

(1997) 07 AHC CK 0145

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16626 of 1997

Ashok Kumar and others

APPELLANT

Vs

Prescribed Authority/Civil Judge (Senior Division), Jhansi and others

RESPONDENT

Date of Decision : 31-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 23

Citation : (1997) 07 AHC CK 0145

Hon'ble Judges : J.C.Gupta, J

Final Decision : Dismissed

Judgement

J.C. Gupta, J.

1. Heard Sri S.M. Dayal counsel for the petitioners and Sri, B.N. Agrawal and Sri K.M. Dayal, counsel for the contesting respondents.
2. Parties have exchanged affidavits and in the peculiar circumstances of the case, this writ petition is disposed of finally at the admission stage itself.
3. Some relevant facts may be put in brief. The dispute relates to shop no. 70 situate in Mohalla Pasrat, Jhansi. Undisputedly the respondent no. 2 the landlord moved an application under Section 21(1)(a) of the Act for the release of the shop on the ground that the same was bonafide required for his son Vijay Kumar Agrawal for doing business. The said application was allowed by the Prescribed Authority by the order dated 30.5.92. It further appears that before the Prescribed Authority an offer was made to the tenant by the landlord that on account of his being his brother he was prepared to offer to him the shop which was in his (landlord) occupation on rent. The tenant did not accept that offer instead he filed an appeal before the District Judge which was dismissed by the order dated 25.10.1994. Even before the lower appellate court the landlord bonafide stuck to the aforesaid offer but the tenant did not show any inclination

to have for his own use the tenanted shop which was in occupation of the landlord. The appeal was dismissed after the parties contested the same on merits. The tenant was still not satisfied and filed Writ Petition No. 35444 of 1994 before this court. That writ petition was also dismissed on 21.9.1995. A perusal of the said judgment would indicate that the main submission advanced on behalf of the tenant was that the landlord acquired additional accommodation in 1989 but instead of settling his second son, therein the accommodation was utilised for the purposes of godown and as such there was no bonafide need which might indicate the immediate or urgent requirement of the disputed accommodation. This court examined the said submission and held that it was established from the material on record that the additional accommodation was measuring 6"x4" only in the residential house and there was no other accommodation available. The size and situation of the above accommodation was not such which could be used in establishing a new business and the same could be utilised only for the godown purposes. The second accommodation in compound no. 70 consisted of two small Kotharies covered by Khaprail and this was also not: suitable for establishing the business of Crockery for Anil Kumar. This court held that the additional accommodation as indicated by the tenant was not available to the landlord to establish his second son and, his need for the disputed shop was bonafide and genuine. This court also further found that on comparing the hardship, the landlord would be put to greater hardship than the tenant who could look for an alternative accommodation. The tenant did not make any effort to search for any alternative accommodation. With these findings writ petition was dismissed and on the request made on behalf of the tenant, this court allowed him six months time to vacate the shop in question subject to his furnishing an undertaking before the Prescribed Authority within three weeks to deliver peaceful possession to the landlord immediately after six months from the date of the judgment. It further appears that the tenant did not file any undertaking as ordered by this court within the time allowed in the order and thereafter an application was moved before this court for extending the time for filing the required undertaking. However the said application remained pending and no effort was made by the tenant to get the time for filing an undertaking extended. It further appears that the tenant instead of complying with the order of this court, approached the Supreme Court by filing Special Leave Petition there. The Supreme Court on 13.11.95 passed the following order:

"Learned counsel for the petitioners states that respondent no.1 had stated before the prescribed authority as well as before the appellate authority that one shop would be given to the petitioner. Issue notice to respondent no.1. Mr. R.D. Upadhyaya, Advocate accepts notice on behalf of respondent no.1. In the meanwhile there will be stay of the dispossession of the petitioner. Put up after four weeks."

4. The landlord filed a short counter affidavit in the aforesaid S.L.P. whose copy has been annexed as C.A4 to the counter affidavit filed in this writ petition on behalf of the landlord. In the said short counter affidavit it was clearly stated that

the tenant was interested in prolonging the litigation and in putting harassment to the landlord as the tenant did not accept the offer and invited a judgment from the prescribed authority. Thereafter they preferred appeal before the District Judge instead of approaching the said respondent landlord to provide him the shop which was in his tenancy, prosecuted the appeal on merits which was ultimately dismissed. During the pendency of appeal the landlord sent a letter dated 8.10.92 by registered post renewing the offer made by him before the Prescribed Authority yet the tenant neither accepted the Offer nor gave any reply and thus it was clear that the tenant petitioner were not at all interested in taking the shop on rent as offered by the landlord. After having lost the appeal also they filed writ petition in this court and again they did not make even a whisper about their intention to accept the offer made by the landlord before the Prescribed Authority in the year 1992, which was obviously, made to avoid litigation and harassment and to get the possession of. The disputed shop early. When the offer was made by the present landlord, he had made arrangement with the landlord of his tenanted shop to let out the same to the present petitioners. However the landlord who had agreed to let out the shop to the petitioner died in May 1993 and he was survived by his wife who was not now willing to let out the said shop to the petitioners, It was also categorically stated that the petitioners themselves have two shops with them and they do not require any other shop. After hearing counsel for the parties the S.L.P. filed by tenants was dismissed on 12.2.96 by the Supreme Court.

5. The landlord thereafter applied to the Prescribed Authority under Section 23 of the U.P. Act No. XIII of 1972 for the enforcement of the release order. The claim of the landlord was however resisted by the petitioners and an objection was filed that since the release order was a conditional one, the landlord cannot be put into occupation of the disputed shop in execution of the release order unless an alternative shop either the one which was in the tenancy of the landlord or any other shop owned by the landlord is made available to them. It may be noted here that the landlady of the shop which was in the tenancy of the present landlord also filed an application before the Prescribed Authority that she was not prepared to let out that shop any more to any person as the same was required by her. The objections of the petitioners were rejected and it is not disputed that the petitioners have already been evicted from the shop in question.

6. Sri S.M. Dayal, learned counsel for the petitioners argued that the offer made by the landlord before the Prescribed Authority at the time when the release application was pending was not bonafide as no such offer could be taken into consideration by the authorities as it was not in respect of a residential building. Rule 16(1) envisages consideration of an offer but then the said rule applies only to a residential building and not to nonresidential one. He therefore, argued that the release order made by the Prescribed Authority was bad in law and could not be enforced under Section 23 of the Act. This submission of the learned counsel has no force. The Prescribed Authority acting under Section 23 of the Act has to execute the order made under Section 21(1) (a) as it stands. It has no power to

go into the correctness or otherwise of the said order, which in the instant case had been upheld even by the Supreme Court. If there was any defect or error in the release order on the ground which is now being urged by the petitioners, it was for the petitioners to have pointed out that alleged defect at the time when the appeal was heard and decided or in the writ petition and S.L.P. filed before the High Court and the Supreme Court respectively.

7. There is nothing on record to indicate that the offer made by the landlord before the Prescribed Authority that he was prepared to permit the tenant to occupy the shop which was under his tenancy was made with any oblique designs. The offer was made, according to the landlord, when the landlord of his tenanted shop had agreed to let out the same to the petitioner-tenant. The tenant however never accepted that offer before the Prescribed Authority nor showed his willingness to accept the same either before the lower appellate court or before this Court in the writ petition filed by the tenant. In the Supreme Court it was alleged on behalf of the tenant that the landlord had made an offer of one shop to him. On this statement notice was issued to the landlord and counter affidavit on behalf of the landlord was filed wherein he took a specific case that the said offer which was made earlier before the Prescribed Authority could not be given effect to in the changed circumstances inasmuch as at the time when the said offer was made, the landlord of the tenanted shop was agreeable to let out the same to the present petitioner but at that time the tenant never agreed. The landlord who had agreed to let out the shop to the petitioner died during the pendency of proceedings and after his death, his widow was not ready to let out the said shop to any person including the petitioner. Therefore, the tenant could not take any advantage of the said offer. The S.L.P. filed by the tenant was dismissed by the Supreme Court after hearing counsel for both the parties, it is not disputed before me that the other shop in respect of which offer was made, was in the tenancy of the present landlord and he had no right to let out the same himself. At the time when the offer was made the landlord of the said tenanted accommodation had agreed to let out the same to the petitioner and it is also the case of the present landlord that at that time the said tenanted shop was exempted from the operation of the Act but since the tenant did not agree at that time to take the said shop on rent as was offered, with the passage of time the U.P. Act No. XIII of 1972 became applicable and under the provisions of the said Act it is only the District Magistrate who has the power of letting. Thus in the changed circumstances the said offer has been rendered infructuous.

8. In the present case the petitioners are themselves guilty in allowing the offer made by the landlord to frustrate and now it is not open for them to insist for the implementation of the said offer. In the case of *Har Shankar & others v. Deputy Excise & Taxation Commissioner & others* AIR 1975 SC 1121, it was held that writ jurisdiction of High Court is not intended to facilitate avoidance of obligation voluntarily incurred.

9. It is well settled law that when a person approaches this court in exercise of

extraordinary jurisdiction under Article 226 of the Constitution of India, he must come with clean hands. As a court of equity, this court should not help a person who himself is guilty of his own laches and delay and who does not come with clean hands. For this proposition, a reference

may be made to the decisions of the Apex Court in the cases of Ramjus Fountain & others v. Union of India others AIR 1993 SC 852 and K.R. Srinivas v. R.M. Prem Chand and others (1994) 6 SCC 620. Similar view was expressed by this court in the case of Balram Singh and others v. State of U.P. and others (1996) 1 UPLBEC Page 19.

10. In the present case therefore, petitioners who are themselves guilty of their own acts and omissions and whose hands have not been clean cannot be alllowed to be heard for getting the release order made in favour of the landlord set aside and for putting them back into occupation of the disputed shop specially when undisputedly they have got with them their own building and shops.

11. For the above reasons, this writ petition is dismissed with no order as to costs.

(Petition dismissed)