
(1997) 02 AHC CK 0097
In the Allahabad High Court
Case No : Writ Petition No. 74 (R/C) of 1996

A.K.Chatterjee

APPELLANT

Vs

A.D.J.(VII) Lucknow & Ors.

RESPONDENT

Date of Decision : 06-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (1997) 02 AHC CK 0097

Hon'ble Judges : B.K.Singh, J

Final Decision : Dismissed

Judgement

B.K. Singh, J.—The petitioner who is admittedly a tenant of opposite party No. 3 of a petition of house No. 45, Lala Prabhu Dayal Road, Cantonment, Lucknow on ground floor has preferred this writ petition challenging the order dated 16/4/1994, passed by the Prescribed Authority under U.P. Act 13 of 1972, whereby he allowed the release application in respect of accommodation in dispute in petitioner's tenancy as well as against the judgment and order dated 30 May, 1996, passed by the VIIIth Additional District Judge, Lucknow, by which petitioner's appeal against the order passed by the Prescribed Authority has been rejected.

2. A few relevant facts necessary for the disposal of the writ petition may be stated. That Shri Hari Saran Agarwal, opposite party No. 3, filed an application for release of the accommodation under Section 21(1)(a) of Act 13 of 1972, The allegation in the application was that his son Shri Dilip Kumar Agarwal has passed LL.B. Examination in 1974 and has entered into legal profession. He has no Chamber of his own. His family resides on the first floor of House No. 45, Sadar Bazar, Cantt. Lucknow. There is no spare accommodation with the applicant, opposite party No. 3 wherein his son Shri Dilip Kumar Agarwal could open his Chamber/Office. The premises in tenancy of the petitioner is most suitable for Office/Chamber. Shri Dilip Kumar Agarwal has also been elected as a

Member of the Lucknow Cantonment Board recently and as such his need for Office/Chamber has become more pressing. The applicant's all sons have been established in business except Shri Dilip Kumar Agarwal. For want of Office/Chamber he has to attend the office of a Senior Lawyer. The tenantpetitioner has purchased a big house in the name of his wife bearing No. 107, Sadar Bazar, Cantonment, Lucknow, 45 years back on the same road hardly at a distance of a few yards. The accommodation in the house so purchased by the petitionertenant is stated to contain 4 big rooms one kitchen, one bathroom and one latrine on the ground floor and two rooms on the first floor with bathroom. It was also stated that the petitioner has extended the said accommodation by making new construction. The tenantpetitioner has more than sufficient accommodation for his residential purposes and the ground floor portion, can be used by the petitioner for his commercial activities as it is available in vacant state and he can conveniently and easily shift his clinic from the premises in question to his own house. The opposite party No. 3 claimed that applicant has no other suitable alternative premises for the purposes of establishing his son's Office/Chamber whereas the tenant has suitable alternative accommodation in house No. 107, Sadar Bazar, Lucknow. It was also stated in the application that the tenant has acquired a plot measuring 23 ft. x 35 ft. in Hata Ram Das, Gola Sadar Bazar, Cantonment near Railway Crossing on Nehru Road and has started raising construction, which has been raised to a height of 6 ft. on all four sides. Boundary of the said accommodation has been raised. The opposite party No. 3 stated that the Cantonment Board Lucknow at Nehru Road and Badi Bazar crossing has constructed 24 shops which were auctioned on 27 March, 1989 by the Cantonment Board, Lucknow but the tenant did not apply for the same as he already has in his possession sufficient accommodation. The opposites party No. 3 claims that he has bona fide requirement of the premises in question for the occupation of his son Shri Dilip Kumar Agarwal for the purpose of Office/Chamber to get established independently in his profession. An undertaking was given that if the premises is released then it will not be let out to any one for any purpose. Finally it was prayed that the application be allowed and the accommodation in the tenancy of the petitioner be released in favour of the o4taer/iandlord.

3. The case was contested by the tenantpetitioner. The first two paragraphs of the landlord's application were admitted. It was stated that the accommodation in petitioner's tenancy is a big hall in which he has made compartments for pathology, surgery and out door patients. It was stated that there are more than 16 flats in the building, which have been let out to different tenants. The flats have been falling vacant from time to time, but they have been let out by the applicant to tenants. The tenantpetitioner stated that during the pendency of the case the applicant has moved a number of release applications, at least six in number as mentioned in paragraph 3 (9) and after getting them vacated, the released accommodation has been let out. It shows that the applicant has no need for any accommodation. It was stated that the applicant has occupied accommodation of Han Singh Hatwal and is living there. The tenantpetitioner

then stated that the applicant's son Shri Dilip Kumar Agarwal has opened his Chamber in ROOD Sagar building in a room with open roof on the second floor where even Signboard of applicant's son had been put up. The same was, however, removed after the institution of the present case. The tenantpetitioner denied that the applicant wants to provide Chamber/Office to his son. The tenantpetitioner stated that on 9282 two rooms were got released by the ownerlandlord which were in occupation of Mohan Lal as a tenant but he did not inform the Court about the vacation. The tenantpetitioner admitted that Dilip Kumar Agarwal has been elected a Member of the Cantonment Board but he denied his need for an office and again insisted that the accommodation in Roop Sagar building is serving the need of Shri Dilip Kumar Agarwal. The tenantpetitioner stated that carpet area of his house No. 107 is about 600 sq. feet whereas the carpet area of the clinic in tenancy accommodation is about 25 ft x 45 ft. The tenantpetitioner stated that in the house No. 107 there is a garage from which the staircase goes up and there is a septic tank in it. As such it can not be used for dwelling purposes. He parks his car therein. In the remaining portion of the ground floor the tenant has made a drawing room and a store room. There is no proper ventilation and cross ventilation. The tenant claims that there is shortage of accommodation and it is also not hygienic so as to take the patients who are suffering from contagious diseases. The tenant then has stated that the landlord has a number of accommodations which he has been letting. Had there been any need then he could have provided the same for the Office/ Chamber to his son.

4. The parties led evidence and a Commission was also issued whose report had been filed before the Prescribed Authority. The parties in support of their claim had filed affidavits. A few orders of the release of the accommodation in favour of Hari Saran Agarwal had also been filed by the tenantpetitioner in support of his case.

5. The Prescribed Authority considered the respective case of the landlordthe oppositeparty No. 3 and the tenantpetitioner. After considering the evidence led by the parties, the Prescribed Authority by a detailed judgment came to the conclusion that no accommodation is available in Roop Sagar building where office is held by the son. It has also been held that the building is about 3 to 4 kilometres away whereas the accommodation in question is in the main market of Sadar Bazar and is a suitable place for a lawyer's Chamber. The premises in respect of which the tenant's claim is that they have come in the possession of landlord are all situated in the back of the house. According to the Prescribed Authority the landlord is free to choose the accommodation which he wants to be released and the tenant can not dictate that some other accommodation and not in his tenancy be got released and used. The Prescribed Authority held that the applicant's son has no other proper accommodation and the accommodation in question is needed bona fide for establishing the son independently in the profession of law. The Prescribed Authority also compared the comparative hardship of the parties.

The conclusion of the Prescribed Authority is that from the Commissioner's report it is evident that the house No. 107 has sufficient accommodation for running the clinic. The tenant has five rooms on the ground floor with kitchen etc. and on the first floor he has two rooms and Latrine and Bathroom. The house is situated on the same road and is at a distance of about 25 yards away. The Prescribed Authority has held that the application for release was moved in the year 1981 and if the tenant had really made efforts then he could have suitably modeled the accommodation of house No. 107 for shifting his clinic. Besides the tenant has not made any efforts to find out any alternative accommodation for his clinic. The Prescribed Authority, therefore, concluded that in case the application for release is dismissed then it will cause more hardship to the applicantlandlord because his son will face considerable difficulty in getting himself established independently in the profession of law. The Prescribed Authority has also considered the case of the tenant that during the pendency of the release application the opposite party No. 3landlord had got some accommodation released. According to the Prescribed Authority he has recorded the findings of bona fide need and comparative hardship after taking into account the said development. According to the Prescribed Authority the factual aspects of the case makes him say that there is bona fide need and more of hardship to the landlord. The Prescribed Authority with the above finding has allowed the application and released the accommodation in the tenancy of the petitioner with the direction that he shall vacate the same within two months, failing which the order can be implemented through Court. Aggrieved by the order of the Prescribed Authority the tenantpetitioner had preferred an appeal in the Court of the District Judge, Lucknow. The appeal stood transferred to the Court of the Additional District Judge. The Appellate Court heard the parties counsel and he agreed with the findings recorded by the Prescribed Authority. The appellate court also came to the conclusion that there was no Chamber of the applicant's son in Roop Sagar Building. He categorically held that from the date of commencement of release proceedings till date Shri Dilip Kumar Agarwal, Advocate son of the applicant has no office. On the question of bona fide need the finding recorded by the Appellate Court is that it is established that the need for Chamber/Office is still prevailing. The learned Additional District Judge came to the conclusion that had there been any suitable accommodation for Office available then he would not have failed to occupy it. The Appellate Court took a view that had there been any suitable accommodation which came in the possession of the landlord then the son would have opened his office there instead of waiting since 1981. The appellate Court did not find any merit in the plea that release is sought for enhancement of rent. On the point of hardship the appellant court held that the tenant has his own house on the same road at a distance of a few yards from the accommodation in his tenancy hence shifting to it would not cause any hardship to the tenant. On the other hand if the release application is rejected then the landlord's son would face more hardship and would be adversely affected. The Appellate Court also held that from a perusal of the entire evidence on record he is of the view that bona fide need of the

applicant is established and on failure to get the accommodation vacated more hardship would be caused to landlord than to the tenant. The learned Additional District Judge accordingly came to the conclusion that on the grounds set up in the appeal he is of the opinion that the appeal is not worthy of being allowed. He accordingly dismissed the appeal and again gave two months further time to the tenant to vacate the premises.

6. It is against the above concurrent findings recorded by the two courts that the tenant has preferred this writ petition.

7. I have heard the learned counsel of the petitioner as well as the learned counsel of the opposite party No. 3 at some length.

8. The learned counsel of the petitioner has in his submission challenged the findings recorded by the Courts below on the ground that the accommodation is not needed for the son Shri Dilip Kumar Agarwal. The learned counsel has submitted that the petitioner had vacated a portion of the building in October, 1974. Besides other accommodations had fallen vacant in house No. 47 which were in the tenancy of Mohan Lal. The accommodation in his tenancy was released on the application of landlord but it was nowhere said in it that it was needed for the son. Only requirement for family members was shown. Then release applications against four more tenants were moved. These too were allowed. The landlord has moved into those accommodations. This aspect has not been considered by the lower courts in accordance with law. The learned counsel has further submitted that the courts below have not believed his witness. This vitiates the orders under challenge. The learned counsel has submitted that the finding on bona fide need is illegal and material facts have been omitted from being considered. The learned counsel has also tried to factually assail the findings. On comparative hardship the learned counsel has submitted that the accommodation as said to be available to the tenant in House No. 107, Sadar Bazar, Cantonment Lucknow is not sufficient to meet his requirement. According to him the Commissioner's report is malicious and an objection was filed against the report. The Courts below have, however, acted with material illegality and the findings of the Prescribed Authority in this regard are perverse. The finding on bona fide need as well as comparative hardship can not be sustained. The judgment and orders impugned in the writ petition deserve to be quashed. A few reported cases have also been relied upon by the learned counsel.

9. The learned counsel appearing on behalf of landlordrespondent No. 3 in the writ petition has submitted that the Prescribed Authority as well as the appellate court have recorded their findings on bona fide need and comparative hardship in favour of the landlord. The findings on the points of bona fide need and hardship are based on consideration of evidence and after subjective satisfaction. The findings on these points are purely factual and in writ jurisdiction it is not possible to again reapraise the evidence and interfere. The learned counsel has referred to a number of decisions of Hon''ble Supreme Court and this Court in

support of his contention that the factual findings cannot be gone into by this court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

10. I have considered the above submissions of the learned counsel of the parties. What is a very striking feature of this case is that since 1981 the landlord is seeking release of the accommodation in Petitioner's tenancy for the Chamber of his son Dilip Kumar Agarwal who has admittedly joined legal profession. The appellate court has categorically held in its judgment that Dilip Kumar Agarwal is still without a Chamber. The appellate judgment is dated 30 May, 1996. So the long wait of about 15 years and persistence of the landlord to get the accommodation released for the Chamber of his son cannot be categorised as fanciful or with mala fide motive. Besides, the petitioner has purchased a building on the same road at a distance of about 24 meters away from the accommodation in suit. He is still contesting the case on the ground that he will suffer greater hardship if the accommodation is released in landlord's favour. The tenant/petitioner also disputes the bona fide need of landlord set forth in the release application.

11. The thrust of the arguments of the learned counsel of the petitioner is that courts below have not considered petitioner's, evidence regarding other accommodation being got released by the landlord. He wants that again this court should go into the evidence and like trial court again record findings on bona fide need and comparative hardship. In my view that is not the scope of writ jurisdiction. Both the lower courts have considered the evidence and found that landlord's need for his son to open an Office/Chamber in accommodation in dispute is bona fide and when comparing the hardship have held that more hardship would be caused to landlord by rejection of the release application.

12. That above findings on bona fide need and comparative hardship are factual in nature and what has to be seen is whether the same can be gone into in exercise of writ jurisdiction.

13. The Hon"ble Supreme Court while considering the jurisdiction of High Court in writ jurisdiction in its judgment reported in AIR 1986 S.C. 302 Harbans Lal v. Jagmohan Saran, has held as under:

"A writ in the nature of certiorari may be issued only if the order of inferior tribunal or subordinate court suffers from the error of jurisdiction, or from a breach of principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior court or subordinate court, when a High Court proceeds to do so, it acts plainly in excess of its powers."

14. The Hon"ble Supreme Court in a case reported in AIR 1984 S.C. 1447 Jagdish Prasad v. Smt. Angoori Devi, laid identical principle of law. It is as under:

"The jurisdiction to issue a writ of certiorari is a supervisory one and in exercising

it, the court is not entitled to act as a court of appeal. That necessarily means that the finding of fact arrived at by the inferior court or tribunal are binding. An error of law apparent on the face of record could be corrected by a writ of certiorari, but not an error of fact, however, grave it may appear to be."

15. The other view on the above point of Hon"ble Supreme Court is reproduced below. It is reported in A.I.R. 1978 S.C. 45 M/s. India Pipe Fitting Co. v. Fakruddin M.A. Baker and another.

"Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts, however, erroneous those may be. This power of superintendence conferred by Art. 227 is to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

HeId, that whether the landlord's requirement was bona fide and reasonable had been concurrently found by two courts below against the landlord by appreciating the entire evidence. After examining the reasons given by both the courts it was not possible to hold that the conclusions were "perverse" or even that those were against the weight of evidence on record. It was a case of reasonably possible factual appreciation of the entire evidence and circumstances brought on the record.

There was thus no justification for interference in the case with the conclusions of facts by the High Court under Art. 227. The High Court arrogated to itself the powers of a court of appeal, which it did not possess under the law, and exceeded its jurisdiction."

16. In the same law report of 1978 at page 29 Muni Lal and others v. Prescribed Authority and Others Hon"ble Supreme Court held as follows:

"It is not for the High Court in exercise of jurisdiction under Art. 226 of the Constitution to reappraise the evidence and come to its own conclusion which may be different from that reached by the Distt. Judge or the Prescribed Authority."

17. The Hon"ble Supreme Court in another recent case reported in 1993 Selected Civil Decisions 472 at page 474 : Om Prakash and another v. Smt. Sundari Devi and others, while striking down a judgment of remand of this court held as under:

"Even in a Second Appeal the High Court must restrict itself to questions of law; all the more so in a writ petition. We have referred to the findings of the High Court in some detail. They leave us in no doubt that the High Court reassessed the evidence and went beyond its legitimate jurisdiction. The intervention of this Court is therefore, called for, especially since the High Court has directed the appellate Authority to decide the appeal afresh "in the light of the observations made above". We do not approve of some of those observations."

18. The ratio of the above decisions is very clear. The jurisdiction of the High Court under Article 226 or under Article 227 of the Constitution of India can not be exercised as a Court of appeal. When the lower Courts have appraised the evidence and they have come to a finding of fact on the point of bona fide need and comparative hardship then it is not open to this Court to undo the said findings until some error of jurisdiction or manifest or apparent error of law is shown. The lower courts have dealt with the case of the parties on the points of bona fide need and comparative hardship correctly on appreciation of evidence. As stated above the submissions of the learned counsel of the petitioner is that this Court should interfere on the concurrent conclusions of fact on bona fide need and comparative hardship because the same are contrary to evidence and erroneous. This submission of the learned counsel of the petitioner can not be accepted because in exercise of jurisdiction under Article 226 this Court does not function as Court of appeal and cannot reappraise the evidence. The factual findings, even if erroneous, cannot be upset. The learned counsel of the petitioner has failed to point out any error of jurisdiction or apparent mistake of law committed by the lower courts.

19. In view of the above the writ petition is bound to fail. It is dismissed with costs. However, considering that the petitioner is carrying on clinic in the accommodation in dispute I grant him eight weeks time to vacate the premises failing which the opposite party No. 3 will be free to have the petitioner evicted in accordance with law.