
(1998) 11 AHC CK 0043
In the Allahabad High Court
Case No : C.M.W.P. No. 33293 of 1996

Bansal Brothers

APPELLANT

Vs

XIIIth Additional District Judge, Kanpur Nagar and others

RESPONDENT

Date of Decision : 26-11-1998

Acts Referred:

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

Citation : (1999) 1 AWC 798

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Vipin Sinha, for the Appellant; Ashok Trivedi, for the Respondent

Final Decision : Allowed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of the prescribed authority dated 31.3.1993 allowing the release application filed by the landlord and the order of the appellate authority, respondent No. 1, dismissing the appeal against the said order on 19.9.1996.

2. The facts in brief are that respondent Nos. 3 and 4 filed application for release of the shop in question on the allegation that the petitioner is a tenant of the shop situate on the ground floor of building bearing number 76/469, Koolie Bazar, Kanpur Nagar. The landlord-respondents were engaged in the business of extraction of Sandal Oil and other ancillary products from sandal wood and for this purpose, they have got a unit in the Industrial Area of Unnao at a distance of about 10 kilometers from Kanpur. It is an old business. His son Lalit Prakash is in service because he could not get any suitable accommodation to carry on business. The landlord has his office on the first floor of house No. 76/469. It is a part of his residential house where he has got four rooms. His second son Ramesh Chandra also requires the accommodation for carrying on business. It was alleged that he was running his business from his residential portion. The

petitioner contested the application and it was stated that Lalit Prakash and Ramesh Chandra do not require the accommodation in question. They are already working. The tenant petitioner alleged that he has no other accommodation and he would suffer greater hardship. The landlord. In fact, has his business at Unnao and is not carrying on any business from his first floor. The Prescribed Authority found that the need of the landlord-respondent is bona fide and on comparative hardship it was found that he would suffer greater hardship in case the application is rejected. The petitioner preferred an appeal against this order. The appeal has been dismissed by respondent No. 1 vide Impugned order dated 19.9.1996.

3. I have heard Sri Vipfn Sinha, learned counsel for the petitioner and Sri Ashok Trivedi, learned counsel for the respondents.

4. Learned counsel for the petitioner assailed the finding that the landlord-respondent requires the disputed accommodation for carrying on business as alleged by him. It is submitted that the Commissioner inspected the first floor portion of the house of the landlord-respondent and found that no business was being carried on from the said accommodation. The Prescribed Authority considered this aspect of the matter. The version of the respondent is that he is only carrying on office on the first floor in his residential portion. He requires the disputed shop for carrying on business. This version has been believed by the Prescribed Authority. It is a matter of assessment of evidence. I do not find any manifest illegality in the finding recorded by the Court below.

5. It is further submitted that the petitioner will suffer greater hardship in case he is evicted as the petitioner is carrying on business for the long time. Tt has not been shown that the petitioner made any sincere effort to find out any alternative accommodation. The application was filed in the year 1989 and almost nine years have passed. Considering the entire facts and circumstances of the case, I do not find it to be a fit case for interference under Article 226 of the Constitution of India. The writ petition is accordingly dismissed.

6. In the end, learned counsel for the" petitioner prayed that some time may be granted to vacate the accommodation in dispute. Considering the facts and circumstances of the case, the petitioner is granted six months time to vacate the disputed accommodation provided he gives a written undertaking on affidavit within two weeks from today before respondent No. 2 that it would vacate the disputed accommodation within the time granted by this Court and handover its peaceful possession to the landlord-respondent.