

PETITIONER:
SUDHA AGRAWAL

Vs.

RESPONDENT:
XTH ADDL. DISTRICT JUDGE

DATE OF JUDGMENT: 04/08/1999

BENCH:
V.N.Khare, Syed Shah Mohammed Quadri

JUDGMENT:

V.N. KHARE, J.:

The appellant herein is the landlord of the premises in dispute. The premises consists of ground floor and first floor. The respondent-tenant is in occupation of the said premises. The ground floor of the premises is being used by the tenant for non-residential purposes, whereas the first floor is being used for residential purpose. The appellant-landlord filed an application before the Prescribed Authority, Varanasi, for eviction of the respondent-tenant on the ground that he required the premises for his bona fide need. In the said application, the landlord also took a plea that the son of respondent-tenant who was ordinarily residing with him has constructed a residential premises in the city of Varanasi, and as such under explanation (i) to fourth proviso of sub-section (1) of Section 21 of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter referred to as the Act), the tenant besides being debarred from contesting the application, his need has to be presumed bona fide. A written statement was filed by the respondent tenant wherein the allegations made in the application were denied. The Prescribed Authority took the view that since the premises was let out to the tenant partially for non-residential purposes and partially for residential purposes, the benefit of explanation (i) to fourth proviso of sub-section (1) of Section 21 of the Act is not available to the landlord. The prescribed authority also found that the need set up by the landlord is not bona fide. Consequently, the application for eviction of the tenant from the premises was rejected by the Prescribed Authority.

Aggrieved, the landlord-appellant preferred an appeal which was dismissed by the appellate authority affirming the finding of the Prescribed Authority. The writ petition filed by the landlord has also been dismissed by the High Court.

It is urged by the counsel appearing on behalf of the appellant that in view of explanation (i) to fourth proviso of sub-section (1) of Section 21 of the Act, not only that

the tenant was debarred from contesting the application filed by the landlord, but also the need set up by the landlord in the said application has to be presumed bona fide. Learned counsel appearing for the tenant, however, argued that in the present case, explanation (i) to fourth proviso of sub-section (1) of Section 21 of the Act is not attracted and in any case, even if it is held that the explanation (i) is applicable in the present case, the landlord independently has to prove that his need is bona fide and the alleged need set out in the application cannot be presumed to be bona fide.

After we heard the learned counsel for the parties, we assume for the sake of the argument that explanation (i) to fourth proviso of sub-section (1) of Section 21 of the Act is available to the appellant landlord without deciding the question whether explanation (i) is applicable to the present case or not. For appreciating the arguments of learned counsel for the parties, it is necessary to set out the relevant provisions, which are extracted herein below :-

Section 21(1)(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;

Fourth proviso to sub-section (1) of Section 21 - Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.

Explanation (i) to fourth proviso of sub-section (1) of Section 21 - In case of a residential building :- where the tenant or any member of his family (who has been normally residing with 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.

A perusal of Section 21(1)(a) shows that a landlord can succeed in his application for eviction of a tenant if he establishes before the Prescribed Authority that his need for the premises is bona fide. Fourth proviso of Section 21(1) provides that the Prescribed Authority, while considering the bona fide requirement of the landlord has also to take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application excepting in cases provided for in explanation (i). Explanation (i) provides that where the tenant or any member of his family who is normally residing with him or 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, no objection by the tenant against an application under this sub-section shall be entertained. The aforesaid provisions extracted above

show that in cases where explanation (i) is applicable no presumption can be raised with regard to the need of the landlord as bona fide. The only effect of application of explanation (i) is that the tenant is not entitled to contest the application filed by the landlord and the Prescribed Authority is not required to compare the hardship of the landlord with that of the tenant which he otherwise required to do under fourth proviso of Section 21(1) of the Act. We have noticed earlier that the landlord can get an order of release in his favour only when he proves his need as bona fide before the Prescribed Authority. It is no doubt true that the application of landlord is uncontested as the tenant is out of field, still the landlord has to establish his bona fide need. In fact the landlord is required to stand on his own legs and he cannot derive any advantage of absence of defence of the tenant. The proceedings before the Prescribed Authority is like a uncontested suit, where there is no defence of the defendant. In such a suit plaintiff in order to get decree must prove his case to the satisfaction of the Court. Applying the said principle to the present case, we have no doubt in our mind that, by application of explanation (i) the landlord is not discharged from the burden of proving his need as bona fide. Further we also do not find any provision in the Act creating any presumption in favour of the landlord as regard his need as bona fide.

This view of ours finds support from the provision contained in Sections 12 and 16 of the Act. Section 12 provides the contingency when a building shall be deemed to have fallen vacant. Sub-section (3) of Section 12 provides that in case of a residential building if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, town, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy. Section 16 provides that a landlord can apply to the District Magistrate for release of the premises which has fallen or deemed to have fallen vacant if the premises is bona fide required. Thus, in cases where the premises has fallen vacant or deemed to have fallen vacant, the landlord necessarily has to apply before the appropriate authority for release of the premises in his favour and he can get an order of release of the premises only when he satisfies the Prescribed Authority in respect of his bona fide requirement for the premises. If explanation (i) to fourth proviso of Section 21(1)(a) is to be read as creating presumption in favour of the landlord in respect of the requirement of landlord as bona fide, in that event the said explanation would come into conflict with Section 16 of the Act. It is well known rule of interpretation that a provision of a statute is required to be interpreted in such a manner which may avoid possible conflict in various provisions of a statute.

In view of the legal position discussed above, we find that there is no presumption in favour of the landlord that his need is bona fide by virtue of application of explanation (i) to fourth proviso of sub-section (1) of Section 21 of the Act and the landlord has to allege and prove his requirement as bona fide in order to evict the tenant from the premises. In the present case, concurrent finding of fact has been recorded by the courts below that the need of the landlord was not bona fide. Such a finding

cannot be interfered with in this appeal. We, therefore, find no merit in these appeals. The appeals are accordingly dismissed. There shall be no order as to costs.

JUDIS