
(2000) 05 AHC CK 0106

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 87008 of 1997

Asha Sahu and Others

APPELLANT

Vs

XII Addl. District Judge, Allahabad and Another

RESPONDENT

Date of Decision : 11-05-2000

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 22

Citation : (2000) 05 AHC CK 0106

Hon'ble Judges : A.K.Yog, J

Final Decision : Allowed

Judgement

A.K. Yog, J.—This petition under Article 226 of the Constitution of India has been filed by Smt. Asha Sahu and others claiming to be "Landlords" of "nonresidential accommodation" a shop (in building, the shop No. 321, Bahadurganj, Allahabad) Measuring 15"x6"Called the shop.

2. Petitioners seek to challenge judgment and order dated 281997 (Annexure No. 7) passed by Respondent No. I/appellate authority under Section 22 U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (called "the Act") whereby it set aside judgment and order dated 21493 passed by the Prescribed Authority (Annexure 5 to the Writ Petition) on the Release application (Annexure 2 to the Writ Petition) registered as PA Case No. 15 of 1991.

3. Petitioner No. 1 is the wife whereas petitioners No. 2, 3 And 4 are sons and daughter of Prem Shanker Sahu erstwhile landlord. They filed a "Release" application on the ground that the shop was let out by the late Prem Shanker Sahu to augment his income and when his children were minor. Prem Shanker Sahu died on 2191993. Business of cycle repairing carried on by Prem Shanker Sahu was stopped on the death of husband of Petitioner No. 1. Since Deepak Kumar (son of deceased Prem Shanker Sahu) who was studying in intermediate wanted the shop for repairing of electronic gadgets like radio, tape, TV etc. on the basis of his skill acquired by undergoing training at S.R.C. Training Institute,

it was to settle his son, Deepak Sahu as well as to augment income for subsistence and maintenance of the family.

4. The tenant filed a written statement (Annexure 3 to the Writ Petition). It was not denied that he obtained possession of the shop on the basis of an agreement. Learned Counsel for respondent No. 2 has placed photocopy of the allotment order which indicates that the shop allotted in his favour was bigger than the area which he actually occupied as a result of the agreement. Be that as it may be, respondent No. 2 cannot be allowed to raise grievance at this stage because he himself voluntarily agreed to take the shop on rent on the terms and conditions contained in the agreement (Annexure No. 1 to the Writ Petition). The above fact is clear from para 4 of the written statement (Annexure No. 3 to the Writ Petition at page 30 of the paper book).

5. The Prescribed Authority allowed the Release application vide judgment and order dated 21.4.93 (Annexure 5 to the Writ Petition).

6. Feeling aggrieved tenant filed appeal No. 181 of 1993. Commissioner's report was obtained and certain documents were also filed by the parties at the Appellate stage. The appellate Court allowed the appeal vide impugned judgment and order dated 2.8.97.

7. I have heard learned Counsel for the parties at length and perused the record.

8. The appellate Court decided against the petitioners on the basis that half portion of the original shop (in possession of Dr. Narang) could not be ignored while considering bonaftde need of Smt. Asha Sahu and others. I do not subscribe to the view taken by the appellate authority on this aspect. "It may be noted that the appellate Court has unnecessarily laboured to record a finding against Smt. Asha Sahu and others on the ground that Dr. Narang is in possession of half original shop having completely ignored two important circumstances of the case.

9. The Prescribed Authority accepted, as a fact, that property in question originally belonged to the father of Prem Shanker Sahu and Vimal Shankar Sahu and the entire building including premises in question on inheriting on their father's death divided amongst themselves. Vimal Sahu (brother of deceased Prem Shanker Sahu) filed in affidavit before Prescribed Authority supporting the contention of Smt. Asha Sahu to the extent that she is not the owner/landlord of the half portion of the shop in tenancy of Dr. Narang (who is the tenant of said Vimal Shankar Sahu).

10. Appellate Authority has not given a single reason for disbelieving Vimal Shankar Sahu. He has reversed the finding of the Prescribed Authority on this issue without giving any cogent reasons.

11. Even if it is assumed that Vimal Shankar Sahu was not owner of the portion in the tenancy of Dr. Narang and contention of the tenantrespondent is accepted for a moment for the sake of argument, no adverse inference can be drawn

against Smt. Asha Sahu because in the changed circumstances, Le. the main family breadearner who was carrying on petty business of cycle repairing on roadside Patri had died, the widow must look for means to arrange for the bread to be provided to her minor children and to ensure that her eldest son gets some education/training so as to settle himself early in order to support his widow mother and minor brother and sister in future. Appellate Authority has failed to refer to a specific material or document on record which may be the basis to disbelieve the version of Smt. Asha Sahu regarding family settlement. The appellate authority is conspicuously silent and do not mention that the tenant was successful in rebutting the documents e.g. copy of allotment order filed with the affidavit of Vimal Shankar Sahu. Approach of the appellate authority is that why original receipt was not produced, is too a flimsy ground in absence of clinching material to rebut the contention of the petitioner.

12. One cannot ignore that Dr. Narang is admittedly the tenant in possession of half of the shop. Release application filed by Smt. Asha Sahu could not be rejected, even if she is presumed to be the owner/landlord of Dr. Narang in as much as it is well settled that landlord has option to seek release of either of the two tenants Le. in possession of respondent No. 2 and Dr. Narang.

13. In the facts and circumstances of case, finding recorded by the appellate authority, reversing finding of the Prescribed Authority in favour of the petitioners on the question of comparative hardship also cannot be sustained. It is a matter of common knowledge that business of electronic goods and its repair cannot be carried on roadside patri. Considerations for carrying cycle repairing business are entirely different. For example it may be advantageous to do cycle repairing on roadside patri in as much as it will be visible and attract the passersby needing this service. It will certainly not conducive as far as business of selling and/or repairing electronic gadgets is concerned.

14. Age of the petitioners has not been disputed and considering it, Smt. Asha Sahu (who is a widow) will naturally be anxious to maintain the family of three persons including a growing daughter, and to provide education to her children. It is but natural that Smt. Asha Sahu was anxious to get the shop released for settling her elder son, Deepak Kumar who has the requisite training to repair electrical gadgets e.g. TV. etc.

15. It may be mentioned that the case was taken on 10th May, 2000. After hearing some length, learned Counsels representing the parties were required to seek instruction from their clients for settling the matter amicably and case was adjourned to 11th May, 2000.

16. On 11/5/2000, learned Counsel for the tenant respondent made a statement outright rejecting the suggestion and the opportunity to settle the matter amicably. No reason is disclosed to the Court for not considering the suggestion made by the Court on this aspect.

17. In view of above, the impugned judgment and order dated 28/9/97 is quashed.

The judgment and order dated 21493 passed by the Prescribed Authority in PA Case No. 15 of 1991 (Annexure 5 to the Writ Petition) is hereby affirmed.

The Writ Petition is allowed. There will be no order as to costs.