

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (M/S) No. 2198 of 2021

Harjinder Singh

.....Petitioner

Vs.

Harvansh Lal

.....Respondents

Present: Mr. Jitendra Chaudhary, Advocate, for the petitioner.

Mr. Sudhir Kumar, with Mr. Vikas Kumar Guglani, Advocate, for the respondent.

Hon'ble Sharad Kumar Sharma, J (Oral)

The issue would be as to whether a “government servant” of the United States of America, would be treated as to be equal, as to be a government servant serving in India, to bring him with the exception clause provided under sub-clause (b) of sub-rule (2) of the Rule 16 of the Rules framed under the Act No.13 of 1972.

2. The brief facts are, that initially the respondent/landlord had initiated the proceedings under section 15 of the Provincial Small Causes Courts Act, being Suit No.07 of 2009, “Harvansh Lal Vs. Harjinder Singh”, before the court of 1st ADJ, Rudrapur, District Udham Singh Nagar, on the ground that the petitioner/tenant has **failed to remit the rent** which was due to be paid of the shop in question. The said suit was dismissed by the judgment of 17th December, 2014.

3. In fact, initially the learned counsel for the petitioner argued that the dismissal of the SCC suit would be having a bearing, on the proceedings under section 21 (1) (a) of the Act, which was instituted subsequent to the dismissal of the SCC Suit. At this juncture itself, it would be apt to answer that the scope of section 15 of the Provincial Small Causes Courts Act, and the

field which it covers under section 21 (1) (a) of Act No.13 of 1972, is distinct to the one provided under section 21 (1) (a) of the Act No.13 of 1972, for the reason being that section 15 of the Provincial Small Causes Courts Act itself, has got its parameters and periphery within which the proceedings under it, could be decided. Its dismissal will have no bearing when the tenant institutes the proceedings under section 21 (1) (a) of the Act on the ground of the bonafide need, which is a field not covered by the proceedings under section 15 of the Provincial Small Causes Courts Act.

4. Thus, this argument of the learned counsel for the petitioner will have no legal effect, as such so far as the proceedings under section 21 (1) (a) of the Act No.13 of 1972, is concerned, because it is absolutely an independent proceedings and will not be clouded by any earlier decision taken in the SCC suit merely based upon the ground of the default committed in remittance of the rent.

5. After the dismissal of the SCC suit, it is contended by the petitioner/tenant, that a release application was preferred by the landlord under section 21 (1) (a) of the Act No.13 of 1972, for seeking a release of the tenement in question on the personal need, and for the said purpose certain grounds, which are provided under the Act No.13 of 1972, has been taken in the release application itself, would required to be considered, the release thus instituted by the respondent before the court of learned Prescribed Authority being Rent Control Case No.01 of 2015, “Harvansh Lal Vs. Harjinder Singh”, it was primarily the ground for release of the tenement, which has been described as to be a shop of 16 x 13 feet, bearing No.I6, the precincts of which has been given in paragraph 1 of the release application, situated in Punjabi Market, Shop No.I-6, Rudrapur, District Udham Singh

Nagar, which was sought to be released on the ground, that the landlord and his children, they are qualified medical practitioner and at present i.e. when the release application was preferred on 04.02.2015, they were working in the United States of America, under the government employment, and since they had an affinity to the country, they wanted to leave the government job and they intended to settle in India to serve the public, and that was the intention expressed for the purposes of the bonafide need of the landlord as per paragraph 2 of the release application.

6. The release application was contested and after the contest being put to the Release Application No.01 of 2015, “Harvansh Lal Vs. Harjinder Singh” was ultimately allowed by the court of Prescribed Authority by the judgment of 01.10.2021, and consequentially the Rent Control Appeal No.09 of 2017, “Harjinder Singh Vs. Harvansh Lal”, as preferred under section 22 of Act No.13 of 1972, was dismissed by the learned appellate court, thus concurrently recorded the findings that the landlord had a bona fide need as expressed in the release application, to settle in India by opening a clinic for the children, who are in the government employment in the United States of America.

7. A very limited and short argument has been raised by the learned counsel for the petitioner in the context of the implications drawn by the provisions contained under Rule 16 (2) (d) of the Act No.13 of 1972, which reads as under:-

“16. Application for release on the ground of personal requirement:-

(1).....

(2) While considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of a building let out for purposes of any business, the prescribed authority shall also have regard to such facts as the following:-

(a)....

(b)....

(c)....

(d) Where a son or unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant of the landlord has, after the building was originally let out, completed his or her technical education **and is not employed in Government service**, and wants to engage in self-employment, his or her need shall be given due consideration”,

8. Under Rule 16 (2) (d) of the Act, which is extracted hereinabove, creates an embargo that in case if a person for whose need release is filed is in the employed in the government services, in that eventuality, the release application has to be dealt with in accordance with the legal implications contained under Rule 16 (2) (d) of the Act.

9. The issue which becomes relevant herein to be considered is that in the context of the facts of the present case, as to who would be the “government servant”, for the purposes of Act No.13 of 1972, because the Act itself doesn’t defines the “government servant”; independently, in that context, once the Act doesn’t defines the term Government Servant, the General Law or the Law prevailing under the Constitution of India, which is the mother of all the laws has to be taken into consideration, to determine as to who would be Government Servant, in the context of Act No.13 of 1972.

10. The Constitution of India under Article 12 defines the “State”, it includes the Government and the Parliament of India, and the Government and Legislature of each of the States, and all local or other authorities **within the territory** of India or **under the control** of the Government of India.

11. The Constitution in its quite explicit terms for defining the State had included the Authorities or the Government, which are situated “within the territory of India” or “are under the control of the Government of India”. The said implications of Article 12 of the Constitution of India, will not be attracted in the instant case to attract the embargo under Rule 16 (2) (d) of the Act No.13 of 1972, to create any obstruction as such from drawing the proceedings under section 21 (1) (a) of the Act No.13 of 1972, merely for the reason being that, it is not in dispute that the landlord needs as expressed in the release under section 21 (1) (a) was with regards to their children who are qualified medical practitioner and were working in the government job in the United States of America, which is fact not denied by the tenant, thus they will not be falling to be within the definition of being a government servant or being under the dominion of the Government, as covered under Article 12 of the Constitution of India having a direct control by the State or by the Government of India.

12. In that eventuality, Rule 16 (2) (d), where it provides with a restriction for release for the need of the “government servant”, since its not inclusive under Article 12 of the Constitution of India, the need expressed for the children who were employed in United States of America, will not be under the territory of India or under the direct control of India or its states, as included in the First Schedule of the Constitution. Thus, the embargo under Rule 16 (2) (d) of the Act, would not be attracted, where the bonafide need is expressed for the family member, working abroad and want to settle in India.

13. In order to widen the interpretation of expression, when the Special Act, doesn't contains a definition as to who would be the government servant, in that eventuality, the general

rule or law will have to be considered for example as that of UP General Clauses Act of 1904, which defines the “**government servant**” under sub-section (19A) of section 4 of the Act. The General Clauses Act, 1904, as applicable to the State of Uttar Pradesh (now Uttarakhand), provides that the “government servant”, shall include the servant of the Central Government or that of any State Government.

14. Meaning thereby, since it means to be read in the context of a State Law i.e. Act No.13 of 1972, the definition of the government given under sub-section (19A) of section 4 of the Act, will here has to be read in context of the employees working in the State falling within the territory of India or with the Central Government, which is not the case here in the instant writ petition because admittedly the need of the heirs of the landlord who are within definition of family, since being the employed with the Government of United States of America, they will not be a government servant who can be taken to be under the control of the dominion of the State or under the dominion of the Central Government falling within the territory of the Government of India.

15. Almost similar expression has been given by the General Clauses Act, 1897 (Central Act), as made applicable, which under sub-section (23) of section 3 of the Act, it too has almost given a similar expression that the government in the context of the Article 12 of the Constitution of India, will have to be read either the State or the Central Government, lying within the territory of India and being under the direct control of the State Government or the Government of India, and in that eventuality a person with the employment of the sons in the United States of America, will yet again not be falling under sub-

section (23) of section 3 of the General Clauses Act. Hence, the embargo of Rule 16 (2) (d) of the Act, would not be attracted.

16. To further elaborate on the issue, and to draw a distinction, though it may not be directly relevant, but that can also be considered, as to who would be the government servant and the said principles could also be borrowed and elaborated to be applied from the provisions contained under Uttarakhand Government Servant Disciplinary and Appeal Rules, of 2003 where the government servant has been defined under sub-section (h) of section 2 of the Act, which is extracted hereunder:-

“2. **Definitions-** In these Rules, unless there is anything repugnant in the subject or context-

(h) “Government Servant” means a person appointed to public services and posts in connection with the affairs of the State of Uttarakhand;”

17. It means that a person appointed in public service and post, in connection with the affairs of the State of Uttarakhand and once it is in the context of the State law, that is rent control Act No.13 of 1972, in that elaboration, the government servant herein if it is to be read in context of the Act No.13 of 1972, it would mean a person who is working with the affairs of the State of Uttarakhand, and not otherwise which may not be a case at hand.

18. In order to further elucidate the implication as to how the term government servant is to be interpreted, it will be apt to even borrow the wider definition given under the Indian Penal Code, under section 14 of the IPC, which defines the government servant, which is extracted hereunder:-

“ [14. “Servant of Government”.—The words “servant of Government” denote any officer or servant continued, appointed or employed in India by or under the authority of Government.]”

19. Servant of the government as defined under section 14 of the IPC, which has got its common applicability in the State as well as under the Union, it denotes officer or servant continued, appointed or employed in India or under the authority of the government, which quite apparently would not be a case which would cover the argument as extended by the learned counsel for the petitioner, that since the need which was expressed by the landlord with regards to his children who are the government employee of the United States of America, they will not be the government servant under the Constitutional mandate or under any of the general laws as referred to hereinabove, to attract Rule 16 (2) (d) under the Act No.13 of 1972.

20. In that eventuality, the argument extended by the learned counsel for the petitioner to attract the exception under Rule 16 (2) (d) of the Act, will not be attracted, and as such, the argument from that pretext fails.

21. Learned counsel for the petitioner had relied upon one of the judgments of the Hon’ble Apex Court as reported in 2001 (8) Supreme 329, “G.C. Kapoor Vs. Nand Kumar Bhasin and others”, and particularly, he has referred to paragraph 14 of the said judgment, which is extracted hereunder:-

“14. The courts below completely overlooked Clause (d) of Sub-rule (2) of Rule 16 of the rules while deciding the eviction petition. From the rule extracted earlier, the court has to ascertain whether the son of the landlord has completed technical education and is not employed in the government and wants to engage in self-employment. All the criteria laid down in the said clause have been proved and,

therefore, appellant is entitled to get the decree for eviction.”

22. When the Hon’ble Apex Court was dealing with the implications of the Rule 16 (2) (d), in the said case it was a case where the need which was expressed by the landlord was with regards to his or her dependents, that was in the context of their engagement with the Government of India or the State Government, which could be quite apparently culled out from the entirety of the judgment if it is taken into consideration because the Hon’ble Apex Court in the said case was dealing with the situation where the dependents of the landlord were under the government employment of the establishment falling under the control or under the territory of the Government of India, and not in relation to the dependents working under the Government of other country, and hence this judgment would be of no avail for the present petitioner.

23. In view of the aforesaid clear distinction, because apart from the above, no other issue has been argued it would be treated that the need expressed with regards to the son of the dependents of the landlord being working with the United States of America they would not be a government servant who would be covered by under Rule 16 (2) (d) of the Act. Thus, the argument from the said prospective as raised by the learned counsel for the petitioner fails.

24. The writ petition apart from it since is covered by the concurrent findings of facts is not required to be ventured into. The writ petition accordingly fails. The petitioner is granted 30 days’ time to vacate the premises.

(Sharad Kumar Sharma, J.)

30.10.2023