
(2013) 08 AHC CK 0003

In the Allahabad High Court

Case No : C.M.W.P. No. 30121 of 2013 & Civil Miscellaneous Writ Petition No. 30121 of 2013

Bhagwandas Sharma and Others

APPELLANT

Vs

Kshitijkant Kesari and Others

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : (2014) 1 ALJ 789 : (2013) 100 ALR 613

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—This is the petition by the tenants of the shop in dispute situated in a building No. 246 against the order dated 27.4.2013 passed by the District Judge, Chandauli whereby Rent Appeal No. 8 of 2004 filed by the landlords has been allowed and the order of the Prescribed Authority dated 18.3.2004 has been set aside. The release application filed by the landlords has been allowed and the petitioners have been directed to vacate the premises, which is in the nature of shop. The brief facts giving rise to the present writ petition are that;

2. Late Kashi Nath Kesari, who was the landlord of the premises in dispute, filed release application u/s 21(1)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the ("Act")) in the year 1980 on the ground that the premises in dispute was required for personal need, for carrying on the business as well as for residential purposes. The Prescribed Authority vide order dated 31.8.1981 rejected the release application and the plea of the landlords of bona fide need and comparative hardship. The order of the Prescribed Authority has been challenged in appeal. The appeal has been rejected vide order dated 31.8.1982. The landlords filed Civil Misc. Writ Petition Nos. 4349 of 1982 and 4355 of 1982. Both the writ petitions have been dismissed by a common order dated 6.9.2000. The landlords filed review application, which has also been rejected vide order dated

31.7.2001. However, this Court has given the liberty to the landlords to file another application u/s 21(1)(a) of the Act on the expiry of the period of limitation prescribed under the Act.

3. Late Kashi Nath Kesari-landlord filed the release application u/s 21(1)(a) of the Act on 11.3.2002 on the ground that he is now aged about 55 years old and has no permanent business and is only supporting his brother in his business and whatever the money is being received from his brother is the only source of income. He had three adult sons, namely, Sri Kshitijkant Kesari, Sri Akhilesh Kant Kesari and Sri Chandramouli Kesari. Sri Kshitijkant Kesari was 28 years old and has passed B.A. and could not marry in the absence of any permanent business. Sri Akhilesh Kant Kesari was 25 years old unmarried and wants to do business and third Sri Chandramouli Kesari was 22 years old and has passed B.A. and wants to do the business. It is stated that he had purchased the house with a view, that on the ground floor he himself and sons would carry on the business and on the first floor he would live after construction of rooms. It is further stated that on the mercy of his brother Sri Krishna Kant Kesari, he was residing in one room and living life of hell. The future of his sons is in dark in the absence of any opportunity to carry on the business and after the shop is being vacated, he would construct the shops and settle his sons. It is also stated that the tenants are running a Bhojnalaya in the premises in dispute in the name of Marwari Bhojnalaya and the tenants also possessed house No. 252 in which they are running a Bangle Cosmetic shop and running Beauty Parlour, which is near the premises in dispute and from that place they can carry on the business. To the contrary the petitioners have no other property and shop. The Prescribed Authority vide order dated 18.3.2004 rejected the release application.

4. Being aggrieved by the order of the Prescribed Authority, the landlords filed an appeal, which has been registered as Rent Appeal No. 8 of 2004. The appellate authority vide order dated 1.2.2005 rejected the appeal. It appears that during the pendency of appeal, Kashi Nath Kesari died and his sons have been impleaded as the appellants. Though the appellate authority has accepted the bona fide need of the landlords but the comparative hardship has been decided in favour of the petitioners and accordingly confirmed the order of the Prescribed Authority rejecting the release application.

5. Being aggrieved by the order of the appellate authority dated 1.2.2005, the landlords filed Civil Misc. Writ Petition No. 36350 of 2005, which has been allowed vide order dated 30.11.2012 and the matter has been remanded back to the appellate authority to decide the appeal with certain observations and directions. This Court after hearing learned Counsel for both the parties has observed as follows:

If in the garb of findings of fact, something is mentioned, based on no evidence at all, particularly the facts are such which cannot be presumed in law to be in the knowledge of Court below, or in respect where to judicial notice cannot be taken, such findings not based on evidence, resulting miscarriage of justice and

amount to manifest error in the error of the Court below justifying interference of this Court's in writ jurisdiction.

6. In pursuance of the order of this Court, referred herein-above, the appellate authority has heard learned Counsel for both the parties and allowed the appeal by the impugned order dated 27.4.2013 and directed the petitioners to vacate the premises in dispute. Being aggrieved, the petitioners filed the present writ petition.

7. Heard Sri Somesh Khare, learned Counsel for the petitioners and Sri Rahul Sahai, learned Counsel appearing on behalf of the respondents.

8. Learned Counsel for the petitioners submitted that the appellate authority has not considered Rule 16(2) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 while allowing the release application. He further submitted that the Court below has also not considered the submission that even the part release of the premises in dispute would satisfy the need of the petitioners which ought to have been considered. He submitted that Kashi Nath Kesari was carrying on the business along with his brother and also residing along with his brother and his brother had sufficient space to carry on the business. It is submitted that the petitioners are ready to part some of the portion of the shop which may satisfy the need of the landlords.

9. Learned Counsel for the respondents submitted that Late Kashi Nath Kesari purchased the shop No. 246 in the year 1974 by separate sale-deed. Apart from this house, he has no other house. His sons also do not possess any other house or shop. The portion adjacent to the shop No. 246 belongs to the brother of Late Kashi Nath Kesari. In the release application, it has been categorically stated that he was supporting his brother in his business and whatever he gets, that is the only source of income and on courtesy of his brother, he was residing in one room and living the life of hell. His three sons are adults, unemployed and unmarried and accommodation in dispute is required to settle them. It is also stated that on the premises being vacated, he would construct the shops in the premises in dispute and also construct rooms on the first floor for residential purposes. The appellate authority in its order dated 1.2.2005 has accepted the bona fide need of the landlords but the comparative hardship has been decided in favour of the tenants. Against the order of the appellate authority dated 1.2.2005, the landlords filed writ petition. The tenants have not challenged the finding of the appellate authority. So far as the bona fide need is concerned, the finding of the appellate authority in this regard has become final. The only question is about the comparative hardship. The appellate authority has recorded a categorical finding that the landlords have no other premises to live and carry on the business and this is the only premises available to them. The landlords are three adult brothers and they need place to carry on the business. The appellate authority has observed that the landlords in their affidavits have stated that in house No. 252, which belongs to the tenants, Smt. Shushil Devi is just running a Beauty Parlour and there is another house No. 20/A and house No. 53.

The appellate authority stated that the tenants in their affidavits have stated that house Nos. 20/A and 53 are in lane and are not suitable for carrying on the business of Bhojnalaya and Tea but so far as house No. 252 is concerned, in which the business of Beauty Parlour etc. is being carried on just for passing of time and socialization, can be used for carrying on the business. It has also been observed that the tenants have not made any effort to search out an alternative accommodation by making the publication in the newspapers or by moving any allotment applications before the Rent Control and Eviction Officer which shows that no effort has been made to find out alternative accommodation. On these facts, it has been held that the comparative hardship is in favour of the landlords.

10. I have considered rival submissions and perused the impugned order.

11. I do not find substance in the argument of learned Counsel for the petitioners.

12. So far as the bona fide need is concerned, the finding recorded by the appellate authority in its order dated 1.2.2005 has become final inasmuch as it has not been challenged by the petitioners. The only question remains is the comparative hardship. The Appellate Court has adjudicated this issue in detail and has recorded the finding that the comparative hardship is in favour of the landlords. It has been held that except the premises in dispute, the landlords did not have any other premises to carry on the business and to live. It has been further observed that house Nos. 20/A and 53 are in western bazar, Mughalsarai and house No. 252 is at Mainatali Mughalsarai. In house No. 252, Smt. Sushila Devi, the family member of the petitioners, was running a Beauty Parlour shop to pass time and for socialization and the said building can very well be used for carrying on the business. It has been further held that the petitioners have not made any effort since last several years to find out alternative accommodation.

13. I do not find any error in the findings recorded by the Appellate Court. The findings are findings of fact and are based on material on record. I also do not find substance in the argument of learned Counsel for the petitioners that the part portion may be released in favour of the landlords and part portion may be allowed to the petitioners to retain as the tenants. The bona fide need of the landlords for the shop in dispute has been established. The landlords are three adult brothers and need space to carry on the business. The premises in dispute cannot be said to be so big or substantial out of which any portion can be parted to the petitioners. For carrying on the business by the three brothers separately and independently in an area in dispute cannot be said to be substantial or excessive. Therefore, this plea of the petitioners cannot be accepted.

14. This is one of those cases where bona fide need and comparative hardship is fully established. Late Kashi Nath Kesari purchased the property to settle himself and his sons and was running from pillar to post since 1980 to get the premises vacated but could not succeed to get the possession till his life time and after his death his three sons are running from pillar to post to get the premises vacated to settle themselves. Just see that the landlords, who owns property, are living

miserable life and are not able to carry on the business despite property being owned by them and tenants are enjoying the property on one pretext or the other.

15. In a recent decision, the Apex Court had an occasion to consider the principle relating to the bona fide need and comparative hardship. In the case of Mohd. Ayub and Another Vs. Mukesh Chand, , the Apex Court held that the landlord's requirement need not be a dire necessity. The length of tenancy ought not to have weighed with the Courts below. It has been held that the hardship the landlord would suffer by not occupying their own premises would be far greater than the hardship the respondent would suffer by having to move out to another place. It has been further observed that whenever the tenant has been asked to move out of the premises some hardship is inherent.

16. While dealing with the petitions under the present statute the following principles have been laid down in the following case:

17. In Om Prakash and Others Vs. Sunhari Devi (Smt) and Others, , a similar question came up for consideration before this Court. There an application u/s 21(1)(a) of the present Act was filed by the landlords against the tenants on the ground that they bona fide required the tenanted premises, a shop, for their own use. The Prescribed Authority dismissed the eviction petition holding that the applicant's requirement was not bona fide and greater hardship would be caused to the tenants than to the landlords. The landlords filed an appeal and the appellate authority allowed the same holding that the requirement of the landlords was genuine and bona fide. It also recorded a finding in favour of the landlords on the question of comparative hardship.

18. The High Court of Allahabad in a petition by the tenants, set aside the finding recorded by the appellate authority and dismissed the eviction application. Aggrieved landlords approached this Court.

19. Allowing the appeal, setting aside the order passed by the High Court and restoring that of the appellate authority, this Court held that even in second appeal, the High Court should restrict itself to question of law. It was all the more so, in a writ petition. When findings were recorded by the appellate authority, the High Court was wrong in interfering with the said findings and in setting aside the order of eviction, observed this Court.

20. In Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, , this Court held that rent control laws must be construed reasonably. They should be interpreted in such a way as to achieve the object of enabling landlord to evict tenant where the statute grants such right in favour of landlord.

21. Dealing with the Jammu and Kashmir Houses and Shops Rent Control Act, 1966, the Court observed that "reasonable requirement" undoubtedly postulates that there must be an element of "need" as opposed to a mere "desire" or "wish". The distinction between "desire" and "need" should doubtless be kept in

mind. That does not, however, mean that even a genuine need should be treated as nothing more than a desire or wish. The connotation "need" or the word "requirement" should not be artificially expanded nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such construction would defeat the very purpose of the Act, which affords facility of eviction of the tenant to the landlord on certain specified grounds.

22. In the case of *Muni Lal and Others Vs. Prescribed Authority and Others*, , while dealing with section 21 of the Act No. 13 of 1972, the Apex Court held that It is not for the High Court in the exercise of its jurisdiction under Article 226 of the Constitution to reappraise the evidence and come to its own conclusion which may be different from that reached by the District Judge or the Prescribed Authority.

23. The learned Single Judge of this Court in the case of *Suresh Chand Sharma Vs. Nand Kumar Kamal*, , has held that as follows:

Section 21 of the Act, 1972 confers a right on landlord to get a building, which is under occupation of a tenant, released on the ground specified therein and this includes bona fide requirement of building by himself or members of his family for whose benefit he held it. The right of landlord to judge his requirement and live according to his own wisdom and discretion cannot be controlled by third person, like tenant, or, even the Court. The purpose of the Court is to protect the tenant from unjustified eviction or abrupt increase of rent etc., but, simultaneously, if the landlord has come with the case of his own personal need, it has to be judged disparately, fairly and independently, so that a landlord, coming with a bona fide case, must be able to use his own premises for the purpose he has disclosed before the Court, if it is found bona fide and genuine. The issue of hardship between the two is an integral part of looking into the bona fide and genuity of personal need set up by landlord.

It cannot be disputed that it is the privilege of landlord to determine his way of living and accommodate himself and his family according to his status, requirement etc. He cannot be compelled to live in a particular manner either by tenant or any other agency. Even the Court of law must not dictate such terms to a landlord to live in a particular manner and adjust his needs accordingly.

24. In *Prativa Devi Vs. T.V. Krishnan*, , the Apex Court said that the landlord is the best judge of his residential requirement. He has complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how and in what manner he should live or to prescribe for him a residential standard of their own. Therein the Court considered the age of landlord and doubted his need on the ground that in such advanced age, he would be requiring somebody to take care and therefore should live with other family members instead of alone. The Apex Court observed that High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. That is a

lookout of landlord and not of High Court. The Apex Court disapproved the approach of High Court and observed:

We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property.

25. Similarly, in *R.C. Tamrakar and Another Vs. Nidi Lekha*, , the Court in paras 10 and 11 said:

10. Law is well-settled that it is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement. In deciding the question of the bona fide requirement, it is unnecessary to make an endeavor as to how else landlord could have adjusted himself.

11. Though the son of the landlady is a doctor and has constructed his own house, the landlady wants to stay in the suit premises. It is not the case of the tenant that landlady has any other suitable accommodation. Therefore, the High Court rightly set aside the finding of the First Appellate Court holding that landlady could not be compelled to reside with her son as her case was that she wanted to stay by herself in the suit premises because of her health condition and the climatic condition of that place suit her.

26. In *Ragavendra Kumar Vs. Firm Prem Machinery and Co.*, , the Court said that landlord is best judge of his requirement for his residential or business purpose and he has complete freedom in the matter.

27. In *Yadvendra Arya and Another Vs. Mukesh Kumar Gupta*, , the Court reiterated that the landlord is best judge of his requirement and has got every right to file release application for settling his unemployed son in an independent business and son cannot be forcibly asked to be accommodated with father's business. Mere fact that landlord is a rich and affluent person will make no difference as held in *Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased)* through LRs. and Others, .

28. On the question of comparative hardship, the Courts below have observed that petitioner-tenant did not make any attempt to find out any alternative accommodation. This is a relevant aspect to decide question of comparative hardship in favour of landlord and mere long possession of tenant is immaterial, as held in *Sushila v. II Additional District Judge, Banda and others* (supra).

29. In the case of *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*, , while considering the bona fide requirement of the landlord, the Apex Court has held that the alternative accommodation available to the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation where-from the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the Court may keep in view the profession or vocation of the

landlord and his family members, their style of living, their habits and the background wherefrom they come.

30. In the case of *Sarla Ahuja v. United India Insurance Co. Ltd.* (1996) 5 SCC 353, the Apex Court has held that the Rent Controller should not proceed on the assumption that the landlord's requirement is not bona fide. When the landlord shows a prima facie case a presumption that the requirement of the landlord is bona fide is available to be drawn. It is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without giving possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

31. In the case of *Ragavendra Kumar Vs. Firm Prem Machinery and Co.,* , the Apex Court has held that it is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter.

32. In the case of *Ashfaq Brother and Others Vs. Additional District Judge and Others,* , this Court has held that it is the legal right of the landlord to decide which portion or accommodation would suit him/her for utilizing it how and in what manner. This factor of utility is to be satisfied by him to meet his needs is only dependent upon the landlord only and tenant has no say in the matter.

33. In the case of *Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased) through LRs. and Others,* , the Apex Court while dealing with section 21 of Act No. 1972 held as follows:

Though the 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 power 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 appreciate, 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.

34. In *Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram,* , this Court stated:

Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the Court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities.

35. Even prior to Chundavarkar case, in AIR 1975 1297 (SC) , dealing with supervisory power of a High Court under Article 227 of the Constitution, Bhagwati, J. (as His Lordship then was) stated:

If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as a Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 covert itself into a Court of appeal when the Legislature has not conferred a right of appeal and made the decision of the subordinate Court or Tribunal final on facts.

36. In State of Maharashtra Vs. Milind and Others, , this Court observed;

The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of inferior Tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the Tribunal, only when it records a finding that the inferior Tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior Tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record.

37. In State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others, , this Court reiterated;

Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate Tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and Tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise.

(Emphasis supplied)

38. In *Ranjeet Singh Vs. Ravi Prakash*, , again this Court while interpreting the provisions of the Act in question, held that the High Court, while exercising powers under Articles 226 and 227 of the Constitution, cannot act like an Appellate Court and re-appreciate or reevaluate the evidence while exercising certiorari or supervisory jurisdiction. Only a patent error which did not require establishment by lengthy and complicated arguments or by long drawn process of reasoning is amenable to certiorari jurisdiction. If two opinions were reasonably possible, the finding arrived at one way or the other by the appellate authority, cannot be disturbed.

39. In view of the above, the writ petition has no merit and is accordingly dismissed with the cost of Rs. 10,000/-. However, the petitioners are allowed two months time to vacate the premises provided the petitioners give an undertaking before the Prescribed Authority to this effect within two weeks from today.