
(1989) 05 AHC CK 0051

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2049 of 1989

Alok Brothers (Tea) Pvt. Ltd.

APPELLANT

Vs

VIIIth Additional District Judge and Others

RESPONDENT

Date of Decision : 11-05-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 22
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 16(1), 16(2)

Citation : (1989) 2 AWC 930

Hon'ble Judges : N.N. Mithal, J

Bench : Single Bench

Advocate : R.V. Gupta and S.K. Gupta, for the Appellant; S.C. and K.M. Dayal and S.P. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mithal, J.—By means of this petition under Article 226 of the Constitution, the Petitioner seeks quashing of the order passed by the Prescribed Authority dated 20-4-1987 and the decision of the appellate court u/s 22 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, herein "U.P. Act". The landlord has three sons, out of whom the youngest one is unemployed. He has admittedly passed his B. Com Final Examination in 1987. The landlord and his other sons are engaged in the business of cloth, cement, old gunny bags and building materials etc. An application u/s 21(1)(a) of U.P. Act was moved by the landlord on the allegation that he required the disputed accommodation for his unemployed son who intends to start business of auto spare parts in one of the shops in question. The second ground set out in the application is that the godown used for storing cement is to be shifted to one of the shops in dispute as the existing godown has become unsuitable due to dampness and leakage etc.

2. The tenant of course denied all these allegations and asserted that the

landlord has no bonafide or genuine need for any of the shops in question and that it was merely a device to oust him from the shop as he was one of the oldest tenant of the building. It was further asserted that on a comparative consideration, the tenant would suffer more than the landlord in case the petition is allowed.

3. The admitted position is that the tenant had got three shops in his tenancy which form part of a larger building in which there are as many as 8 shops besides a stair case behind which also there is one room measuring 7 X -11 with a Dochhatti over it which is in possession of the landlord. Of these three shops, two are adjacent to each other and lie to the south of the building in question abutting the road and face south with a four feet wide platform in front of them. The other shops are all east facing and they too have a four feet wide platform in front of them and these shops also abut a road. The Petitioner is a tenant of the two south facing shops and one shop facing east. Between these shops there is a stair case which is in possession of the landlord and also two other shops which appear to have been converted in one large shop and is occupied by other tenants. It is also undisputed that apart from the disputed property, the landlord has got one shop bearing No. 75/31 on Halsey Road Kanpur and a godown Premises No. 75/30 also on Halsey Road Kanpur which is Used as a cement godown-Premises No. 51/8, Raniganj is in the tenancy of one of the sons of the landlord and in a portion of this very shop a wooden partition had been fixed and the hind portion is being used as an office for running the gunny bag business. The fourth property admittedly in possession of the landlord is godown at 115, Rail Bazar, which is nearly "36" x 21" 6" with a tin shed verandah in front of it measuring 8 x 21" 6". In this dispute, we are "not much concerned with properties -Nos. 75/31 and 51/8, referred to above.

4. The Petitioner's main attack is that the landlord has no genuine or bonafide need of the shop in question. An application for release by the landlord can be allowed if the Prescribed Authority is satisfied that the building was bonafide required by the landlord for occupation by himself or any member of his family etc. The term "bonafide required" has been a bone of contention in several cases but over the years the word "required appearing in Section 21(1)(a) of U.P. Act has received judicial interpretation in a large number of cases. It is not necessary here to refer to all those cases but suffice it to mention that the crux of those pronouncements" is that this term has inherent in it the element of necessity in addition to a mere desire on the part of the landlord to have the accommodation and this should be actuated by a fair motive as opposed to a mere device of a landlord to obtain possession with an ulterior motive. However, such need or requirement is not required to be stretched to the limit of being absolute. A Full Bench of this Court in Chandra Kumar Sah and Another Vs. The District Judge and Others, , held that "bonafide" means genuinely or in good faith with no intention to deceive. Thus if the landlord comes to the Court without being actuated by any ulterior motive or if his need is not based on a fanciful whim, it may be deemed to be bonafide. On an ultimate analysis of the case law on tie

point, therefore, bonafide requirement of the landlord must be considered on the above broad principles subject, however, to special circumstances of each case. The Court must invariably consider the nature of the need set up by the landlord in the light of the surrounding circumstances whether the landlord really needs the accommodation for the required purpose having regard to the suitability of that accommodation for the said purpose.

5. Viewed in the light of the above, in the facts of the present case, it would be found that the landlord's son who has passed B.Com. in 1987 and wants to establish himself in auto spare parts business has been rightly held to be in genuine need of the accommodation for starting the business. It is undisputed that the property in question is situate in a market where other shops of auto parts dealers are also situate. Even in the building in question, of which the disputed shops form a part, at least 4 of the tenants are carrying on similar business. In these circumstances, it can not be disputed that so far as the landlord's need to establish his youngest son in the said business is concerned, the same is bonafide and genuine as the area is also most suitable for the purpose.

6. Coming now to the alleged need of the landlord for shifting his cement godown and the office to the disputed property, it will be seen that the landlord already has a godown in his tenancy. The case set out is that the said godown has become unsuitable as there is dampness and the roofs also leak which has made it necessary for the landlord to seek another place for stocking the cement. The Petitioner's contention, however, is that before the Prescribed Authority he had applied for local inspection of this premises but the same had been refused on opposition by the landlord, However, at the appellate stage, the landlord himself made an application for local inspection. The same was allowed and a Commissioner was sent to inspect various accommodations in possession of the landlord including the disputed property. This cannot therefore be a ground now for complaint. If the Prescribed Authority acted illegally in refusing to allow inspection, the appellate court could certainly rectify the mistake by sending a commission itself. However, the Petitioner's more substantial objection is that after the Commissioner's report was received, he had filed a detailed objection supported by an affidavit against it. In these objections, he had, apart from other things, uisputed the correctness of the report as regards the godown being damp or leaking at any place but it was alleged that all these things had been wrongly mentioned by the Advocate Commissioner and the matter required further investigation by sending another commission for local inspection. A copy of this application and the affidavit are Annexures "13" and "12" to the petition. In paragraph 14 of the affidavit i.e. Annexure "12", the Petitioner has raised a specific ground that there was neither any dampness in the walls nor there was any water in the godown or any apart thereof or in the gallery as reported by the Commissioner. Further there was no leakage of water from the roof. From the order of the appellate court, it is apparent that the Commissioner's report was not considered in the light of the objections raised by the Petitioner and the

affidavit in support thereof. These objections have been washed away by a cryptic remark that these are not substantiated by any cogent reasons. This was not the proper way to deal with these objections particularly because it related to a factual observation made at the time of the inspection. It was not possible for the Petitioner to give any evidence or substantiate it in any other manner since the court had earlier decided to consider these objections in the light of the objections already filed. One cannot forget that specific objections were taken by the Petitioner and were sworn on an affidavit. Unless there was a counter-affidavit by the other side or there was some other material which prima facie showed that these objections were baseless, these could not be rejected merely by saying that no cogent reasons have been assigned. It was the duty of the Court to ascertain the actual position before it proceeded to rely upon the Commissioner's report. The appellate court certainly committed a manifest error of law in taking into consideration this report which has resulted in serious prejudice to the Petitioner.

7. In order to judge whether the need of the landlord was genuine or not, it was necessary for the Court to find that the reason for which the landlord wanted to shift his godown was founded on a correct ground i.e. the existing godown in his possession was really unsuitable because of dampness. This not having been done in the present case, the order cannot be sustained.

8. Apart from the above, in the three shops which are in possession of the Petitioner he is carrying on the wholesale business of selling Tea. The three shops are held by the Petitioner under separate agreements and the rent is also paid separately for each of them as would be clear from paragraph 4 of the release application itself according to which one of the shops is let out to the Petitioner at the rate of Rs. 120/- plus taxes and the other two shops are let out at the rate of Rs. 240/- each plus taxes. In such a situation, it was the duty of the Prescribed Authority to consider whether the need of the landlord will be satisfied by one or two shops instead of all the three. For this an assessment of requirement for auto spare part business and the cement godown and the office was necessary and at the same time also keeping in mind that the landlord has already with him one room behind the stair case in his possession. If the Prescribed Authority or the appellate court comes to the conclusion that all the shops should be released, then only an order for releasing the same could have been passed.

9. Sri K.M. Dayal appearing for the landlord opposite-party, however, submitted that there is no rule requiring this aspect to be considered in the case of a non-residential building. According to him Rule 16(2) which deals with non-residential buildings does not lay down any such mandatory condition while such a condition is there in respect of residential building under Rule 16(I)(d). This argument, however, omits Sub-section (1) of Section 21 which provides that the order of eviction can be passed by the Prescribed Authority in respect of the building under tenancy or any part thereof. It essentially means that it is within the

powers of the Prescribed Authority either to release the entire building or to release only a specified part thereof. Even if there is no specific provision in this regard in the Rules, the main section does not lose its efficacy. The Rules are always servient to the main section and are intended only to carry out the intent of the main provision. The argument, therefore, does not appeal to me. In the case of both residential and non-residential building, the Prescribed Authority has to see whether the entire building or only a part thereof should be released and for this purpose a finding must be recorded that the landlord's need will be met only by releasing the entire property and not by only a part thereof.

10. It is also alleged that the business of used gunny bags is dwindling on landlord's own showing. The Petitioner has pointed out the allegation made in paragraph 6 of the release application wherein it is mentioned that upto the end of 1881, the business of used gunny bags was being run on a proper scale. Thereafter due to change in policy of the Cement Corporation for used gunny bags for packaging, the applicant (landlord) was carrying on skeleton business of local supply of used gunny bags but the turnover was very meagre. This admission is very significant for determining the bonafide need of the landlord. If the gunny bag business was already going down, the need for space for keeping those bags must also have gone down. That being so, the godown space available with the landlord in premises No. 115, Rail Bazar can easily be utilised for stocking Cement bags. In this connection, it may also be mentioned that the landlord himself had filed a statement of annual turnover from the year 1976-77 to, 1986-87 of his gunny bags business which shows that from a turnover of nearly 13 lakhs, it has come down approximately 2 lakhs by 1986-87. The existing godown is hardly 17' 6" x 10' while the gunny bag business is being carried on in a godown which is as big as 26' x 21' 6" plus 10' x 21' 6" and a tin shedded verandah 8' x 21' 6". The very dimensions shows that the landlord has got almost three times as big a godown with him as he was at present using for stocking the cement. Again this aspect of the matter has not been considered by the appellate court in its proper perspective.

11. Lastly it was urged that the Prescribed Authority has misconstrued the Sales-tax return to arrive at a conclusion that the Petitioner's business was going down. It is urged that although the amount of tax payable may have gone down yet the volume of business or turnover had gone up and this was on account of changes in Sales-tax Law. It is not necessary for me to enter into this controversy in these proceedings and it is better left for being considered by the appellate court when the matter goes before it.

12. Having considered the matter, in my opinion, the order passed by the appellate court cannot be sustained and must be quashed in view of the observations made in the body of the judgment above. The appellate court (VIII Addl. District Judge, Kanpur) is directed to register the appeal to its original number and dispose of the same afresh in the light of the observations made above. With these observations the writ petition is allowed with costs.