

(2017) 03 AHC CK 0033

In the Allahabad High Court

Case No : Matters Under Article 227 No. 1240 of 2017

Anand Vardhan Singh

APPELLANT

Vs

Rajesh Kumar

RESPONDENT

Date of Decision : 01-03-2017

Acts Referred:

Constitution of India, 1950 — Article 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (2017) 122 ALR 200 : (2017) 2 ARC 241

Hon'ble Judges : Manoj Misra, J.

Bench : Single Bench

Advocate : Santosh Kumar Yadav and Babu Lal Ram, Advocates, for the Petitioners; Javed Husain Khan, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Manoj Misra, J.— Heard learned counsel for the petitioners; Sri W.H. Khan, assisted by Sri J.H. Khan, for the respondents and perused the record.

2. This is a tenants' petition against the release order dated 13.07.2016 passed by the Prescribed Authority/Civil Judge (Senior Division), Chitrakoot in Rent Case No.1 of 2012 by which the shop in dispute has been released in favour of the landlord-respondents. The petitioners have also assailed the order dated 08.02.2017 passed by the Additional District Judge, Chitrakoot by which he has dismissed the appeal preferred against the order of the Prescribed Authority and has affirmed the order passed by the Prescribed Authority.

3. A perusal of the record would reveal that the landlord-respondents filed a release application, under Section 21(1)a) of U.P. Act No.13 of 1972, in respect of a shop admeasuring 20" x 20". It was claimed that on death of the original owner/landlord of the shop, a family settlement had taken place between his heirs and legal representatives, as a result, the eastern half portion of the shop in dispute admeasuring 10" x 20" came to the share of the release applicant no.4

(Mahesh Kumar Jain respondent no.4 herein) and the western half portion admeasuring 10" x 20" came to the share of release applicant no.6 (Devesh Kumar Jain-respondent no.6 herein). It was claimed that the release applicant no.6 had an adjoining shop in which he was running business by the name of Shyam Motors and the requirement of the business could not be met with the accommodation which was in his possession, therefore, part of the accommodation in dispute, which came to the share of the release applicant no.6, was bona fide required for expanding the business of the release applicant no.6 so as to make it in conformity with the requirements of the automobile business. The release applicant no.4 set up the need for the eastern half portion of the shop by claiming that he does not have any settled employment and, therefore, the shop in question was required for his own employment. As regards comparative hardship, it was alleged that after the death of original tenant, namely, Balender Singh, from the shop in dispute, a hotel was not being run by the heirs and legal representatives of Balender Singh but by his brother Shiv Raj Singh and, therefore, in case the release application is allowed, the tenant will not suffer greater hardship than what the landlord would suffer in case of rejection of the release application. The petitioners contested the release proceedings by denying the family settlement between the heirs and legal representatives of the original owner/landlord and by claiming that the landlords were very wealthy having several properties and, therefore, they did not have any bona fide need for the accommodation in dispute. They also denied the running of the hotel by Shiv Raj Singh, the brother of the original tenant.

4. The Prescribed Authority after examining the evidences brought on record and after considering the case at length recorded a finding that from the affidavits brought on record it was established that a family settlement had taken place between the heirs and legal representatives of the deceased-landlord and under the settlement, the eastern half portion of the shop admeasuring 10" x 20" came to the share of the release applicant no.4 and the western half portion came to the share of the release applicant no.6. The Prescribed Authority also observed that the tenant had no right to challenge the family settlement. It also found that in so far as the release applicant no.4 was concerned, there was nothing on record to show that he was gainfully employed or in service and, accordingly, need of the release applicant no.4 was found to be bona fide and pressing. In respect of the release applicant no.6, the Prescribed Authority returned a finding that from the documents brought on record it was established that the release applicant no.6 was running an automobile business by the name of Shyam Motors from a shop adjoining the shop in dispute and the requirement of the business was of much larger area than what was in possession of the release applicant no.6, therefore, to satisfy his need for the purpose of expanding his business, he had bona fide need for the western half portion of the shop in question. The suggestion given by the tenant that there were other properties with the landlord was discarded as having no factual foundation and it was observed that even if the landlord had other properties that would not deprive

the landlord of his right to choose any one of the properties for the purpose of satisfying his need. Accordingly, after taking conspectus of the facts and circumstances of the case, the Prescribed Authority returned a finding that there was bona fide need of the landlord for the premises in question.

5. On the question of comparative hardship, the Prescribed Authority took into consideration the claim of the landlord that it was the brother of the deceased tenant who was running a hotel from the shop in question whereas the other family members were not interested in the said business. It was found that a first information report was lodged as Case Crime No.668 of 2013 in which allegations were levelled by Harsh Vardhan Singh (petitioner no.2) against accused Raju alias Rajesh for having demanded Goonda tax from his uncle Shiv Raj Singh in connection with running of the business. The court found that there was no occasion to demand Goonda tax from uncle Shiv Raj Singh unless he was running the business and since the first information report was lodged by none other than the petitioner no.2, an adverse inference was drawn against the claim of the tenant that they were themselves running the business. The court below also considered that earlier the pairvi of the case was being done by Shiv Raj Singh. Accordingly, it found that there was some substance in the plea of the landlord that it was Shiv Raj Singh who was running the hotel business from the shop in question. In addition to above, while comparing the hardship, the court found that no substantial material was placed on record that despite pendency of the release application the tenants had made genuine search for an alternative accommodation. Thus, after taking a conspectus of the facts and circumstances of the case as also the need of the landlord it came to the conclusion that comparative hardship would also be greater in the case of landlord. Accordingly, the Prescribed Authority directed release of the accommodation. The order passed by the Prescribed Authority was assailed by the petitioners before the appellate court. The appellate court also, after examining the entire evidence on record, affirmed the finding returned by the trial court and dismissed the appeal.

6. The learned counsel for the petitioners though has challenged the judgment and order passed by the courts below but has failed to demonstrate that the findings returned by the courts below are vitiated in any manner. It has not been demonstrated that the findings which have been returned are based on ignorance of relevant evidence or on misreading of any evidence.

7. Under the circumstances, this Court does not find it appropriate to entertain this petition under Article 227 of the Constitution of India because no error apparent on the face of the record could be shown in the orders impugned.

8. At last, the learned counsel for the petitioners prayed that some time may be provided to the petitioners to vacate the accommodation in dispute.

9. Sri W.H. Khan, who appears on behalf of the landlord-respondents, submitted that he has no objection to grant of reasonable time to the petitioners to vacate the premises subject to furnishing of undertaking before the court below that

they shall handover vacant and peaceful possession of the accommodation in dispute after expiry of the period provided herein.

10. Having considered the rival submissions and having perused the orders passed by the courts below, this Court does not find any good reason to interfere with the orders passed by the courts below. However, taking into consideration the facts and circumstances of the case, the petitioners are provided time upto 31st August, 2017 to vacate the premises provided they furnish an undertaking before the Prescribed Authority, Chitrakoot by 31st March, 2017 that they shall handover vacant and peaceful possession of the premises in dispute to the landlord respondents by 01st September, 2017. If no undertaking is filed by 31st March, 2017, as provided herein above, the release order shall be executable forthwith. In case an undertaking is filed by 31st March, 2017, as provided herein above, then the petitioners shall not be evicted till 31st August, 2017. However, if the petitioners do not handover peaceful and vacant possession of the premises in dispute to the landlord-respondent by 01st September, 2017, it shall not only be open to the landlord respondents to seek for eviction of the petitioners as also for possession of the shop in question but it shall also be open to them to initiate contempt proceedings against the petitioners.

11. With the aforesaid observations/directions, the petition is disposed of.