

(1995) 11 AHC CK 0113

Allahabad High Court

Case No: C.M.W.P. No. 23254 of 1993

Kuldeep Chandra Vohra

APPELLANT

Vs

Xth Addl. District Judge and
Others

RESPONDENT

Date of Decision: Nov. 23, 1995

Acts Referred:

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

Hon'ble Judges: Sudhir Narain, J

Bench: Single Bench

Advocate: S.N. Varma and Sharad Malviya, for the Appellant;

Final Decision: Dismissed

Judgement

Sudhir Narain, J.

This writ petition is directed against the order dated 2.12.1992 passed by the prescribed authority, allowing the application filed by the landlord, Respondent No. 3, u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act) and the order dated 28.5.1993, dismissing the appeal of the Petitioner against the order of the prescribed authority.

2. The Petitioner is a tenant of premises No. 66 MIG "W Block, Juhi Gaushala, Kanpur Nagar. Respondent No. 3 filed application u/s 21(1)(a) of the Act on the ground that he is residing as a tenant on the first floor of premises No. 124/M/7 Govind Nagar, Kanpur, and his landlord is pressing to vacate it. He wants to live in his own house. It was further stated that the tenanted accommodation with him consists of only 4 rooms, store, etc. Whereas his family consists of self, wife, son, daughter-in-law and one grand-daughter. So It is difficult for him to live in that small accommodation.

3. This application was contested by the Petitioner and it was stated that the Respondent No. 3 is already living in a tenanted house and he did not require any

further accommodation. The Petitioner further stated that he is tenant of two separate accommodations and one application for release of two separate accommodations is not maintainable.

4. The prescribed authority allowed the application, aforesaid, on the findings that the Respondent No. 3 is living in a tenanted house and his need was bona fide and genuine.

5. The Petitioner filed an appeal against the order of the prescribed authority and the appellate authority has dismissed the appeal filed by the Petitioner by order dated 28.5.1993.

6. I have heard Shri Sharad Malviya, learned Counsel for the Petitioner and Shri H.S. Nigam, learned Counsel for the Respondent.

7. Learned Counsel for the Petitioner urged that the Petitioner had taken a residential portion at the rate of Rs. 325 per month in the year 1974. In the year 1979, one additional room was constructed by Respondent No. 3 and that was let out to him for manufacturing purposes. There were two separate accommodations and one single application for release of these two separate accommodations was not maintainable.

8. The Petitioner has filed a copy of the agreement which was entered between the Petitioner and Respondent No. 3 on 1.9.1979. In para 3 of the agreement, it has been clearly stated that the Petitioner will continue to pay monthly rent of Rs. 325 with regard to residential portion and as regards another one additional room, he will pay Rs. 50 per month, but in para 11 of the agreement, it has been stated that the Petitioner will pay rent Rs. 375 for both the accommodations jointly from 1st of August, 1984. Respondents 1 and 2 have recorded finding that there is one tenancy hence single release application was maintainable for both the accommodations. This finding does not suffer from any illegality.

9. The learned Counsel for the Petitioner next contended that the accommodation which has been let out for manufacturing purpose, cannot be released for residential purpose. There is no bar in filing application u/s 21(1)(a) of the Act for release of a commercial accommodation, for residential purpose. Clause (11) of third proviso to Section 21(1) of the Act. prohibits filing of the application for release of a residential building for occupation for business purpose but not the vice versa.

10. The next submission of the learned Counsel for the Petitioner is that as the Petitioner is carrying on manufacturing of hosiery in the disputed building, the provisions of U.P. Act 13 of 1972 is not applicable in view of Section 2(1)(d) of the Act.

11. Section 2(1)(d) of the Act exempts a building from the operation of the Act if any building is used or intended to be used for non-residential purpose (that is to say, for the purpose of manufacture, preservation or processing of any goods) or as a cinema or theatre, where the plant and apparatus installed for such purpose in the

building is leased out along with the building. It is not the case of the Petitioner that the accommodation has been let out with plant and apparatus for manufacturing hosiery. The Petitioner, cannot, thus, claim exemption from operation of the Act.

12. No other point has been pressed.

In view of the above discussion, I find no merit in the writ petition. It is accordingly dismissed.

Learned Counsel for the Petitioner prays for and is granted two months time to vacate the accommodation in question, provided the Petitioner gives written undertaking before the prescribed authority (Respondent No. 2) within two weeks from today that he would vacate the premises in question and handover its peaceful possession to the Respondent No. 3 within the time granted by this Court.