

(2011) 02 AHC CK 0377

Allahabad High Court

Case No: C.M.W.P. No. 5975 of 2011

Smt. Sharifunnissa and Others

APPELLANT

Vs

Kaviullah

RESPONDENT

Date of Decision: Feb. 1, 2011

Acts Referred:

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

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.

2. The facts in brief are that the Respondent landlord filed Application No. 5 of 2007, u/s 21(1)(a) of U.P. Act No. 13 of 1972 for release of a kothari and open area covered with Tin shed, situated at the ground floor in house No. 19/230 Patkapur, Kanpur under the tenancy of Mahmood alias Mammu on the ground of establishing his sons in the business. It was stated that Mahmood alias Mammu expired on 6.5.2002 to whom the accommodation in dispute was given on rent for commercial purpose.

3. The Petitioners filed their written statements denying the plaint allegations and stated that the kothari was taken for residential purpose and open space was used for manufacture of chains or janjeers, for a short period.

4. Upon hearing the parties and going through the entire record, the court below allowed the release application, releasing the accommodation in dispute in favour of the landlord vide order dated 7.8.2009 for commercial purpose.

5. Aggrieved by the aforesaid order dated 7.8.2009, the Petitioners filed Rent Appeal No. 69 of 2009 before the appellate court which too was dismissed vide order dated

28.9.2010, hence the instant writ petition has been filed challenging the validity and correctness of the order dated 28.9.2010, passed by the Additional District Judge, Court No. 7, Kanpur Nagar in Rent Appeal No. 69 of 2009 and the order dated 7.8.2009, passed by the Prescribed Authority/Addl. Civil Judge (Junior Division), Court No. 3, Kanpur Nagar in Rent Case No. 5 of 2007.

6. Learned Counsel for the Petitioners submits that the courts below have miserably failed to consider the legal proposition of law that residential accommodation cannot be released for commercial purpose ; that the Electricity bills and Death certificate clearly show that Petitioner Nos. 1 and 2 are using the accommodation in dispute for residential purpose since before the death of chief tenant ; and that the averment of Respondent landlord in paragraph 3 of the release application stand falsified as in the assessment of 1968 to 1973, tin shed karkhana was shown in the possession of Mahmood alias Mammu Khan.

7. He also submits that Mahmood alias Mammu Khan was using tin shed area for making "chains" for a short period and the kothari was used for residential purpose whichever after the death of chief tenant is still used for residential purpose and that the inference drawn by the courts below that accommodation in dispute with land appurtenant was being used for commercial purpose is perverse and contrary to the record produced.

8. It appears from the record that the Respondent landlord moved release application for release of the accommodation in dispute on the ground of establishing his sons in the business. The courts below have recorded a finding of fact that the accommodation in dispute had been given on rent to the Petitioners' father Sri Mahmood alias Mammu Khan for commercial purpose and the Petitioners being his legal heirs and representatives are liable to be evicted; that bona fide need and comparative hardship for establishing his sons in the business by the landlord are greater than the tenants Petitioners. Having considered all these aspects of the matter, the Court below has released the accommodation in dispute in favour of the landlord for commercial purpose.

9. It is apparent from admission of the Petitioners on record that the accommodation in dispute being used for commercial purpose by their father since 1968 to 1973 and thereafter due to paucity of working space, land appurtenant was taken by the tenant on rent with it for commercial purpose in 1998 over it a tin shed has been constructed. In the facts and circumstances, the case of the Petitioners stand falsified that no commercial activity was carried on in the "kothari" as according to records and their own case commercial activity was being carried out in the tenanted accommodation since 1968 and land appurtenant was taken in addition to it for commercial purpose in 1998.

10. A tenant cannot change user of a tenanted building by him except in accordance with law. Mere production of Electricity bill for consumption as

non-commercial/non-registration of workshop under labour laws applicable to it for evasion of liabilities of employees employed by it or for tax would not constitute a good ground for holding the building to be a residential one on face of admitted facts on record by the tenant that the building was being used for commercial purpose. The findings of the prescribed authority have been confirmed by the appellate court. The impugned orders therefore, suffer from no illegality or infirmity.

11. For all the reasons stated above, the writ petition is accordingly, dismissed. No order as to costs.