

(2006) 05 AHC CK 0228

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4104 of 1995

Bechchu Lal

APPELLANT

Vs

IXth Additional District Judge, Civil Judge/Prescribed
Authority (Rent) and Baij Nath

RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 21, 3

Citation : (2006) 4 AWC 3467

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

Bench : Single Bench

Advocate : I.P. Singh, for the Appellant; G.N. Verma, Madhu Tandon, A.N. Verma and S.C., for the Respondent

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. This is landlord's writ petition arising out of eviction/ release proceedings initiated by original landlord petitioner Bachchu Lal since deceased and survived by his widow on the ground of bonafide need u/s 21 of U.P Act No. 13 of 1972 in the form of Rent Case No. 170 of 1975.

3. In the release application, it was stated that landlord required the shop in dispute for himself (as he had retired) and for settling Ghanshyam one of his five sons. Prescribed authority/ Special Chief Judicial Magistrate, Kanpur Nagar through judgment and order dated 28.10.1991, allowed the release application. However prescribed authority awarded twenty months rent amounting to Rs. 625/- as damages to the tenant. Against the said judgment and order original tenant respondent No. 3 Baij Nath filed Rent Appeal No. 218 of 1991. Rent Appeal was allowed by IX A.D.J Kanpur Nagar on 24.12.1994 hence this writ petition.

4. During pendency of writ petition both the original landlord as well as original tenant died. Landlord has been substituted by his widow who has stated that she

requires the shop in dispute to settle her son Ghanshyam (for whose need also release application was filed by original landlord). It has been stated that the original petitioner had executed a will in respect of his several properties and shop in dispute was given to his widow Smt Maharaji who has been substituted at the place of sole petitioner.

5. As far as tenant is concerned he has died and his son Radhey Shyam Gupta has been substituted. However Radhey Shyam Gupta has filed counter affidavit stating therein that the tenancy of the shop in dispute as well as business carried out there from was bequeathed by original tenant Baij Nath in favour of his three grandsons (i.e. sons of Radhey Shyam). It is admitted that Radhey Shyam is carrying on business from another shop and shop in dispute and the business carried out there from is in exclusive possession and control of his sons. While allowing substitution application by order of date I have held that there can not be any will in respect of tenancy (as held by the Supreme Court in Jaspal Singh Vs. Additional District Judge, Bulandshahr and Others, . Appellate court recorded a very strange finding while rejecting the release application and allowing the appeal. Appellate court held that for doing the work of goldsmith independent shop is not required and Ghanshyam for whom the shop was required could carry on the said business either from his house or from the shop of any of his brothers. The Supreme Court in Sushila Vs. IInd Addl. District Judge, Banda and Others, and Akhileshwar Kumar and Others Vs. Mustaqim and Others, has held that each and every family member of the landlord is entitled to separate independent business and no family member can be compelled to participate either in the family business or in the business of his brothers. Tenant pointed out that other shops were available to the original landlord. However his other sons were doing business from those shops. It could not even be asserted by the tenant that Ghanshyam was doing any business or was otherwise gainfully engaged.

6. In respect of comparative hardship tenant did not show that he made any efforts to search alternative accommodation after filing of the release application. This was sufficient to tilt the balance of comparative hardship against the tenant. The appellate court while allowing the appeal was very much impressed by the fact that for about 65 years the shop in dispute was in tenancy occupation of tenant. Mere long possession is not sufficient to reject the release application. The rent is Rs. 31.25/- per month. For a shop in Kanpur Nagar such rent is rather ridiculous. It is virtually as well as actually no rent. By paying such highly inadequate rent, tenant must have saved lot of money, which he might have been required to pay as proper rent. Money saved is money earned. Moreover, the tenant was doing business from the shop in Kanpur for 65 years. Accordingly he must be in a position either to purchase the shop or to take on good rent another shop. In this direction no efforts were made by the tenant. It is admitted that Radhey Shyam is doing business from another shop. In view of this his hardship is nil. This is an additional ground to allow the release application.

7. Learned Counsel for the petitioner has further argued that grand sons are included in the definition of "family" of the tenant, as given u/s 3(g) of the Act, hence their need shall also be considered and their hardships shall also be compared. I do not agree with this argument. The purpose of giving definition of "family" under the Act is to permit those persons to occupy the tenanted accommodation. After the death of the original tenant, his son Radhey Shyam became the tenant and the three sons of Radhey Shyam are only family members of Radhey Shyam and not independent tenants. u/s 3(a) of the Act provision for devolution of tenancy after the death of the tenant has been provided. It is not controlled by Section 3(g) of the Act. The definition of the "family" u/s 3(g) of the Act is not for the purposes of inheritance of tenancy. Even otherwise, grand sons did not show what efforts they made to search alternative accommodation. Moreover, their father Radhey Shyam has got a shop. The need or hardship of grand sons of original tenant in relation to the shop in dispute cannot independently be considered.

8. Appellate court further held that earlier proceedings for enhancement of rent were initiated by the landlords against the tenant which failed hence it was clear that the need was not bonafide and the real intention of the landlord was to enhance the rent. The reasoning is utterly fallacious.

9. Incidentally it may be noted that in seventies and eighties it was considered almost indecent that landlord entertained the desire to enhance the rent! The Supreme Court in Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another, has severally criticised those Rent Control Acts which do not contain provision for periodical enhancement of rent. U.P Rent Control Act also suffers from the said infirmity. The result of the aforesaid omission is best illustrated by the cases coming from Kanpur including the present one. Current rent of no shop in Kanpur, which is most expensive city of Uttar Pradesh, can be less than several thousand rupees per month. However still there are hundreds of shops and thousands of houses whose tenants are paying rent ranging in between Rs. 5 to Rs. 50/- per month.

10. Accordingly I find that the judgment and order passed by the appellate court is patently erroneous in law and liable to be set-aside.

11. Writ petition is therefore allowed. Judgment and order passed by the appellate court is set-aside and that of the prescribed authority is restored.

12. Tenant-respondent is granted six months time to vacate provided that

(1) Within one month from today he files an undertaking before the prescribed authority to the effect that on or before the expiry of period of six months he will willingly vacate and handover possession of the property in dispute to the landlord.

(2) For this period of six months which has been granted to the tenant to vacate he is required to pay Rs. 3600/- (at the rate of Rs. 600/- per month) as damages

for use and occupation. This amount after deducting Rs. 625/- awarded as damages by prescribed authority shall also be deposited within one month before the prescribed authority and shall immediately be paid to the landlord.

13. It is further directed that in case undertaking is not filed or amount of Rs. 2975/- is not deposited within one month then tenant shall be liable to pay damages at the rate of Rs. 2000/- per month since after one month till the date of actual vacation.

14. Similarly if after filing the aforesaid undertaking and deposit of Rs. 2975/- the property in dispute is not vacated on or before six months then damages for use and occupation shall be payable at the rate of Rs. 2000/- per month since after six months till actual vacation.