

ALLAHABAD HIGH COURT

Nand Rani

Vs.

Addl. Dist. Judge

Civil Misc. Writ No. 2171 of 1977

(Murlidhar, J.)

05.11.1979

ORDER

Murlidhar, J.

1. This is a landlord's petition under Article 226 of the Constitution directed against an order dated 20-9-1977 passed by the Addl. District Judge, Moradabad in proceedings under Section 21 of Act No XIII of 1972 (hereinafter referred to as the Act).

2. The brief relevant facts are these : The petitioner owns a shop in Sambhal town which the respondent No. 2 has been occupying as a tenant since near about 1949 carrying on business of Ban, Rassi, Dalia etc the present rent being Rs 8/- per month The petitioner applied under Section 21 for release of the shop for setting up her daughter's son Gopal Kumar in business on the ground that she was a lonely widow and had virtually though not formally adopted Gopal Kumar and wished him to stay with her at Sambal and take care of her. Respondent No. 2 contested the matter. The Prescribed Authority found that the petitioner had only rental income of about Rs. 75/- per month, that Gopal had completed his education and has been living with the petitioner and that and in substance the petitioner needed the shop for herself as she wanted to carry out business by her daughter's son and her need was genuine and bonafide. On the point of comparative hardship, the Prescribed Authority found that five sons of respondent No. 2 were well settled in service in other towns and only two more sons were with him. Observing that the respondent was well off and could secure some other shop to carry on his business if he wanted to continue the same, the authority found that the test of comparative hardship went in the petitioner's favour. The application was, therefore, allowed and the shop was

released subject to payment of an amount equal to two years' rent as compensation to the tenant. In appeal the District Judge took the view that the landlady had sufficient means and had also been earning Rs. 75/- per month and that Gopal Kumar being a daughter's son was not a member of the petitioner's family and the premises could not be released. The District Judge went on to state that there were still four units in the family of the tenant and he was an old tenant and the likely hardship to him from release would be more than that to the landlady from the rejection of the application. This is the order challenged by this petition.

3. The respondent has not filed any counter affidavit and in fact he did not put in appearance in this case. It was urged on behalf of the petitioner that the learned District Judge has committed an error in law in holding that the premises could not be released for setting up daughter's son in business. There is substance in this contention. Under Section 21(1)(a), the accommodation can be released only if it is "bonafide required by the landlord for occupation by himself or members of his family or for any whose for whose benefit it is held by him". There is no dispute that a daughter's son is not included in the definition of family given under Section 3(g) of the Act nor in the present case is the property held for him. The question, therefore, is whether in the circumstances of the case, the requirement for his business can be regarded as requirement of the landlady for occupation by herself. The provision of Act No. XIII of 1972 cannot be read so as to put an end to the ties of affection, friendship, kinship or sheer necessity. There can be no doubt that in appropriate circumstances the landlord may be so much concerned with and interested in the requirement of or for another person who is not a member of his family as defined in Section 3(g) that the requirement may be properly regarded as the landlord's own requirement. Whether a landlord is so identified with the person concerned that this is the case is a question of fact to be determined on the evidence and circumstances of the particular case. In the present case, the facts found are that the petitioner is an old widow having a rental income of Rs. 75/- per month, that she has kept her daughter's son Gopal Kumar to look after her and that she desires to set him up in business in Sambhal town so that he may stay with her. If in any circumstances requirement of or for another person could be regarded as requirement of the landlord this could well be a case of this kind. Whether it is so or not is to be determined by the authorities below after

considering all the aspects. It is also for that authority to consider whether and how much if at all the ownership of the business and the name in which it will be carried out is relevant to the question.

It is also obvious that the question arises only because the daughter's son is not a, member of the family as defined in Section 3(g) for if he were a member of the family his need would be covered by Section 21(1)(a) itself Therefore, the District Judge should have focused on the question whether the need to set up Gopal" Kumar in business can be held to be the own requirement of the landlady. In taking the view that as he was not a member of the family as defined in Section 3(g) her need would not be considered the District judge has illegally rejected the claim of *bonafide* requirement at the very threshold without properly approaching the question in the manner indicated above This finding is, therefore, unsustainable.

4. He has undoubtedly recorded a finding on the question of comparative hardship also against the petitioner. The legal position however is that the stage of comparative hardship is reached only after the finding of *bonafide* requirement is in favour of the landlord. Besides this where the finding is that there is no *bonafide* requirement by the landlord, the comparison of hardship is likely to be influenced by the factors and assumptions in that finding. It is, therefore, not possible to uphold the order of the District judge on the basis of the finding on the question of comparative hardship which has to be struck down along with the finding on the question of *bonafide* requirement. It is made clear that any observation made in this order will not be treated as an expression of opinion on any question of fact to be dealt with by the authority.

5. In the result, the petition is allowed. The order of the District Judge, dated 20-9-77 is set aside and the District judge is directed to decide the appeal afresh according to law in the light of the observations made in this order. There shall be no order as to costs.

Petition allowed.