitioner filed an appeal and the Appellate Authority has dismissed the appeal by the Impugned order dated 31.5.1997.

4. I have heard Sri K. K. Arora, learned counsel for the petitioners, and Sri. Rajesh Tandon, learned counsel for the respondents.

5. Learned counsel for the petitioners urged that the release application for the need of grandson cannot be entertained in an application filed by the grandfather u/s 21 (1) (a) of the Act. He has placed reliance upon the decision Smt. Rahiman v. District Judge, Barabanki and others 1984 (2) LCD 49 wherein the Court considering the provisions of Rule 16 (2) (d) held that this rule is not applicable in respect of grandson. Rule 16 (2) (d) reads as under:

"where a son or unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant of the landlord has, after the building was originally let out completed his or her technical education and is not employed in Government service, and wants to engage in self-employment, his or her need shall be given due consideration."

6. The Court was not considering the definition of family as given u/s 3 (g) of the Act which reads 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."

It includes the male lineal descendants. It is not confined only to the son. The application u/s 21 (1) (a) of the Act can be filed by the landlord for occupation by himself or any member of his family.

7. In *Murlidhar v. XIth Additional District Judge and others* 1996 (1) ARC 492 it was held that the application can be filed for release on the ground of the need of the grandson as well. In *Prem Chand v. District Judge, Jhansi and others*. 1998 ARC 339 it was held that the definition of "family" u/s 3 (g) of the Act includes spouse, son, parents, grandparents, unmarried or widowed or judicially separated daughter, grand-daughter. The landlord can validly file an application for need of his grandson u/s 21 (1) (a) of the Act.

8. Learned counsel for the petitioner also assailed the finding recorded by the authorities below on the question of partition. It is contended that Jagdish Singh had partitioned the family amongst his sons and himself and that partition was also given effect to in the record of the Town Area Committee. This aspect has been considered in detail by the Appellate Authority. Jagdish Singh had filed affidavit, a copy of which has been annexed as Annexure-C.A-1 to the counter-affidavit and in paras 11, 12 and 16 he clearly denied that he had filed an application before the Chairman Town Area Committee that the names of his sons be separately recorded in the records of the Town Area Committee in respect of the shop in question. It was categorically stated that the entries in the record of Town Area Committee was totally wrong and based on no evidence. The petitioner did not file any documentary evidence to show that the partition had taken place except the affidavit filed by the tenant-petitioner.

9. On the other hand, the tenant-petitioners had been paying the rent to Jagdish Singh. The tenant-petitioners had filed Misc. Case No. 43 of 1992 u/s 30 of U. P. Act No. XIII of 1972 in the Court of Munsif, Baghpat, Meerut, wherein Ravi Kant, the petitioner, admitted Jagdish Singh as landlord of the disputed shop and sought permission to deposit the rent in the Court as Jagdish Singh refused to accept the rent. The petitioners never paid the rent to Manak Chand. The findings recorded by the authorities below do not suffer from any manifest illegality.

10. The next submission of the learned counsel for the petitioners is that the landlord has various other vacant accommodations/shops wherein Akshay Kumar can carry on business. He has referred to the affidavits of Ravi Kant, Madan Lal and Manoj Kumar, in the writ petition, the petitioners have not given the details of any particular accommodations which were not taken into consideration by the authorities below. The Appellate Authority has considered in detail regarding all the accommodations narrated by the petitioners as vacant. It was found that the Shop

No. 113 is not vacant and the same was under the tenancy of one Islam. The premises No. 115 is not a shop but it is a residential house. Premises No. 121 is entered as Baithak in the register of Town Area Committee and it also cannot be suitably used as a shop. Shop No. 122 is under the tenancy of Phool Singh, Premises No. 148 is situated on first floor and the same can also not be converted into a shop. Shop No. 145 is under the occupation of Nek Chand and he is carrying on his independent business.

11. The last submission of the learned counsel for the petitioners is that the comparative hardship as between the petitioner and the landlord-respondents has not been considered keeping in view the provisions of Rule 16 (2) of U. P. Urban Buildings (Regulations of Letting, Rent and Eviction) Rules, 1972.

12. The petitioners are alleged to be carrying on business in the shop in question which is situated in Aminagar Sarai which is a small township where the petitioners can get alternative accommodation. The application was filed in the year 1993 and during this period, they have not shown that they have made efforts to find out an alternative accommodation. I do not find any manifest illegality in the impugned order.

13. The writ petition is accordingly dismissed with costs.