

(2010) 11 AHC CK 0205

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 65887 of 2010

Arun Kumar & Anr

APPELLANT

Vs

Shiv Shanker Pandey & Ors

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21

Citation : (2010) 11 AHC CK 0205

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.

Heard counsel for the parties and perused the record.

This writ petition has been filed by the petitioners challenging the validity and correctness of the judgment and order dated 13.9.2010 passed by the Additional District Judge, Court No.2, Allahabad in Rent Control Appeal No. 79 of 2006, Arun Kumar and another versus Shiv Shankar Pandey and others whereby the appeal of the petitioners was dismissed by affirming the judgment and order dated 17.5.2006 passed by the Prescribed Authority/ Additional Civil Judge (Senior Division), Court No. 13, Allahabad in P.A. Case No. 24 of 1998, Shiv Shankar Pandey versus Shyama Prasad Srivastava and others. By order dated 17.5.2006 P.A. Case No. 24 of 1998 of the landlord respondent no.1 was allowed releasing the accommodation in dispute in his favour.

Brief facts of the case are that the house in dispute was a single unit residential accommodation let out on rent to Sri Bageshwari Prasad, the grand father of the petitioners and after his death his four sons namely, Chandrika Prasad, Tara Prasad, Kamta Prasad and Lalta Prasad succeeded the tenancy rights. Chandrika Prasad died issueless whereas Tara Prasad died leaving behind Shyama Prasad Srivastava and his other three sons. The tenancy rihgts were succeeded by all the sons of late Tara Prasad, who were residing in the said tenanted

accommodation along with other two sons of late Bhageshwari Prasad namely Lalta Prasad and after the death of Lalta Prasad, his tenancy rights were devolved upon his widow and three sons namely, Smt. Lal Mani Devi, Prabhat Chandra Srivastava, Prakash Chand Srivastava and Subhash Chandra Srivastava. Kamta Prasad also died and his tenancy rights were succeeded by his three sons namely, Someshwar Prasad, Hari Mohan and Kailash Bihari. It appears that subsequently the house in dispute was partitioned between the heirs of the landlord which was numbered as house no.179B and 179C although the entire house and tenancy is single succeeded by the heirs of original tenant namely Bhageshwari Prasad.

Respondent no.1 filed release application under Section 21(1)(a) of U.P. Act No. 13 of 1972 in the court below for release of house no. 233 on the ground that his younger son wanted to shift along with his family therein as there was no sufficient accommodation in house no. 208, Old Bairahana where the landlord respondent no.1 is residing.

The petitioners tenants filed their written statements denying the averments made in the release application.

The landlord filed an amendment application stating that inadvertently due to typing mistake house no. 233 has wrongly been mentioned as house in dispute no. 232, which was allowed by the Prescribed Authority vide order dated 1.12.2004. The amendment was incorporated in the release application treating it to be in respect of house no. 232 in place of 233.

Thereafter, an additional written statement was filed by the petitioners stating that by the aforesaid amendment the entire nature of the case will be changed. Replication was filed by the landlord thereto.

The Prescribed Authority vide order dated 9.8.2005 directed for issuance of commission on petitioners' application no.66B in respect of house nos. 232/233 in order to ascertain that both are the same unit of one house and is not separate and further directed the landlord to clarify his release application by means of amendment mentioning the boundaries of house nos. 232 and 233, Old Bairahana along with the details of rooms and amenities thereof.

The landlord filed amendment application 95A for adding certain paragraphs and certain words in the relief clause of the release application. Objection 96B was filed by the petitioner to the aforesaid amendment application along with the detail map of the entire accommodation i.e. house nos. 232/233. The Prescribed Authority vide order dated 14.10.2005 allowed the aforesaid amendment application by granting time to the petitioners for filing additional written statement, if any. Pursuant thereto, additional written statement was filed by the petitioners along with an affidavit.

After hearing the parties and going through the entire evidence on record, the Prescribed Authority vide order dated 17.5.2006 allowed the release application

by releasing house no. 232, Old Bairahana, Allahabad in favour of the landlord respondent.

Aggrieved by the aforesaid order dated 17.5.2006, the petitioners filed Rent Control Appeal No. 79 of 2006, Arun Kumar and another versus Shiv Shankar Pandey and others before the appellate Court.

During the pendency of appeal, the landlord filed an amendment application for making certain amendments in the release application on the ground that inadvertently some words were left in paragraph 4 of the release application which was allowed by the appellate court vide order dated 22.8.2010.

The Additional District Judge, Court No.2, Allahabad vide judgment and order dated 13.9.2010 dismissed the appeal, hence this writ petition has been filed by the petitioners with the aforesaid prayer.

Learned counsel for the petitioners submits that the amendment as sought and allowed by the Prescribed Authority treating the release application in respect of house no. 232 instead of 233 is wholly misconceived and has been filed at very belated stage, therefore, the said amendment cannot be said to be typing mistake as the evidence was led by the parties in respect of release of house no. 233; that after closing of evidence of the parties, the amendment is not permissible as it will change the entire nature of the case which is contrary to the provisions of Order 6 Rule 17 C.P.C.; and that admittedly the landlord has two houses in his possession and is residing at house no.208, Old Bairahana along with the family of younger son as such no additional accommodation is required but both the courts below have failed to consider this aspect of the matter by ignoring the evidence.

He also submits that the courts below have failed to consider the fact that house nos. 232 and 233 are not the separate houses and is a single unit with single entrance and common passage and no finding has been recorded by the courts below in this regard even the fact that the release application is not maintainable in absence of nonjoinder of other cotenants; that the petitioners have got no house of their own, hence the proviso to Section 21 of U.P. Act No. 13 of 1972 is not at all attracted on the facts and circumstances of the case; that it is well settled law that mere acquisition of house by the other tenants having independent family will not affect the rights of the petitioners to live in the accommodation in dispute as they have got no house in the city which fact has not been considered by the courts below; and that in any case, the need of the landlord apart from their three houses i.e. house nos. 208, 125 and 132 cannot be said to be genuine for the entire accommodation in dispute and the courts below have failed to consider the provisions of Rule 16(I) (d) of the Rules framed under U.P. Act No. 13 of 1972 regarding question of part release of the accommodation in dispute.

He next submits that no personal affidavit of the son of landlord has been filed before the courts below to show that he needed the accommodation in dispute

for himself for establishing his chamber, hence in the absence of such evidence in the form of affidavit, the need of the son of the landlord cannot be considered to be bonafide and genuine; and that the sole purpose for making the amendment in the release application in respect of house no. 232 instead of 233 is only in collusion with the other cotenants so that they can evict the petitioners and take possession of house nos. 232/233 and if the need of the landlord is genuine, he can very well be satisfied with the accommodation of house no. 233 and there is no need for making any amendment after conclusion of evidence.

Sri M.K. Gupta, learned counsel for the respondents submits that admittedly the tenancy is claimed by the grand forefather of the petitioners of the single unit house; that the tenancy was devolved upon the heirs of late Bhageshwari Prasad and the partition wall has been demolished by the heirs of late Bhageshwari Prasad, who are living in the house in dispute, hence the amendment application in the circumstances, for eviction of the petitioners from house nos. 232 and 233, which was recorded in the Municipal record after the partition between the heirs of the landlord does not at all affect the rights of the landlord.

He further submits that the heirs of the tenants have constructed their own houses in the same municipal locality, therefore, in view of Explanation (i) to proviso third of Section 21(1) of U.P. Act No. 13 of 1972, the question of bonafide need and comparative hardship cannot be raised by the tenants.

Explanation (i) to proviso third of Section 21(1) of U.P. Act No. 13 of 1972 reads thus:

" Explanation In the case of residential building

(i) where the tenant or any member of his family (who has been normally residing with him or is wholly dependent on him) has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area, no objection by the tenant against an application under this subsection shall be entertained."

According to him, the heirs of late Bhageshwari Prasad who are tenants in the house in dispute, which is a single unit house, does not affect the amendment for eviction of the petitioners from house nos. 232 and 233 in municipal record after partition equally amongst the heirs of the landlord. He also submits that admittedly the claim of the tenants is that even there was no partition wall in the house and the structure was maintained as it was originally let out to late Bhageshwari Prasad the forefather of the tenants.

He lastly submits that the question of bonafide need and comparative hardship have been decided in favour of the landlord and as the heirs of the original tenant late Bhageshwari Prasad have constructed four houses in the same municipality in the city of Allahabad, there is no illegality or infirmity in the impugned orders of the Prescribed Authority as well as Appellate Court and the Prescribed Authority has rightly allowed the release application of the landlord

filed under Section 21(1)(a) of U.P. Act No. 13 of 1972 which has been confirmed by the Appellate Court in Rent Control Appeal No. 79 of 2006.

After hearing learned counsel for the parties and from perusal of record it is apparent that the Prescribed Authority has adverted to the question of applicability of Section 21(1)(a) of U.P. Act No. 13 of 1972. It is also apparent from the various orders passed by the court below that it has heard the parties before allowing the amendment application.

As regards bonafide need of the landlord is concerned, the trial Court has recorded its finding in paragraphs 9 and 10 of the judgment which read as under:

From perusal of the aforesaid it is apparent that the landlord filed an application for release of house no.232 in possession of the petitioners tenant on the ground that his younger son wanted to shift with his family therein which was opposed by the petitioners tenants stating that the aforesaid release application has been filed for release of a part of the house in dispute which is not legally maintainable. Relying upon the judgments rendered in 1982, ARC311, 2005(2) ARC76, and 1984(2) ARC642, the trial Court has recorded a finding of fact that if a release application is filed for release of a part of the house the same is maintainable, hence the release application filed by the landlord for release of house no. 232 is legally maintainable.

In so far as the bonafide need of the landlord is concerned, respondent no.1 landlord stated that he is a practicing Advocate having standing of 36 years for which he has only one room, hence he needs four rooms. He further stated that often there is a conflict between his wife and his daughterinlaw, hence he wants to shift his younger son and his family in the house in dispute. In the circumstances, if the release application is not allowed, he will suffer greater hardship than the petitioners tenants.

Relying upon the ratio laid down in judgments rendered in 1985(2) ARC206, Dr. B.N. Joshi versus IInd Additional District Judge, Allahabad and others, 1997 ACJ1493, (Smt.) Tika and others versus Lachman, 1995(1) ARC200, Surjan Singh versus IXth Additional District Judge, Kanpur Nagar and others, (2001) 8 SCC431, R.C. Tamrakar and another versus Nidi Lekha, 1978 ARC360, Puran Das Bandari and others versus the Prescribed Authority and others, 1994(1) ARC502, Wajid Ali versus XII Additional District Judge, Kanpur Nagar and others, 1983(2) ARC79, Bhushan versus The District Judge, Ghaziabad and others, 1986 (1) ARC247, Devi Prasad Misra versus IInd Additional District Judge, Bareilly 1985(2) ARC250, Ahmad Ali versus IVth Additional District Judge, Kanpur and others, 1992(2) ARC273, 2001(2) ARC200, Madan Lal versus Prescribed Authority/First Additional Civil Judge and others, 1979 ARC73, Ajit Prasad versus IVth Additional District Judge, Meerut and others, 2000 ACJ153, Pramod Kumar Verma versus VI Additional District Judge, Bijnor and others, 1992 ARC440, Ram Chandra versus District Judge, Badaun, AIR 1979 SC272, Mst. Bega Begum and others versus Abdul Ahad Khan (dead) by L.R's. and others, 1982 ARC24, Sanwal Das Banka

versus IIIrd Additional District Judge, Faizabad and others, and 1992(2) ARC273, the trial Court decided the question of bonafide need in favour of the landlord holding that the requirement of the landlord for himself and for shifting his younger son and his family in the house in dispute is genuine. The family members of the tenants have constructed three houses in the same municipality in the city of Allahabad, hence the tenants have no right to remain in possession of the house in dispute. The High Court as well as the Apex Court have held in a catena of decisions that once the tenant or any member of his family acquires the accommodation in a vacant state, he has no right to keep the accommodation of the landlord in his possession. It is settled position of law that the landlord is the best Judge of his requirement for residential or business purpose and he has got complete freedom in the matter.(See: Prativa Devi (Smt.) v. T.V. Krishnan, (196) 5 SCC353).

In so far as the comparative hardship is concerned, the trial court has recorded its finding in favour of the landlord in paragraph 19 and 18 of the judgment which read thus:

From perusal of the aforesaid finding on the question of bona fide need and comparative hardship it is apparent that the family members of the petitioners have purchased three houses i.e. house no. 23/24A, at Ramanand Nagar Allahpur, house no. 179, at Sohbatyabagh and house no. 41/19/2 at Baghambari Gaddi, Allahpur of their own, therefore, the third proviso to Section 21(1) (a) of U.P. Act No. 13 of 1972 will come into play. The petitioners did not make any efforts to search out any alternative accommodation. It also noted by the court below that the tenants have sufficient means for purchase of their own house. Considering all these facts and circumstances of the case, the trial Court has held that the bonafide need and comparative hardship are in favour of the landlord.

The appellate Court has also confirmed the findings of the trial Court with regard to bonafide need and comparative hardship in favour of the landlord.

Both the courts below have recorded concurrent findings of facts that the family members of the petitioners have got three houses of their own in the same municipality in the city of Allahabad, hence Explanation to the third proviso of Section 21(1)(a) of U.P. Act No. 13 of 1972 will come into play. Admittedly, the tenancy devolved upon the petitioners through their foregrand father and the tenancy being of the single unit house, allotting of two different municipal numbers on the basis of mutual partition among the heirs of the landlord, does not affect the rights of the landlord from evicting the tenants of the single unit tenancy house as they claim that there is no partition wall dividing the house. In any case, since members of original tenants family have constructed their own houses in same municipality as found by the courts below, this court is not inclined to interfere in the matter on any technicality. Rather the court is taking a view of substantial Justice in the peculiar facts and circumstances of this case. Since there appears to be no illegality or infirmity in the impugned orders of the courts below, hence no interference is required by this Court in its extra ordinary

power under Article 226 of the Constitution.

For the reasons stated above, the writ petition is dismissed. No order as to costs. The petitioners tenants are directed to vacate and handover the peaceful possession of the accommodation in dispute to the landlord within a period of 15 days from the date of production of certified copy of this order.