

(2011) 04 AHC CK 0412**Allahabad High Court****Case No:** Writ A. No. 25064 of 2011

Naeem and Another

APPELLANT

Vs

Sri. Bishan Swaroop Garg

RESPONDENT

Date of Decision: April 29, 2011**Acts Referred:**

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

Hon'ble Judges: Rakesh Tiwari, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Rakesh Tiwari, J.

Heard learned Counsel for the parties and perused the record. Brief facts of the case are that the Petitioners are tenants of one room and one verandah at ground floor of house No. 333 situated at Sadar Bazar, Agra on monthly rent of Rs. 13/-. The Respondents are the landlords of the accommodation in dispute.

2. The Respondents filed an application u/s 21(1)(a) and (b) of Uttar Pradesh Urban Buildings (Regulation Of Letting, Rent And Eviction) Act, 1972 (hereinafter referred to as the U.P. Act No. 13 of 1972) for release of the accommodation in dispute under the tenancy of the Petitioners. It was registered as P.A. Case No. 11 of 2005, Bishan Swaroop Garg v. Naeem and Ors.

3. The tenants filed objection/reply denying the averments made in the release application. They also filed counter affidavit to which rejoinder affidavit has been filed.

4. Upon hearing parties and going through the record the Prescribed Authority/JSCC, Agra vide his order dated 21.8.2008 allowed the release application of the landlord directing the tenants to vacate and handover peaceful possession of the accommodation in dispute to the landlord within a period of 30 days from the

date of the order. In case of failure to comply with the aforesaid order, the landlord will be at liberty to proceed against the tenants in accordance with law.

5. Aggrieved by the aforesaid order dated 21.8.2008 of the Prescribed Authority, the Petitioners filed P.A. Appeal No. 130 of 2008, Naeem and Ors. v. Bishan Swaroop Garg, which too was dismissed vide judgment and order dated 14.3.2011, hence the instant writ petition has been filed challenging the validity and correctness of the order dated 21.8.2008 passed by the Prescribed Authority/JSCC, Agra in SCC Case No. 11 of 2005, Bishan Swaroop Garg v. Naeem and Ors. and judgment and order dated 14.3.2011 passed by the Additional District Judge, Court No. 9, Agra in P.A. Appeal No. 130 of 2008, Naeem and Ors. v. Bishan Swaroop Garg.

6. Learned Counsel for the Petitioners submits that the Respondent landlord is living happily along with his father in house No. 447/448, Sadar Bazar, Agra and that the property situated at Saheed Nagar, Agra belongs to Petitioner No. 4, Salim only, who is living there and has no concern with other Petitioners.

7. He also submits that both the Courts below have failed to appreciate that the bonafide need of the Petitioners are more genuine in comparison to the landlord, hence the impugned orders passed by the Courts below are liable to be quashed by this Court.

8. Per contra, learned Counsel for the Respondent submits that Petitioner No. 4, Salim has acquired a residential house at Saheed Nagar, Agra, who is the real brother of Petitioner Nos. 1 to 3, hence they have no right to continue in the tenanted accommodation. He also submits that both the Courts below have recorded concurrent findings of facts that if a member of the family has acquired a residential house in a vacant state, they have no right to continue in the accommodation in dispute and that there is no illegality or infirmity in the impugned orders passed by the Courts below, hence no interference is required by this Court.

9. After hearing learned Counsel for the parties and on perusal of the orders impugned of the Courts below it is apparent that Petitioners-tenants are real brothers; that Petitioner No. 4 has acquired a residential accommodation at Saheed Nagar, Agra, therefore, they have no right to continue as tenants in the accommodation in dispute. The appellate Court concluded that the landlord is the best judge to choose the place of business in his premises and the tenant cannot dictate terms to him as to how and at which place he should run the business; that if the tenant has not made any effort to search for a alternative accommodation, the landlord is to suffer greater hardship than the tenant and the tenant cannot suggest the landlord to satisfy his requirement in his premises.

The definition of the family is defined in Section 3(g) of U.P. Act No. 13 of 1972 which reads thus:

3(g) "family" in relation to a landlord or tenant of a building, means, his or her-

(i) spouse,

(ii) male lineal descendants,

(iii) such parents, grand-parents 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.

Perusal of the definition of the family as defined u/s 3(g) of U.P. Act No. 13 of 1972 shows that Petitioner No. 4 being the brother of Petitioner Nos. 1 to 3 comes within the definition of the family, hence they have no right to continue in the tenanted accommodation in view of explanation (i) to proviso-III of Section 21 of U.P. Act No. 13 of 1972.

10. Explanation (i) to proviso-III of Section 21 of U.P. Act No. 13 of 1972 provides that where the tenant or any member of his family (who has been normally residing with him 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.

11. In the present case, Petitioner No. 4, who is the real brother of Petitioner Nos. 1 to 4 has acquired a residential house at Saheed Nagar, Agra, hence in view of Explanation (i) to proviso-III of Section 21 of U.P. Act No. 13 of 1972, they have no right to continue in the tenanted accommodation.

12. The Courts below have also recorded concurrent findings of facts that a member of the tenants' family has acquired a residential accommodation, hence they have no right to continue in the accommodation in dispute. There is no illegality or infirmity in the impugned orders of the Courts below, hence no interference is required by this Court.

13. For all the reasons state above, the writ petition is dismissed.

14. At this stage, learned Counsel for the Petitioners requested the Court for allowing reasonable time to the tenants for vacating the accommodation in dispute. As prayed, six weeks' time is allowed to the tenants-Petitioners for vacating and handing over peaceful possession of the accommodation in dispute to the landlord.

15. No order as to costs.