

(1986) 11 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6731 of 1983

Badri Prasad

APPELLANT

Vs

2nd Addl. District Judge and Others

RESPONDENT

Date of Decision : 04-11-1986

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1987) 1 AWC 107

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : Rama Nand, for the Appellant;

Final Decision : Dismissed

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India arising out of proceeding under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, U.P. Act XIII of 1972, hereinafter referred to as the Act. The property in dispute is a shop which is a portion of house No. 58, Khuldabad, Allahabad. The Petitioner is the tenant. Respondent No. 3 is the landlord.

2. An application was moved u/s 21 of the Act for release of the shop in dispute on the ground that the landlord requires the premises for his bonafide use.

3. The case set up by the landlord is that he carried on the business of goldsmith in the residential portion of the accommodation, Due to increase in the price of gold, the business which he was carrying on has practically closed and as such he wants to do other business. To carry on other business he requires the aforesaid accommodation. It was in these circumstances that it was urged that the landlord has a bonafide need. In the application it was further alleged that the Petitioner tenant has purchased house No. 41, Noorullah Road, Allahabad. He is living in that house and is also doing business in the said house and that he

has, infect sub-let the shop to his brother Kedar Nath who is doing kerosene business in the same.

4. The prescribed authority found that the need of the landlord was genuine. He further found that the Petitioner had purchased house No. 41, Noorullah Road, Allahabad. He is living in that house and is also carrying on business there and that the shop in dispute has been sub-let to the brother of the Petitioner. On these findings the release application was allowed. Aggrieved by the judgment of the prescribed authority an appeal was filed by the Petitioner. The finding recorded by the prescribed authority was affirmed by the lower appellate court by judgment dated 23-5-1983 and the appeal is dismissed. Aggrieved the Petitioner has filed the present petition in this Court.

5. I have heard the learned Counsel for the parties. The first contention raised by the learned Counsel for the Petitioner is that the, lower appellate court erred in not making a local inspection inspite of the fact that an application was made to that effect. The application has been attached as Annexure 7 to the petition. It is not disputed that no application for local inspection was made before the prescribed authority. The application for inspection was made not to be inspected by the court but for an issue of Advocate Commissioner who may inspect the premises in dispute. The Petitioner had led no evidence whatsoever before the prescribed authority as to the extent of the accommodation which according to him was in possession of the landlord and which could have been used for business purposes. In the absence of any such evidence, there was no justification to move an application before the appellate court for appointment of an Advocate Commissioner. This application in my opinion was made only to obstruct the proceedings before the appellate court and for no other purpose. The purpose for which the Advocate Commissioner was sought to be appointed for inspection was only to adduce additional evidence which the Petitioner could have done without appointment of the Advocate Commissioner. In the circumstances, it cannot be said that the lower appellate court was not justified in rejecting the application moved by the Petitioner for inspection.

6. The second submission made by the learned Counsel is that since the landlord wanted the accommodation to augment his income it was necessary for him to give profit and loss account to show that his income was not substantial and as such he needed the shop in dispute for augmenting his income. He has relied upon certain cases on this submission. In so far as the proposition of the case law cited by the learned Counsel for the Petitioner is concerned, it is not disputed, In the instant case, I have gone through the application made u/s 21 of the Act and I find that the case of the landlord was that due to increase of gold prices the business of gold-smith has practically come to an end and that he requires the accommodation for the purpose of his livelihood. In a situation where the business itself has come to an end and the landlord requires the accommodation for carrying on the business, it is not necessary, in my opinion, for the landlord to give profit and loss account. When the business itself has been

practically closed, the question of any profit and loss account does not arise. In the circumstances, this submission also of learned Counsel for the Petitioner, in my opinion is not substantiated.

7. Learned Counsel for the Petitioner has, however, further urged that the landlord has got a shop in the house No. 58, Khuldabad vacant and he can use the said shop for his business purposes. This allegation has been made in paragraph 12 of the petition. This allegation has been denied in the counter affidavit in paragraph 6 of the counter affidavit and it has been stated that no doubt there is one shop on the ground floor available with the landlord but the said shop is being used as a rasta and as such it is not possible to carry on the business in the said shop. In view of this fact, it is not possible to say that the finding in regard to the bona fide been recorded by the courts below is vitiated in law on this account.

8. It is necessary to observe that both the courts below have categorically recorded a finding that the Petitioner has purchased house No. 41, Noorullah Road, Allahabad, he is residing in the said house and is carrying on the business there and that admittedly he is not carrying on the business in the shop in dispute but his brother is sitting in the said shop. But in view of these circumstances stated above, I do not find it a fit case for interference under Article 226 of the Constitution of India. The petition is accordingly dismissed. The interim order dated 25-7-83 continued by order dated 29-10-84 is hereby vacated.

9. Learned Counsel for the Petitioner prays for time to vacate the premises. This prayer in my opinion is justified provided the Petitioner gives an undertaking to vacate the premises within the time granted by this Court. The Petitioner is granted three months time to vacate the premises provided the Petitioner gives an undertaking before the executing court within two weeks from today that he will immediately vacate the premises after expiry of three months from today and will hand over the vacant possession of the premises to the landlord. In case no undertaking is given within two weeks the release order shall be enforced forthwith.

10. The parties are directed to bear their own costs.