

RESERVED

Court No.

2

Writ Petition No. 631 (M/S) of 2001

M/s Jai Kumar Mehrotra through its
Partner and others.

.....
Versus

Petitioners.

Lalit Mohan Sharma and others.

.....

Respondents.

Hon'ble P.C. Verma, J.

This petition has been filed by the petitioners challenging the order dated 26.4.2001 passed by District Judge, Nainital in Rent Control Appeal No. 5 of 1988, whereby he has dismissed the appeal filed by petitioners/tenants and affirmed the order dated 21.4.1998 passed by the Prescribed Authority/A.C.J.M., Kashipur, District- Nainital (now District-Udham Singh Nagar) allowing the application of the landlords under Section 21(1) (a) of U.P. Act No. XIII of 1972.

Applicants/respondents filed an application before the Prescribed Authority under Section 21(1)(a) of U.P. Act No. XIII of 1972 (hereinafter referred as the Act) on the ground of bona fide need. It was stated in the application that the applicants are landlords of a triple storeyed building situated in Mohalla Jaspuria Line, Ram Nagar, District Nainital. The opposite parties are tenants at the rate of Rs. 2800/- per annum of the shop built on the ground floor in the said building. It was also stated that applicant No. 1 has been retired from the post of Assistant Commandant of Indian Tibbet Border Police (ITBP) on 30.04.1993 and he wants to settle himself in a business of electronic goods. Applicant No. 2 is 57 years of age at the time of filing of application and after retirement from the Government service he also wants to settle himself in a business. The applicants originally belong to Ram Nagar and except the disputed shop they have no other shop or accommodation to carry the business. The opposite parties have no difficulty to shift their business in any other place because they can purchase the shop or built a

shop and can take on rent. There is one another shop of opposite parties of one Smt. Vishno Devi in which at some times they keep their goods. They can do very well their business in this shop.

The tenants/petitioners filed objections before the Prescribed Authority stating therein that application for eviction has been filed on false and baseless allegations and in fact the applicants do not need the premises bona fide for starting their own business. They stated that the applicant No. 1 is residing with this family at Chandigarh (Punjab) and there he may be carrying business or service. Applicant No. 1 is not inclined to reside at Ramnagar due to which the applicants have given their house on rent. The applicants and their father never resided permanently at Ramnagar. There is no question to carry business by applicant No. 2 after retirement because he always lives at Lucknow. They also denied that any shop of Smt. Vishni Devi is in their tenancy or in use. The financial position of the opposite parties is not so good to purchase or built a shop in other place. If an order of eviction is passed against them, they will face great difficulty.

Both the parties adduced their evidence by way of affidavits before the trial Court. The trial Court framed two points for determination of application under Section 21(1)(a) of the Act i.e. (i) bona fide need of applicants/landlords and (ii) comparative hardship of parties.

The Prescribed authority discussed the evidence adduce by the parties and held that the applicants have asserted in their respective affidavits that after retirement they want to carry their business in the disputed premises, so that they may not depend on each other. The Prescribed Authority further held that the opposite parties did not prove their own assertion that the applicants will carry their business or service at Chandigarh and Lucknow after their retirement from service. Rather the applicants have filed their affidavits rebutting the fact that

applicant L.M. Sharma has any business or service at Chandigarh and applicant Kranti Kumar Sharma has any proposal to run private coaching institute at Lucknow. The Prescribed Authority on consideration of the materials on record came to the conclusion that the applicants require the premises for their own use bona fide and also came to the conclusion that if an order of eviction is not passed the applicants would be comparatively harassed. With these conclusions, the application for eviction having been allowed, the tenants/opposite parties/petitioners preferred an appeal.

The appellate authority after considering the entire evidence on record came to the conclusion that in the facts and circumstances of the case the requirement of the landlords/applicants to settle them in a business separately after retirement is bona fide and affirmed the judgment and order of Prescribed Authority on the points of bona fide need and comparative hardship.

After considering the entire material on record, I find that both the courts below have examined the evidence led by the parties in accordance with the provisions of Rule 16 of Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Rules, 1972 and have rightly allowed the release application of the applicants.

Both the courts below have recorded concurrent findings of fact. The order does not suffer from any illegality or perversity. Therefore, no interference is called for in the impugned judgment and order.

The writ petition has no merit and is dismissed. No order as to costs.

(P.C. Verma, J.)

Dt. 28.09.2002
P. Singh

WPMS No. 631 of 2001

Hon'ble P.C. Verma, A.C.J.

Heard learned counsel for review petitioner and learned counsel for the respondents.

The review petitioner is granted further four months time to vacate the disputed premises from today. Copy of this order shall be issued tomorrow on payment of court fee.

The review petition is disposed of accordingly.

(P.C. Verma, A.C.J.)

08.04.2003