

**Case :- WRIT - A No. - 7791 of 2023****Petitioner :-** Mahesh Chandra Agarwal**Respondent :-** Rent Tribunal, Addl. District And Session Judge, Court No. 7, Lko. And 2 Others**Counsel for Petitioner :-** Nandini Verma, Aprajita Bansal**Counsel for Respondent :-** C.S.C., Shresth Agarwal**Hon'ble Alok Mathur, J.**

1. The petitioner being aggrieved by the order dated 29/08/2023 passed by the Additional District and Sessions Judge under Section 35 of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 (hereinafter referred to as the Act of 2021) thereby rejecting the appeal filed by the petitioner and upholding the order of eviction passed by the prescribed authority dated 14/12/2022, has preferred the present writ petition.
2. Ms Aparajita Bansal, learned counsel appearing on behalf of the petitioner has submitted that opposite party No. 3 is the owner of house situated at 253/96, Nadan Mahal Road, Lucknow which consists of 6 shops, one basement and one go-down. Out of the 6 shops, opposite party No. 3 had let out shop no.1 to the petitioner in 1989 and an agreement was also entered into on

3.4.1989 creating a tenancy in his favour for 11 months at the monthly rent of ₹ 500/-.

3. An application under section 21(1) of the Act of 2021 was filed by the opposite party No. 3 who is the owner of the property in question which has been tenanted to the petitioner on a monthly rent of Rs. 4000/-. The said property is being utilised by the petitioner for running a shop. It was further stated that after coming into force of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021, a new tenancy agreement was submitted by opposite party no.3 to the petitioner who refused to sign the same, pursuant to which a notice was given on 23.11.2021 to vacate the said premises. The legal notice was also not accepted by the petitioner, and hence an application for eviction was filed stating that the premises were required for his establishment of a business for his son. It was further stated that the petitioner has not paid the enhanced rent since 01.03.2021.
4. The rent authority had issued notices to the petitioner who had put in appearance and opposed the application for eviction.
5. The application for eviction was allowed by the Rent authority by means of the impugned order dated 14.12.2022 after recording the finding that the petitioner did not execute the rent agreement as per the provisions contained in the Act of 2021 nor did he pay the enhanced rent since 01.03.2021 and

consequently there was violation of Section 9(3) of the Act of 2021. It was further held that the petitioner has repeatedly refused to accept the new agreement proposed by the landlord, and also that the landlord wanted the premises for establishing the business / office and on account of the aforesaid facts allowed the application, and ordered the petitioner to vacate the said premises in 30 days.

6. Appeal was preferred by the petitioner before the Rent Tribunal against the order passed by the rent authority dated 14.12.2022. In the said appeal it was submitted that the landlord had not given any notice as prescribed under the Act of 2021 nor was any notice received by the petitioner and consequently he is not entitled to enhancement of rent as prayed for. It was further stated that agreed rent was only Rs.500/- as per the agreement dated 3.4.1989 and the petitioner has already deposited the said rent.
7. Objections were filed by the landlord to the said appeal wherein it was stated that the petitioner has not deposited Rs.24000/- which is fifty percent of the outstanding rent as per the provisions of Section 35 and consequently the said appeal was not maintainable nor even entertainable in the said form. It was further stated that the rent authority had duly taken into consideration all the facts with regard to service of notice upon

the petitioner and on his being satisfied that despite service of notice the enhanced rent has not been paid and also that the petitioner has deliberately avoided entering into new agreement as per the provisions contained under Section 4 of the Act of 2021 which in itself was a ground for eviction and consequently submits that there was no illegality or infirmity in the order of eviction passed by the rent authority.

8. Counsel for the petitioner assailing the impugned orders has vehemently submitted that no notice was served upon the petitioner prior to institution of the eviction proceedings before the rent authority and that the findings recorded by the courts below is perverse and requires interference. It was further stated that the owner has alternative properties in which he can settle his son and accordingly even on the ground of comparative hardship no case is made out in favour of the landlord.
9. Counsel for the respondent has supported the impugned orders and submitted that prior notice was duly served upon the petitioner and there is no infirmity in the findings recorded by the courts below in this regard. He further stated that the respondent was able to demonstrate that the premises are required for his personal need as per section 21 (2) (m) of the Act of 2021 and consequently order for eviction was passed. He prayed for dismissal of the writ petition.

10. I have heard learned counsel for the parties and gone through the records.

11. At the outset, it is noticed that present proceedings have been initiated under Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 which has replaced Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. There is substantial difference in the procedure laid down for eviction of the tenant in both the enactments. Under the Act of 2021 an obligation is cast upon the landlord and the tenant to enter into agreement in writing and inform the rent authority within two months of the said agreement either jointly or separately provided that the tenancy is for a period of 12 months or more. In case of old/existing tenancy on the date of commencement of the new Tenancy Act of 2021, the parties are expected to enter into agreement in writing and inform the rent authority within three months of the commencement of the said Act and in case of written agreement obligation is cast upon him to inform the rent authority jointly or separately and present the same to the Rent authority.

12. That first proviso of Section 4(3) makes it obligatory to the landlord to give particulars in prescribed format in First Schedule qua tenancy to the rent authority within one month of the expiry of three months referred to above. In the event no agreement is entered in writing, and in such an eventuality the

tenant will also be required to give his particulars and in the event of failure on part of the tenant in discharge in his part of obligation, he will be liable to eviction .

13. Under the old Act of 1972 suits were maintainable to certain specified contingencies for seeking eviction, while under the new tenancy Act any application for eviction would be maintainable on the grounds mentioned in the said Act before the rent authority. Accordingly, simple and summary procedure has been devised under the Act of 2021 for eviction of tenant.

14. Considering the rival submissions, it is noticed that respondent No.3 (The Landlord) had moved an application under Section 21(2)(b) of the Tenancy Act, 2021 alleging that the petitioner has not paid arrears of rent for more than two consecutive months and also under Sub-Section 2(m) of Section 21 wherein he has stated that the said premises was required by him for establishing business for his son. Tenancy in the present case had commenced on 3.4.1989 with regard to the shop situated at 253/96, Nadan Mahal Road, Lucknow which was owned by respondent No.3. The rent agreed in 1989 was Rs.500/- per month. Case of the landlord was that after coming into force of the Tenancy Act of 2021 he has been repeatedly asking and requesting the petitioner to enter into rent agreement, but he did not enter into any such agreement and subsequently he had sent notice on 23.11.2022 which was refused to be accepted by the

petitioner consequent to which application for eviction was filed before the rent authority. It was stated that the petitioner has alternate accommodation from which he can start his business and that he requires the said shop for opening family business and also for his personal use and accordingly the rent authority found it to be a fit case for allowing the application. Much emphasis has been laid by the petitioner with regard to service of notice. It has been stated that repeated attempts were made for service of notice upon the petitioner and the service has been found to be sufficient by the authorities below.

15. Considering the submissions made by the petitioner with regard to not receiving any notice of prior to filing of the suit for eviction, this Court is of the considered view that when an application for eviction is based solely on Sub Section 2(b) of Section 21 of the Act of 2021 which provides that in case the tenant has not paid arrears of rent and other charges payable in full as specified in sub section (1) of Section 13 for two consecutive months including interest for the delayed payment as specified by the tenancy agreement within a period of one month from the date of service of notice for payment of such arrears of rent and other charges payable to the landlord, service of notice by the Landlord is essential and mandatory as is provided in section 21(2)(b) of the Act of 2021. Relevant extract of section 21 are reproduced hereunder:-

*21(2)-The rent authority may, on an application made to it by the landlord in such manner as may be prescribed, make an order for eviction and recovery of possession of the premises on one or more of the following ground, namely-*

*(a).....*

*(b) That the tenant has not paid the areas of rent and other charges payable in full as specified in subsection (1) of section 13 for 2 consecutive months, including interest for delayed payment as be specified in the tenancy agreement within a period of one month from the date of service of notice of demand for payment of such arrears of rent and other charges payable to the landlord:*

*(d) and the tenant has continued to misuse the premises even after receipt of notice from the landlord to desist from such misuse.*

*(g) that the tenant has given written notice to vacate the premises let out on rent and in consequence of that notice the landlord has contracted to sell the said premises or a stake in any other step, as a result of which his interest would seriously suffer if is not put in possession of the premises.*

*(m) that the premises are required by landlord either in its existing form or after demolition and new construction thereof for the purposes of its occupation by landlord.*

16.Provisions of section 21 would indicate that 12 grounds have been specified for moving an application for eviction against the tenant. Only grounds (b),(d) and (g) provide for service of notice prior to moving an application for eviction. According to Subclause (b) where the application for eviction sought to be made on ground of non-payment of rent a prior notice has to be given to the tenant, and in the event of non-compliance, an application for eviction can be filed. As per sub clause (d) in case of the misuse of the premises by the tenant even after receipt of notice for the landlord, an application for eviction can be filed. Here also it is necessary that the prior notice is



required to be given to the tenant to restrain him from misusing the property and lastly according to subclause (g) of section 21 (2) the landlord can give written notice to the tenant to vacate the premises informing him that he has contracted to sell the said premises or that his interest will suffer in case he is not put in possession, and in case despite the notice the premises are not vacated, then an application for eviction can be filed.

17. It is accordingly noticed that it is not necessary to give a prior notice for vacation of the tenanted premises in all the contingencies as provided for in section 21(2). Wherever notice has to be given prior to submission of application for eviction, it been expressly provided for in section 21(2) and therefore in case the application for eviction is filed under clause (b),(d) and (g) of section 21(2) only then the notice would be necessary given to the tenant and not otherwise.

18. In the present case application for eviction was filed under Section 21(2) (m) and also under section 21(2)(b) of Act of 2021. Respondent No.3 landlord had stated that the said premises was required for his personal use which is a condition prescribed in sub clause 2 (m) of Section 21 and consequently there was no dispute in this regard and even rent authority has only ordered eviction without passing any order for payment of arrears of rent, clearly indicating that the application for

eviction has been allowed only considering the aspect of personal need of the landlord as per section 21(2)(m).

19. Both the authorities below have returned a concurrent finding of fact with regard to service of notice though the petitioner has vehemently contested this fact in the present petition. In light of the above discussions where we have already held that there is no requirement of service of prior notice where eviction was sought on the ground of personal need as provided in clause (m) of section 21(2) of the act of 2021, and hence it is not necessary to go into the issue of sufficiency of notice. The application for eviction filed by the landlord has been allowed only on the ground of personal need as contained in Section 2(m) of Section 21. It is for this reason that the rent authority did not pass any order directing the petitioner to pay the outstanding rent. According to sub section 2 (m) of Section 21 the landlord has only to demonstrate that the premises are required for his occupation. This provision is clearly distinguishable from the provisions in erstwhile Act No.13 of 1972 where the aspect of comparative hardship and bonafide requirement was to be established by the landlord.

20. Exclusions of bonafide requirement of landlord as a ground for eviction has, in fact, materially altered the law in this regard.

21. In absence of the word “bonafide requirement” under the Tenancy Act, 2021 the landlord has to demonstrate that the premises are required by him in its existing form or after demolition for the purpose of its occupation by him. This aspect of the matter has not been disputed by the petitioner nor is there averment or material either before the rent authority or rent tribunal or before this Court to show that the landlord does not require the tenanted premises for his own occupation. In absence of any such averment or material there would not be any occasion to interfere in the order passed by the rent authority or the rent tribunal.

22. Accordingly, there is no merit in the present writ petition which is accordingly **dismissed**.

**(Alok Mathur, J.)**

Dated: 8.1.2024.

RKM.