Gur Prasad Vs Ist Addl. District Judge and Another

C.M.W.P. No. 16751 of 1987

Court: Allahabad High Court

Date of Decision: Jan. 9, 1997

Acts Referred:
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 â€" Section 21, 21(1)#Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 â€" Rule 17

Hon'ble Judges: R.A. Sharma, J; D.K. Seth, J

Bench: Division Bench

Advocate: P.S. Tripathi, for the Appellant; S.C. Manjain, S.K. Gaur and S.C., for the Respondent

Judgement

R.A. Sharma, J.
A learned single Judge referred the following question for decision by a larger Bench:

Whether the need of the landlord u/s 21(1)(a) can be considered even if the landlord had pleaded that the building is in a dilapidated condition and

requires demolition?

We have heard the learned counsel for the parties.

2. Section 21 of the U.P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) provides for the

release of building under occupation of a tenant on an application of the landlord. Sub-section (1) of Section 21 so far as it is relevant for the

present controversy is reproduced below.

21. Proceedings for release of building under occupation of tenant.--(1) 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:

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by

himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any

profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust.

(b) that the building is in a dilapidated condition and is required for purposes of demolition and new construction.

Clauses (a) and (b) of Sub-section (1) of Section 21 have laid down two circumstances under which a landlord can recover possession of the

building from his tenant. Clause (a) covers a case when the building is bona fide required either in its existing form or after demolition and new

construction by the landlord for his own occupation or for occupation of any member of his family. In such a case, bona fide requirement of the

landlord is a condition precedent for release of the building. But the state and condition of the building is not a relevant consideration for release of

the building in favour of the landlord under Clause (a). A building under tenancy may or may not be in good condition. It may be in dilapidated

condition which requires demolition and new construction. But if the landlord bona fide requires such a building after demolition and new

construction for his own occupation or for occupation of the members of his family, it can be released under Clause (a). Clause (b) covers a case

where the building is in dilapidated condition and is required by the landlord for demolition and new construction, but not for his own occupation.

A case of a building of dilapidated condition which needs demolition and new construction, can fall under any of the two clauses (a) and (b) of

Section 21(1), depending on the fact whether it is required by the landlord for his own occupation after demolition and new construction or for its

demolition and new construction only. When such a building is needed by the landlord for his own occupation, the case will be covered by Clause

(a). But if it is required merely for demolition and reconstruction Clause (b) will be applicable to such a case.

3. The submission that as the building in a dilapidated condition is covered by Clause (b), it stands excluded from Clause (a), cannot be accepted.

The two clauses have merely laid down two circumstances under which a building can be released in favour of the landlord. Different

considerations govern the two situations under the two clauses. Bona fide requirement of the building by the landlord is a relevant consideration

under Clause (a) but it is not so under clause lb). Likewise the condition of the building is not at all material under Clause (a) but it is a condition

precedent under Clause (b). All the buildings irrespective of their conditions, if bona fide required by the landlord for his own occupation, can be

covered under Clause (a) but Clause (b) covers only a dilapidated building. Which of the two clauses will apply to a case will depend on the

fact/question whether the building is bona fide required by the landlord for his own occupation. If the answer Is in the affirmative, Clause (a) will

apply irrespective of the condition of the building. Clause (b) will be attracted only if a dilapidated building is required by landlord for demolition

and new construction and not for his own occupation. If the dilapidated building is bona fide required by the landlord for his own occupation, his

claim under Clause (a) cannot be rejected merely on the ground that the building in dilapidated condition is covered by Clause (b), because Clause

(b) does not cover such a case. Subject to the regulatory provisions of the Act and the Rules framed thereunder, a landlord has all the rights to use

his property in any lawful manner and he cannot be denied such a right merely because his building is in a dilapidated condition which needs

demolition and reconstruction. Supreme Court in S.M. Gopalakrishna Chetty Vs. Ganeshan and Others, , has laid down that, ""a landlord has every

right to demolish his properly in order to build a new structure on the site to improve his business or to get better returns on his investment. Such a

step, per se cannot be characterised as mala fide on the part of the landlord.

4. When the composite application under clauses (a) and (b) of Section 21(1) is made by the landlord, it is open to him to press his case under any

of the two clauses. He may claim eviction of the tenant under Clause (a) if proves bona fide requirement of the building for his personal occupation

and also satisfies the other requirements laid down by the relevant Rules. In such a case even, if the building is in dilapidated condition which

requires demolition and new construction, the case will be covered by Clause (a) and not by Clause (b). If the landlord fails to satisfy the

requirement of Clause (a), he can still press the application for release of the building under Clause (b).

5. In Bhulan Singh and Others Vs. Ganendra Kumar Roy Chowdhury, , a Division Bench of Calcutta High Court while considering the proviso (f)

to Section 11 of West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, which provided that where the premises are bona fide

required by the landlord either for purposes of building or rebuilding, or for his own occupation or for the occupation of any person for whose

benefit the premises are held, it may be released in favour of the landlord, has laid down as under:

It is suggested that this provision giving the landlord a right to possession, if he established that he required the premises bona fide for rebuilding,

could have no application whatsoever unless the state of the premises was such that they required to be rebuilt. It is to be observed that proviso (f)

to Section 11(1) of the Act does not mention premises requiring rebuilding. What it states is that Sub-section (1) shall have no application if the

landlord requires the premises bona fide for rebuilding. The state of the premises therefore is not an essential factor in the case.

Following the aforementioned decision of Calcutta High Court as well as other cases, a learned single Judge of this Court in Smt. Champa Kunwar

Trust Vs. The District Judge, Rampur and Others, has held that state or the condition of the building is not material for the purpose of application

of Section 21(1)(a). Another learned single Judge in Madan Gopal v. IIIrd Addl. District Judge 1982 ARC 226, has also held that a very old or

dilapidated premises can be released u/s 21(1)(a) without complying with the provision of Section 21(1)(b) or Rule 17. Relevant extract from the

said decision of learned Judge is reproduced below:

Then question arises for consideration whether the premises could have been released for making new constructions and that too after demolition

of the premises in dispute, in absence of non-compliance of Rule 17 of the Rules framed under the ''Act''. It is not in dispute that the plan has

already been submitted and the finding has been recorded by the appellate court that the shop is in a dilapidated condition. The appellate court

relied upon evidence including affidavits and other material on record in arriving at this finding. It believed the affidavits filed on behalf of landlord.

Though the shop may not be in such a dilapidated condition which requires immediate attention, but it is an old shop and from its structure it can be

said to be dilapidated. The word ''dilapidated'' is a relative term and the meaning given to it cannot be static. u/s 21(1)(a) of the ''Act'', a premises

can be released in the existing form even for the purpose of new constructions and in the instant case, the need of the landlord has been held to be

bona fide and genuine and the premises have been released u/s 21(1) of the Act and the need of the landlord having been found to be genuine u/s

21(1)(a) of the Act, as such, there was no question of applicability of Section 21(1)(b) of the ''Act'' as also Rule 17 of the Rules framed under the

Act. This ground also has got no force.

6. In Hans Raj Sharma v. Ist Additional District Judge, Badaun 1986 (2) ARC 17, a learned single Judge while analysing clauses (a) and (b) of

Section 21, has held as follows:

An analysis of the clauses (a) and (b) clearly leads to the conclusion that where a landlord applies for an order of eviction of a tenant on the ground

that the building is in a dilapidated condition and is required for purposes of demolition and new construction the case will be squarely covered by

Clause (b). Where, on the other hand, the application of the landlord is founded on the assertion that the building is required for the personal

occupation of the landlord whether in its existing form or after demolition and new construction, the case will be covered by Clause (a) of Section

21(1). A building may be required for personal occupation by the landlord after demolition and new construction even if it may not be In a

dilapidated condition. The landlord may simply require the building for his personal occupation in whatever condition it may be, whether in its

existing form or after demolition and new construction.

It is submitted that the aforesaid extract from the decision of Hans Raj Sharma v. Ist Addl. District Judge (supra) suggests that whenever a building

is in dilapidated condition and is required after demolition and new construction, only Clause (b) of Section 21(1) will be applicable. This

submission is devoid of merit. Such an inference cannot be drawn from the aforementioned observation made by learned Judge in the case of Hans

Raj Sharma (supra). In the aforesaid extract, the learned Judge has analysed the two clauses (a) and (b) of Section 21(1). The learned Judge has

categorically held that if ""the building is required for personal occupation of the landlord whether in its existing form or after demolition and new

construction, the case will be covered by Clause (a) of Section 21(1)"". The learned Judge has also not held that the building which is in dilapidated

condition and which needs demolition and new construction cannot be released under Clause (a) even if the landlord bona fide requires it for his

own occupation after demolition and new construction. In the case of Hans Raj Sharma (supra), the landlord"s application u/s 21(1) was rejected

by the prescribed authority and the appeal filed by him before the learned District Judge was dismissed on the ground that his application is barred

by first proviso to Section 21(1) as the period of three years has not elapsed since the date of purchase of the building by the landlord. This Court

treated the landlord"s application as the one falling under Clause (b) and, therefore, held that the first proviso to Section 21(1) will not apply to

such a case. The controversy which we are called upon to decide in the instant case was neither raised nor decided by the learned Judge in the

case of Hans Raj Sharma (supra). Any observation made or impression given by the learned Judge in that case which is contrary to what is

contained in this judgment stands overruled.

7. Our answer to the question referred to is as under:

The need of the landlord u/s 21(1)(a) can be considered even if the landlord had pleaded that the building is in dilapidated condition and requires

demolition and new construction.

Lay the papers of this case before the learned single Judge.