
(2010) 05 AHC CK 0214
In the Allahabad High Court
Case No : Writ A. No., 20885 of 2001

Chandra Prakash

APPELLANT

Vs

IInd Addl, District Judge, Firozabad and another

RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (2010) 05 AHC CK 0214

Hon'ble Judges : Devendra Pratap Singh, J

Final Decision : Dismissed

Judgement

Devendra Pratap Singh,J.

1. Heard learned counsel for the petitioner. However, none appears for the respondent tenant even though the case was taken in the revised list.
2. This petition by the landlord is directed against an appellate order dated 10.4.2001 by which his release application has been rejected.
3. The respondent landlord filed an application for release under Section 21(1)(a) of U.P. Act No. 13 of 1972 (hereinafter referred to as the Act) against the respondent tenant which was registered as P.A. Case No. 71 of 1988 inter alia with the allegation that he has required the disputed shop for his own use and occupation. After contest the application was allowed vide order dated 4.9.1991 finding the need of the petitioner to be genuine. In the consequential appeal, during its pendency additional evidence was brought on record to show that the landlord had shifted to Shikohabad along with his business and the shop in which he was running his business earlier in Firozabad is now being utilized by his son for running an electrical shop. This evidence was found to be un rebutted and thus, the appellate court after relying upon it, has held in the changed scenario, since accommodation is available to the landlord and the son, there was no genuine or bona fide need and therefore, set aside the order of the Prescribed Authority and allowed the appeal.

It is urged that the landlord was still using the shop at Firozabad and the finding to the contrary is not correct.

During argument the court has posed several questions to the counsel for the petitioner to demonstrate from the record what was the evidence in rebuttal to the evidence led at the appellate stage, he failed to show any evidence. Thus, the finding returned by the appellate court has to be believed.

4. It is then urged that this court has enhanced the rent vide order dated 23.8.2006 to Rs. 2,000/ but even that rent is not being paid. It is apparent from the record that a learned Single Judge had passed the following order on 23.8.2006:

"List has been revised. The counsel for the petitioner is present. None appears for the respondents.

Brief facts of the case are that an application under Section 2 (1)(a) of U.P. Act No. 13 of 1972 for release of the accommodation in dispute was moved by the landlordpetitioner, which was registered as Case No. 71 of 1988, Chandra Prakash Vs. Nanhey Babu before the Prescribed Authority, Shikohabad. The aforesaid application was allowed vide order dated 4.9.1991 holding that the need of the petitioner was bona fide and genuine.

Aggrieved the respondenttenant filed Appeal No. 100 of 1991, Nanhey Lal Vs. Chandra Prakash. The Revisional Court held that the need of the landlord was not bona fide nor comparative hardship was greater to the tenant as such the plea of the landlord was not sustainable. The Revisional Court accordingly quashed the order of the trial court, allowed the appeal with costs and rejecting the release application vide order dated 10.4.2001. The aforesaid judgment and order dated 10.4.2001 of the Revisional Court, which is impugned in the present writ petition.

Notices were issued to the respondent. He had appeared but when the case is taken up in the revised list today none appears on behalf of the respondent.

One of the grounds taken by the Revisional Court is that inspite of efforts the tenant could not search the alternative accommodation. The respondent is the tenant of the disputed shop on monthly rent of Rs. 10/ for more than 40 years back. With passage of time the rent is to be increased proportionately in addition to notional increase of 5% in rent every 5 years. It is not his case that no shop was available but his case appears to be that no shop is available on the rent, which he is paying.

In view of the decision in Rajeshwari (Smt.) Vs. Smt. Prema Agarwal, 2005 (1) ARC 526 the court can increase the rent to a reasonable extent in exercise of powers under Article 226 of the Constitution of India to adjust the equity.

In the circumstances, the respondent shall pay rent Rs. 2,000/ per month of the disputed shop to the landlord w.e.f. 1.9.2006.

List for hearing after four months."

5. However, there is nothing on record to show that the respondent tenant is depositing rent at the rate of Rs. 2,000/. In the facts of this case, it appears appropriate that the rent be refixed at Rs. 2,000/ as has been done in the order dated 23.8.2006.

6. Accordingly, writ petition is dismissed but in view of the order dated 23.8.2006 the respondent tenant is directed to comply with it.