

(2006) 01 AHC CK 0088

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15764 of 1986

Babu Lal and Brothers and Sri Vijendra Kumar

APPELLANT

Vs

IVth Additional District Judge and Others

RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

Citation : (2006) 3 AWC 2432

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : B.D. Mandhyan and Satish Mandhyan, for the Appellant;

Final Decision : Dismissed

Judgement

S.U. Khan, J.—In spite of sufficient service no one appeared for landlords-respondents 2 to 10 Girish Kumar and others. Heard learned Counsel for the tenant-petitioners.

2. This writ petition arises out of release/eviction proceedings initiated by deceased Sadi Ram and his three sons who are respondents 2, 3 and 4 against tenant petitioner on the ground of bonafide need u/s 21 of U.P.Act No. 13 of 1972. Sri Sadi Ram died during pendency of proceedings before the courts below. Property in dispute is a shop, rent of which is Rs. 50/- per month. Tenant-petitioners are carrying on business of whole sale of cycles from the shop in dispute. In the release application need set up was for Sadi Ram (since deceased) and Girish Kumar. It was stated that Girish Kumar had technical qualification from Roorkee Polytechnic and intended to open a shop for carrying on business of goods relating to sanitary fittings etc. for which he had no other shop. Admittedly tenant-petitioners had other shops available to them. Release application was registered as P.A. Case No. 5 of 1978. Prescribed authority Deoband district Saharanpur held that the need of the landlord was bonafide. However, release application was dismissed through Judgment and order dated 21.1.1979 on the ground that in case of eviction tenant would suffer greater

hardship. Prescribed Authority found that other shops available to the tenants were not suitable for the business which they were carrying on from the shop in dispute. Against the said Judgment and order landlords filed R.C. Appeal No. 31 of 1979. Appellate Court dismissed the appeal on 3.10.1979. Against the said Judgments landlords filed Civil misc. Writ Petition No. 152 of 1980. Writ Petition was allowed on 20.10.1982 Findings on bonafide need of the landlord were confirmed. The matter was remanded to the Appellate Court to reconsider the question on comparative hardship. Thereafter IVth Additional District Judge, Saharanpur through Judgment and order dated 24.6.1986 allowed Rent Control appeal No. 31 of 1979 and consequently release application of the landlord was allowed. Appellate Court held that tenant had other shops available, hence the question of comparative hardship was to be decided against them.

3. I do not find least error in the findings recorded by the Appellate Court in respect of comparative hardship. Tenants have got other shops available to them. Apart from it they did not show as to what efforts they made to search (purchase or to take on rent) another shop suitable for their business. This by itself was sufficient to decide the question of hardship against them. (See: Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, Tenants are carrying on business of wholesale of cycle, hence they must have earned lot of money.

4. However, an important subsequent development has been brought on record through supplementary affidavit. Girish Kumar for whom the shop was sought to be released and whose need was found bonafide had purchased another shop on 17.12.2002. Copy of the sale deed has been annexed along with the supplementary affidavit. Copy of Assessment Register of Municipal Board, photographs of the shop and an advertisement on behalf of Girish Kumar have also been annexed along with the supplementary affidavit. No one has appeared on behalf of the respondents to rebut the said allegation. Accordingly said allegation is taken to be correct. As during pendency of the petition Girish Kumar has acquired another shop in which he has started business, hence his need stands satisfied. This is such an important subsequent event that it can not be ignored and it will have to be taken in to consideration.(I have considered this point in detail in Diptee Singh v. A.D.J. 2005 A D J 342.

5. Writ petition is therefore allowed. Judgment and order passed by the Appellate Court is set aside. Release application is dismissed.

6. However, it appears that due to pendency of this writ petition for 20 years, the purpose of release was rather frustrated, hence landlord had to purchase another shop. In view of these facts it is appropriate, rather essential and in the interest of justice that tenants must be directed to pay adequate rent even for the period when this writ petition remained pending and dispossession of tenant was stayed due to the stay order passed in this writ petition. The Supreme Court in Ansuyaben Kantilal Bhatt Vs. Rashiklal Manilal Shah and Another, also did the same thing. (This point has also been considered by me in the aforesaid authority of Diptee Singh).

7. I have also held in *Khursheeda v. A.D.J.* 2004 (2) A.R.C. 64 that while granting relief against eviction to the tenant, writ court is empowered to enhance the rent to a reasonable extent. The shop in dispute is situated at Railway Road, Deoband district Saharanpur. Tenant is doing wholesale cycle business, hence he must be earning good profit. Rent of Rs. 50/- per month for such a shop is virtually as well as actually no rent. Accordingly, it is directed that with effect from 1.1.1987 till 31.12.1996 tenant petitioner shall pay rent to the landlords respondents @ Rs. 400/- per month. With effect from 1.1.1997 till 31.1.2006 rent shall be paid @ Rs. 800/- per month. With effect from 1.2.2006 onward tenant petitioner shall pay rent to the landlord-respondents @ Rs. 1500/- per month.

8. The arrears of rent due till 31.1.2006 shall be paid in 20 equal monthly instalments along with current rent. In case of failure to pay the arrears of rent due till 31.1.2006 as indicated above, this order shall stand vacated and the writ petition shall stand dismissed. (This direction is being issued in view of similar direction given by Supreme Court in the aforesaid authority of A.K. Bhatt).