

(1992) 05 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 596 of 1988

Brij Kishore Bansal

APPELLANT

Vs

Prescribed Authority (Constituted under Act No. 13 of 1972)
and Others

RESPONDENT

Date of Decision : 11-05-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 22

Citation : (1992) 2 AWC 1217

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Advocate : K.M Dayal, P.K. Jain, A.K. Sharma, S.K. Garg and Ravi Kant, for the Appellant; S.N. Misra, R.N. Bhalla, V.S. Saxena and J.P. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Singh, J.—The legislature has enacted the Rent Act. It is a piece of social legislation aimed at easing the problem of profit hunting notives It provides certain safeguards for the tenants. Now the Act does not completely overlook the interest of the landlord. He has been given a right to get the accommodation released in case he is able to prove his need is genuine and bonafide.

Facts.

2. The Petitioner was a tenant of two shops bearing Municipal Nos. 48 and 49 measuring 9" x 10" situate at Garh Road, Hapur, District Ghazia-bad

3. Respondent No. 3 is the landlord. He filed an application for release u/s 21(1) (a) of the U.P. Act XIII of 1972. The case set up by him was that he wanted the accommodation to settle his youngest son Navin Kumar in business; His eldest son Mahendra Kumar was engaged in the business under the name and style of "Agarwal Oil Mills" which was a partnership concern He was also a partner of this

firm.

4. The next two sons Ashok Kumar and Arun Kumar were engaged in the business, in the name and style of "Arun Trading".

5. Navin Kumar, the last son after doing his graduation in the year 1983-84 could not get any employment and so he wanted to settle him in business. For that purpose he needed these two shows.

6. The Petitioner contested the said application. It was stated that need of the landlord was not bonafide. Navin Kumar was also doing the business alongwith his brother. Some more shops were available in vacant state. The application was liable to be rejected on these grounds.

7. The Prescribed Authority allowed the release application holding that need of the landlord was bonafide. Navin Kumar was un-employed. He needed the shops to start his own business. Shops No. 43, 44, 46, 50 and 56 were not in possession of the landlord nor they were vacant. In addition to that a finding was recorded that the tenant purchased a piece of land in the names of his minor sons, Dushyant, Shashant and Vibrant. He constructed a building over the same. He created a trust on the same day when the application for release was filed by the landlord. Accordingly an order of release was passed.

8. The Petitioner filed an appeal u/s 22 of the Act. It was dismissed The findings recorded by the Prescribed Authority were upheld. These two orders are under challenge in the present writ petition.

9. Heard Sri Ravi Kant, learned Counsel for the Petitioner and Sri S. N. Mishra, appearing on behalf of the Respondent No. 3 and also perused the record carefully.

10. The contention of the learned Counsel appearing on behalf of the Petitioner was that the affidavits filed on behalf of the Petitioner have not been discussed either by the Prescribed Authority or by the Appellate Authority, Paper Nos. 40/C and 41/C were the affidavits filed by Brij Kishore Bansal, Petitioner. Vijai Kumar held an affidavit, paper No. 42/C and paper No. 81/C was the affidavit filed by Arvind Kumar Copies of these affidavits have been filed as Annexures in this case. It was a case of non-consideration of affidavits.

11. It was also submitted that shops No. 44 and 50 were vacant which were available to the landlord. The need of the landlord was not at all bonafide.

12. In order to appreciate the worth of the arguments I examined the said affidavits which are said to have been filed by the Petitioner before the Prescribed Authority Nothing substantial has been said, which may change result of the case, if it is remanded for re consideration. The case has been pending since 1984 No. useful purpose would be served by remanding the case only for discussing the evidence, as after perusing the evidence I am of the opinion that the authorities will come to the same conclusion again. This Court is aware of the

legal position that it is not setting as a court of appeal while exercising powers under Article 226 of the Constitution of India but in order to appreciate the controversy of the learned Counsel, the Court can always look into it.

13. The most important point which goes against the Petitioner is that the uncontroverted affidavit of Navin Kumar, which forms part of the record, shows that though he graduated in the year 1983-84 but still he is unemployed and has not been able to settle in business for want of accommodation. This fact alone is sufficient to establish that need of the landlord is bonafide.

14. The other equally important point in this case is that the Petitioner purchased a piece of land near the shops in dispute and constructed a building. On the date of filing of the release application he created a private trust. Why did he do so ?. In case the release application was filed then in the meantime he should have made an arrangement for shifting himself from the accommodation in dispute. Had he been honest in his approach then he should have made some sincere effort of shifting his business from the accommodation.

15. Will it not amount cruelty to the landlord in case the application for release is rejected and he will not be able to settle his own son Navin Kumar in business.

16. The only enquiry contemplated by Section 21(1)(a) is regarding the bonafide requirement of the landlord The need is to be judged as an objective fact by the Rent Control authorities based on hard reality. It is not a question of sentiment or desire but the fact should always be based on genuine need. The need has to be assessed on a consideration of facts of each case and according to a reasonable appreciation.

17. The phrase "reasonable requirement" always postulates an element of need as opposed to a mere desire or wish. Artificial construction should not be given to this phrase otherwise it may lead to defeat the purpose and object of the Act.

18. The expression "bonafide required" has been considered in number of cases by this Court as well as the Supreme Court In the case Mattulal Vs. Radhe Lal, , it was held that mere desire on the part of the landlord is not enough, but there should be an element of need and the landlord, must show that he genuinely required the accommodation.

19. In the case Jayant Kumar v. Prescribed Authority 1979 (UP) RCC 132, it has been held that:

It is, however, not necessary that the landlord must stand in absolute need of the property. The requirement of law is that the need of a landlord must be honest and in good faith. It is not correct that a landlord cannot succeed unless he is found in an extreme need.

20. Similar view has been taken by this Court in a Full Bench decision N.S. Datta v. VII Addl. District Judge, Allahabad 1984 (1) ARC 113. The law laid down by the Supreme Court in the case of Bega Begam v. Ahdul Ahmad Khan (1979) 1

SCC 275, has been strictly followed in that case.

21. Coming to the second submission that shops No. 44 and 50 are available to the landlord. Only this is to be said that both the authorities below have recorded a categorical finding that accommodation No. 44 is not a shop but is only a Rasta. Shop No. 50 is not available to the landlord in a vacant state It is in the possession of a tenant. The tenant cannot compel the landlord to get some other accommodation released instead of the one which is in his occupation. It is the choice of the landlord to move the release application with regard to any accommodation which he likes,

22. The learned Counsel for the Petitioner has failed to establish that there was any error apparent on the face of the record.

23. I am of the view that need of the landlord was bonafide and greater hardship would be caused to him in case the application was rejected.

24. It is true that in every case of release some hardship or inconvenience is bound to be caused to the tenant but that cannot be a ground for rejecting the application. Can a tenant be justified in compelling a landlord to live below the poverty line and not to settle his son in business ?. No, certainly not.

25. No. other point survives for consideration.

26. Accordingly, I find no merit in this petition and it is dismissed without any order as to cost.

27. However, on the request of the learned Counsel for the Petitioner, I permit the Petitioner to remain in possession for six months from to-day in case he files an undertaking before the Prescribed Authority within a month stating that he will hand over peaceful vacant possession of the accommodation to the landlord on or before 30-11-1992 without inducting any third person in the premises. He is further directed to deposit the entire rent upto 30-11-1992 within a period of one month from the date of filing of the undertaking. In case of default, this part of the order shall become inoperative and the landlord will be entitled to proceed for the enforcement of the order passed u/s 21(1)(a) of the Act.