
(2007) 01 AHC CK 0184
In the Allahabad High Court

Balakram Bajpai	Vs	APPELLANT
Addl. District Judge, Court No. 4 and Others		RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 2 AWC 1214

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. The petitioner has filed this writ petition praying for a writ of certiorari quashing the Judgment and order dated 1.11.2006 passed by respondent No. 1 in Civil Appeal No. 27 of 2004, Radhey Shyam and Ors. v. Balakram Bajpai and Civil Appeal No. 75 of 2004, Balakram Bajpai v. Radhey Shyam and Ors., and order dated 7.5.2004 passed by respondent No. 2 in P.A. Case No. 19 of 2002, Radhey Shyam and Ors. v. Balakram Bajpai u/s 21(1)(b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. XIII of 1972).

3. The facts of the case, in brief, are that respondent Nos. 3, 4 and 5 filed an application u/s 21(1)(a) and (b) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) which was registered as P.A. Case No. 19 of 2002, Radhey Shyam and two others v. Balak Ram Bajpai, for release of southern portion of the premises T.P. No. 423 (Old No. 323) on the ground that they bona fide required the aforesaid southern portion of premises No. T.P. 423, Khirni Bagh Shahjahanpur which they alleged to have purchased on 19.12.1986 from Jag Jeewan Sahai through a registered sale deed. The petitioner was a tenant of the aforesaid premises since before its purchase by respondent Nos. 3, 4 and 5. According to the averments made in

the release application by the respondent Nos. 3, 4 and 5 the said premises is in dilapidated condition and needs reconstruction after its demolition.

4. The respondent Nos. 3, 4 and 5 also moved an application in P.A. Case No. 19 of 2002 for issuance of a commission which was allowed by the Prescribed Authority/Civil Judge (Junior Division), Shahjahanpur directing the Civil Court Amin, Shahjahanpur to submit his report regarding the condition of the building. The Amin submitted his report dated 1.11.2002 to the effect that the premises in dispute is in dilapidated condition.

5. The petitioner filed his objection to the aforesaid report of the Amin, inter alia, that the house is neither in dilapidated condition nor requires re-construction ; that the disputed premises is part of the entire house shown in the plaint by letter A, B, C, D and that the respondents are living in the northern portion and the southern half of the premises is occupied by the petitioner as tenant.

6. The petitioner filed his written statement in the P.A. Case No. 19/2002 denying the allegations made therein.

7. Affidavits between the respondents and the petitioner regarding age and condition of the building were exchanged.

8. In the affidavits of Awadhesh and Satya Prasad filed by the petitioner it has been testified that the house is not more than 50 years old. The petitioner also filed the affidavit of one Kadir son of Ahmad Hussain, a mason by profession, who stated to have seen the premises and deposed that the house was not in dilapidated condition whereas the respondent Nos. 3, 4 and 5 who filed the affidavit of Sri R.K. Agarwal alongwith the report of R. K. Associates to the effect that the house is in dilapidated condition.

9. It appears that the petitioner further filed the affidavit of Shri Suresh Chand Shukla son of Shri Anant Ram Shukla, and the report of Engineers Associates Shri Suresh Chand Shukla on 10.12.2003, who after inspecting the disputed premises and seeing the report of R.K. Associates gave opinion that the house might have been constructed in the year 1939 or 1940 and that the house was not in dilapidated condition.

10. The petitioner also submitted his affidavit that Shri R.K. Agarwal had not inspected the disputed premises and had prepared a false report.

11. The petitioner filed an affidavit on 19.4.2004, stating that from a perusal of the release application and affidavits filed on behalf of respondent Nos. 3, 4 and 5 that the disputed house is in dilapidated condition it is averred that they have constructed a lintel roof of cement in the adjoining room in their occupation using common wall of the disputed premises and the portion in their occupation which is a self contradictory averment by respondents 3, 4 and 5. It is averred in the affidavit that had the disputed premises been in dilapidated condition the respondents could not have put a lintel roof on the common wall dividing the residential area of the landlord and the disputed premises under the tenancy of

the petitioner. From the plaint map contained in Annexure-1 to the writ petition it appears that Room No. 2 is the tenanted disputed premises and Room No. 1 is in occupation of respondent Nos. 3, 4 and 5. The lintel roof has been put by the respondents in Room No. 1 using common wall between Room No. 1 and Room No. 2. in this view of the matter the disputed premises cannot be said to be in dilapidated condition.

12. The Prescribed Authority vide judgment and order dated 7.5.2004 allowed the release application directing the petitioner to vacate the premises in dispute within two months and that respondent Nos. 3, 4 and 5 shall reconstruct the premises after demolishing the same within four months and reserved the right of the petitioner u/s 24 (2) of the Act.

13. Aggrieved by the aforesaid order of the Prescribed Authority the petitioner filed Appeal No. 75 of 2004, Balakram Bajpai v. Radhey Shyam and two Ors. before the District Judge, Shahjahanpur.

14. It appears that respondent Nos. 3, 4 and 5 also filed Appeal No. 27 of 2004, Radhey Shyam and two Ors. v. Balakram Bajpai.

15. The Additional District Judge, Court No. 4, Shahjahanpur, vide common judgment and order dated 1.11.2006 decided both the aforesaid appeals. He allowed the release application u/s 21(1)(a) of the Act and directed the petitioner to vacate the disputed house within two months.

16. The learned Counsel for the petitioner contends that the Prescribed Authority tried the case u/s 21(1)(b) of the Act alone and order passed on that basis which is apparent from the judgment and order dated 7.5.2004 passed by it, hence the petitioner had no opportunity to contest the case and defend himself by producing evidence to show that the respondents had no bona fide requirement of the disputed premises u/s 21(1)(a) of the Act. He states that the Additional District Judge wrongly allowed the application u/s 21(1)(a) of the Act and set aside the judgment and order of the Prescribed Authority accepting the arguments of the respondents holding that bona fide need of the landlords was genuine for the disputed premises.

17. He further states that Section 21(1)(a) of the Act provides that if the building is bona fide required by the landlord for himself or any member of his family either in the existing form or after demolition and new construction, he can move an application for its release, but in the pleadings and the affidavits of the respondents there is no averments to this effect. According to him the only averments in the release application that the southern portion of the premises A, B, C, D be released and possession be given to the respondents and evidence in support thereof that the disputed premises is in dilapidated condition and needs reconstruction, that even the prayer in the application the respondent-landlords did not disclose as to the provisions under which the application was being filed.

18. It is further contended by the learned Counsel for the petitioner that the

application for release of any accommodation cannot be filed under both the provisions of Section 21(1)(a) and Section 21(1)(b) of the Act, as such the respondents had to specify under which provisions the release application was being filed which led to anomalous position that the Prescribed Authority tried the case u/s 21(1)(b) of the Act and the Additional District Judge allowed the appeal treating the case u/s 21(1)(a) of the Act and thus the petitioner has been prejudiced as he could not defend himself against the case which had not been tried by the Prescribed Authority.

19. It is lastly contended by the learned Counsel for the petitioner that by sale deed dated 19.12.1986 the respondents have purchased one intact house being T.P. No. 423, Khirni Bagh, Shahjahanpur, the northern half of which is in possession of the respondents and the southern half is in the tenancy of the petitioner. The entire evidence which is being given is that the southern portion was in regard to its dilapidated condition and the Prescribed Authority on the basis of Commissioner's report alone gave finding which has been set aside by the Additional District Judge.

20. Per contra, the learned Counsel for the respondent-landlords contends that it is well-settled law that u/s 22 of the Act the appellate court has full power and jurisdiction to decide the case on merits after re-assessing the evidence on record if the findings recorded by the Prescribed Authority are perverse by recording its independent findings in the aforesaid circumstances.

21. In support of this contention he relied upon the decision rendered in Sanjay Kumar and Ors. v. Subodh Kumar and Ors. 2004 (1) ARC 148.

22. The learned Counsel for the respondents next contended that the averments made in the release application are not read in isolation or in part but as a whole. He submits that the averments made in paragraphs 5 and 7 of the release application speak about the bona fide need while the averments made in paragraph 9 speak about the condition of the portion of the house in dispute which reads as under:

Ukta makan ko gira kar iska nav nirman kiya jana rihayas aur suraksha tatha jaroorat ke liye bahut awashyak hai.

23. It is submitted by the learned Counsel for the respondents that the proceedings for release have been initiated after about 16 years of purchase of the house therefore under the proviso of Section 21(1)(a) of the Act and the notice contemplated under it the proceedings initiated for release of the disputed accommodation after the period contemplated under the said proviso does not require the service of said notice of 6 months. In this view of the matter where the release application has been filed after about 16 years from purchasing the property there is no requirement of notice as is held in the decisions rendered in Martin and Harris Ltd. v. VIth Additional District Judge and Ors. 1998 (1) ARC 109 : 1998 (1) AWC 580 ; Anwar Hasan Khan v. Mohd. Shafi and Ors. 2001 (2) ARC 554 : 2001 (4) AWC 3228 and Vinod Kumar and Ors. v. IVth Additional

District Judge, Jhansi 2006 (1) ARC.

24. It is next contended by the learned Counsel for the respondents that the lower appellate court after considering the fact that the memo (paper No. 7C/4) bears the signatures of the petitioner came to the conclusion that the Amin Commissioner had in fact Inspected of the house in dispute in the presence of the petitioner who miserably failed to file any evidence that during the pendency of the release application he ever tried to search for an any alternative accommodation. He states that in view of a catena of decisions on the point that the tenant has to file evidence that he made efforts to search alternative accommodation he is not entitled to any relief.

25. The learned Counsel for the respondents lastly submitted that the tenant further failed to establish that the family of the landlord has not increased and has also failed to demonstrate that the finding recorded by the lower appellate court is perverse or suffers from any manifest error of law, as such this Court may not in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution appreciate the evidence and re-appreciate and re-evaluate the findings of the lower appellate court. In support of his submission he placed reliance upon the decisions in Ranjeet Singh v. Ravi Prakash 2004 (1) ARC 613 : 2004 (2) AWC 1721 and Chetan Prakash and Another Vs. A.D.J. and Others,

26. The first contention of the learned Counsel for the petitioner that the release application was not maintainable as the averments have been made taking both the grounds u/s 21, i.e., Section 21(1)(a) and 21(1)(b) and that since the Prescribed Authority has tried the case u/s 21(1)(b) only the petitioner-tenant had no opportunity to contest the case or to defend himself by producing evidence u/s 21(1)(a) of the Act is not sustainable.

27. Section 21 provides that the Prescribed Authority may, on an application of the landlord initiate proceedings for release of the building under occupation of the tenant or for his eviction from the same or any specified part thereof if it is satisfied that any of the two grounds aforesaid exists.

28. Under the provisions of Section 21 of the Act restriction is placed on the landlord to evict the tenant but it does not in any manner make it obligatory upon the landlord to have that much accommodation as the Court considers sufficient. In fact the Court has in addition to consider reasonably whether there is any element of bona fide need in taking its ambit, social status and other requirements of the landlord in the social condition prevailing. Therefore, the question u/s 21 to release the premises on any of the two grounds is to be considered in a proper perspective. When an application u/s 21 is filed it can be a composite application bearing ingredients of both Sections 21(1)(a) and 21(1)(b). If the building is bona fide required after demolition and construction by the landlord for his occupation or for any member of his family or any person for whose benefit it is held by him, the authority can pass an order of eviction of the tenant provided it is specified regarding the bona fide need and comparative

hardship of the landlord.

29. Though the petitioner has brought on record the affidavits which show that the building is not in dilapidated condition, yet the Court below has found that it is not so. The Prescribed Authority in his order has directed the petitioner to vacate the disputed portion of the house in dispute under his tenancy within a period of two months. The Prescribed Authority further ordered that respondents 3, 4 and 5, i.e., the landlords will re-construct the premises after demolishing the same within four months and has also protected the rights of the tenant u/s 24(2) of the Act.

30. Section 24(2) provides the right of re-entry of the tenant which is as under:

(2) Where the landlord after obtaining a release order under Clause (b) of Sub-section (1) of Section 21 demolishes a building and constructs a new building or buildings on its site, then the District Magistrate may, on an application being made in that behalf by the original tenant within such time as may be prescribed, allot to him the new building or such one of them as the District Magistrate after considering his requirements thinks fit, and thereupon that tenant shall be liable to pay as rent for such building an amount equivalent to one per cent per month of the cost of construction thereof (including the cost of demolition of the old building but not including the value of the land) and the building shall, subject to the tenants liability to pay rent as aforesaid, be subject to the provisions of this Act, and where the tenant makes no such application or refuses or fails to take that building on lease within the time allowed by the District Magistrate, or subsequently ceases to occupy it or otherwise vacates it, that building shall also be exempt from the operation of this Act for the period or the remaining period, as the case may be, specified in Sub-section (2) of Section 2.

31. The building appears to be in dilapidated condition as according to the own submissions of the petitioner the landlords have put a lintel roof on their part of the accommodation during the pendency of the litigation supported by a common wall between the tenanted accommodation on the southern side and the residential portion of the northern side of the premises in dispute. The building cannot be said to be not in dilapidated condition merely because the wall is strong enough to support a lintel roof. The building cannot be said not to be in dilapidated condition if the roof of the building requires demolition and re-construction or extensive repairs which may not be temporary in nature.

32. In view of the fact that the landlords had to put a new roof itself indicates that the building does require extensive re-construction. It may be that southern portion in which the petitioner is living is in more dilapidated condition requiring demolition of the walls of that portion only for re-construction and not of the entire building. In any case the rights of the tenant have been protected by the Prescribed Authority u/s 24(2) of the Act.

33. In the appeal the order of the Prescribed Authority has been set aside and the appellate authority has now ordered eviction of the petitioner from the

premises in dispute which may be due to the reason that during the period of litigation the building will not be safe for living.

34. From the record it appears that the landlord had taken both the grounds of Sub-sections (a) and (b) of Section 21 of the Act available to him. The Courts below have held that the bona fide need and comparative hardships of the respondent-landlords are more than the petitioner-tenant. In fact Sub-section (b) of Section 21 of the Act has been framed to enable the landlord to evict the tenant If he bona fide needs the accommodation in his tenancy for which satisfaction of the authority is required for ordering eviction of the tenant. It has a direct nexus with Sub-section (a) of Section 21 regarding bona fide need and comparative hardships and in that sense it is also residual clause of Section 21.

35. Since in the release application the ingredients of both the Sub-sections (a) and (b) of Section 21 of the Act had been taken by the landlords, it cannot be said that the petitioner is deprived of an opportunity to meet the case of the landlords before the Courts below. The application has to be read as a whole and as stated above the release application should be a composite application including the ingredients of Sub-sections (a) and (b) of Section 21, hence it is not necessary to submit the application either u/s 21(1)(a) or 21(1)(b) of the Act. The application can also be a composite one by taking both the grounds u/s 21 of the Act.

36. The contention of the learned Counsel for the petitioner that the petitioner has been prejudiced and could not defend himself before the Prescribed Authority is fallacious. In fact it is clearly decipherable that it is the southern portion of the premises in dispute, i.e., T.P. No. 423 under the tenancy of the petitioner which has been found by the Court below to be in dilapidated condition requiring demolition and re-construction. It does not therefore mean that the whole premises of the building may be in dilapidated condition.

37. u/s 22 of the Act the appellate court has full authority and Jurisdiction to set aside any finding of the Prescribed Authority which is perverse or against the evidence on record. Ordinarily the appellate court may not re-appreciate evidence for setting aside the findings recorded by the Prescribed Authority but where there is perversity or error apparent on the face of the record: the appellate court can of course re-appreciate the evidence and record its independent findings by giving cogent reasons and can even set aside and reverse the findings of the Prescribed Authority which are perverse and against the record. This is in consonance with the decisions in Sanjay Kumar and Ors. (supra).

38. Since the respondents have filed the application for release after about 16 years of purchase of the house the other conditions u/s 21 regarding giving of notice, etc. would not be applicable as is apparent from the decisions cited by the learned Counsel for the respondents in Martin and Harris Ltd. (supra).

39. For the reasons stated above, I do not find any illegality or infirmity in the

impugned orders warranting interference under Article 226 of the Constitution.

40. The petition is accordingly dismissed. However, the petitioner-tenant is granted a month's time to vacate the accommodation in dispute.

No order as to costs.