

(2011) 05 UK CK 0139

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 843 of 2003

Baij Nath and Sons, Photographers, Proprietor Sri Kailash
Nath Agarwal

APPELLANT

Vs

Sri Amba Dutt Tewari and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 16(2)

Citation : (2011) 05 UK CK 0139

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—By means of this writ petition, the Petitioner has sought a writ in the nature of certiorari quashing the impugned order dated 11-10-2002 passed by the Respondent No. 2- Prescribed Authority/Civil Judge (Junior Division) Ranikhet, district Almora (for short Prescribed Authority) (Annexure No. 3 to the petition) and the order dated 23-8-2003 passed by the Respondent No. 3-District Judge, Almora (Annexure No. 4). By order dated 11-10-2002, the Prescribed Authority has allowed the application for release moved u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short the Act) of the landlord-Respondent No. 1 herein. By the order dated 23-8-2003, the learned District Judge has dismissed the appeal of the Petitioners and upheld the order passed by the Prescribed Authority.

2. Brief facts giving rise to the present writ petition are that the Respondent No. 1 who is landlord and owner of shop No. 757 (for short the disputed shop) situate at Gandhi Chowk, Sadar Bazar, Ranikhet and the said shop is let out to the Petitioner Baijnath and sons photographers on monthly rent. The son of the Respondent No. 1-Neeraj Tiwari is doing business in shop No. 759, which belongs

to Sri Jagdish Chandra Tiwari, who is the brother of the Respondent No. 1. The tenancy of the Petitioner over the disputed shop is more than 40 years and the Petitioner is running his business therein. The application u/s 21(1)(a) of the Act was moved by the Respondent No. 1 for release of the disputed shop under the tenancy of the Petitioner on the ground inter alia that his son Niraj Tiwari was doing the business of cement in shop No. 759 as a tenant. Lateron, he changed his business and started the business of gift items. In the mean time, his brother J.C. Tiwari, landlord-cum-owner of shop No. 759 has retired from service and he asked Niraj Tiwari to vacate the said shop to engage himself suitably during retired life.

3. The application for release was moved by the Respondent No. 1 on the ground of bona fide need to shift his business from the tenanted shop No. 759 to the disputed shop to shift the business of his son therein.

4. The Petitioner-tenant filed his objection on the ground inter alia that both the brothers namely Amba Dutt Tiwari and J.C. Tiwari are in collusion just to throw the Petitioner out from the disputed shop and that Mr. J.C. Tiwari, after having been retired from service, has settled at Nainital in his newly constructed house and he does not require his own shop to establish any business at Ranikhet. As such, the landlord of shop No. 759 does not need his shop, therefore, the need to vacate the shop No. 759 is only with a view to get the disputed shop vacated.

5. Both the parties in support of their rival claim filed several affidavits along with documents. The learned Prescribed Authority after hearing both the parties has come to the conclusion that the requirement of the Respondent No. 1 for the disputed shop is bona fide and genuine. On the point of comparative hardship, the Prescribed Authority has recorded a finding that the tenant had not made any effort to get an alternative shop, though there was a shopping complex available near Roadways and KMOU bus stations at Ranikhet. Consequently, the application for release was allowed by order dated 11-10-2002. The landlord was directed to pay an amount equal to two years' rent as compensation to the Petitioner-tenant.

6. Aggrieved, the tenant-Petitioner preferred an appeal, which was registered as Rent Appeal No. 5 of 2002. The learned appellate court after hearing both the parties has recorded a finding that the requirement of the landlord-Respondent No. 1 herein is bona fide and genuine. Learned appellate court has also held that the balance of comparative hardship also tilted in favour of the Respondent No. 1 as no efforts were made by the tenant-Petitioner for alternative shop, which were available in the Ranikhet town itself. Consequently, the appeal of the tenant-Petitioner was dismissed by order dated 23-8-2003.

7. The main ground of challenge raised in this writ petition is that the courts below have ignored the mandatory provisions of Section 21 of the Act as well as Rule 16 of the Rules, framed under the Act inasmuch as the finding recorded on the point of comparative hardship in favour of the landlord-Respondent No. 1 is

perverse.

8. Counter affidavit has been filed on behalf of the Respondent No. 1 and in paragraph No. 8 thereof, it has been specifically mentioned that the Respondent No. 1 had given offer to the Petitioner to do his business in the ground floor of the godown and that the Prescribed Authority has clearly mentioned in the order that alternative accommodation is also available in the cantonment area where new shop was constructed and general information was published for allotment of shop by way of public auction. Besides, alternative shops were available near the K.M.O.U. bus station.

9. Rejoinder affidavit has been filed on behalf of the Petitioner and therein the averments made in the writ petition have been reiterated.

10. At the outset it may be mentioned that this Court in exercise of writ jurisdiction cannot sit like a court of appeal and cannot re-appreciate or reevaluate the evidence so as to arrive at a different conclusion. Only perversity in the impugned order can be seen to find out whether there is a case of mis-reading of evidence by the courts concerned.

11. In the case *Ranjeet Singh Vs. Ravi Prakash*, , the Apex Court has observed inter alia in paragraph 4 of the judgment that An error which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in *Surya Dev Rai* that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal."

12. The Apex Court in the case of *Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased)* through LRs. and Others, while dealing with Articles 226 and 227 of the Constitution of India as observed as under:

38. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law.

13. Mr. M.C. Pande, Advocate, learned Counsel for the Petitioner has vehemently

urged that the brother of the Respondent No. 1, namely Mr. J.C. Tiwari has no bona fide need of the disputed shop and the release application on the ground of the need of Niraj Tiwari, the son of the landlord-Respondent No. 1 has been moved in collusion with Mr. J.C. Tiwari, the landlord of shop No. 759 against the provisions of the Act.

14. The learned Prescribed Authority as well as the learned appellate court have recorded a categorical finding that in the release application, the bona fide need of the landlord has to be seen with regard to the disputed shop and that whether Sri J.C. Tiwari is in need of the shop No. 759 is altogether irrelevant for that purpose. Both the courts below have recorded a finding of fact that the requirement of the landlord-Respondent No. 1 for the disputed shop to shift the business of his son in his own shop is bona fide and genuine. The argument raised by the learned Counsel for the Petitioner that Mr. J.C. Tiwari has no bona fide need for his shop No. 759 is misconceived and not tenable in the eye of law.

15. Learned Counsel for the Petitioner has next argued that the courts below have lost sight of the mandatory requirement of Rule 16(2) (b) of the Rules framed under the Act particularly on the point of hardship that may be caused to the tenant in shifting his business to another place.

16. This argument of the learned Counsel for the Petitioner is not acceptable for the simple reason that from a bare perusal of the impugned order passed by the learned Prescribed Authority it is obvious that the point of comparative hardship has been elaborately dealt with at page Nos. 6 to 12 of the order dated 11-10-2002 and while discussing the point of comparative hardship, the learned Prescribed Authority has specifically dealt with the point of comparative hardship of the landlord and the tenant in detail.

17. In the case at hand, both the two courts below have recorded concurrent finding of fact that the requirement of the landlord-Respondent No. 1 for the disputed shop is bona fide and genuine to shift the business of the son of the landlord to the disputed shop. It has also been held that no attempt was made by the Petitioner to search alternative shop to shift his photographic business, especially when there were shopping complex available on rent near the KMOU bus station Ranikhet near the vicinity of the disputed shop. I am also of the considered view that the statute requires comparison of the hardship of both the tenant as also the landlord. I am fortified in my view by the Apex Court verdict in the case of Ganga Devi Vs. Distt. Judge, Nainital and Others, . In that case, the Apex Court had an occasion to consider the provision of Rule 16(2) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules 1972, wherein the Apex Court relying on the case of Bhagwan Das Vs. Smt. Jiley Kaur and another, , has observed in paragraph No. 23 as under:

23. In Bhagwan Dass v. Jiley Kaur this Court distinguishing the earlier decision of this Court in Bishan Chand v. ADJ stated the law in the following terms: (Bhagwan Dass case, SCC p. 303, para 7)

7. ... It was also pointed out in this case that the provisions of Rule 16(2) of the Act (sic Rules) had not been considered at all. In our opinion, the said decision is clearly distinguishable. Firstly, the instant case was one where there was an outweighing circumstance in favour of the landlord, namely, that two of her sons after completing their education were unemployed and wanted to carry on business for self-employment. Secondly, as already seen above, it was not a case where the provisions of Rule 16(2) can be said to have been ignored by the District Judge. Thirdly, it was a case where there was even this additional circumstance that the Appellant had brought no material on record to indicate that at any time during the pendency of this long drawn out litigation he made any attempt to seek an alternative accommodation and was unable to get it. The "thirdly" referred to therein applies to the fact of this case.

18. In the case of Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased) through LRs. and Others, , wherein the Apex Court has held in paragraph 36 as under:

36. A finding as to bona fide requirement for doing readymade garments" business by Matloob Ahmad has been expressly recorded by the appellate authority. The said finding was a finding of fact. Neither could it have been interfered with, nor has it been set aside by the writ court. In view of the above position, the High Court was wrong in allowing the writ petition.

19. In that case, the Apex Court in paragraph No. 47 has further observed as under:

47. In the case on hand, a finding had been recorded by the appellate authority that requirement of the landlord for doing business by Matloob Ahmad, husband of Applicant 6 was bona fide and genuine. Thus, the requirement of the landlords was established. The said finding stands today. The High Court by a cryptic order, without disturbing the said finding which was based on appreciation of evidence, set aside the order of eviction against the tenant, inter alia, observing that Matloob Ahmad was a "retired person" and was getting pension and was living in his village at a distance of five kilometers from Dehradun. It is no doubt true that the tenancy was created before about fifty years but that should not be a ground for depriving the landlord for doing business if the requirement of the landlord is bona fide and reasonable.

20. Thus, it is obvious that even a long-standing tenancy shall not be a ground to deprive the landlord for doing business if his requirement is bona fide and reasonable. In the case at hand, there is concurrent finding of fact, recorded by the two courts below on the point of bona fide need of the landlord and on the point of comparative hardship of the landlord and the tenant. These are the findings of fact based on proper appraisal of evidence. These findings cannot be interfered with in exercise of writ jurisdiction.

21. For the reasons and discussion above, I am of the view that the present writ petition being devoid of merit is liable to be dismissed outright.

22. The writ petition is dismissed. Costs easy. However, to serve the ends of justice, the Petitioner is granted three months" time to vacate the disputed shop and to deliver peaceful and vacant possession thereof to the landlord-Respondent No. 1.

23. The interim order dated 8-9-2003 passed by this Court is vacated.