
(1999) 07 AHC CK 0176
In the Allahabad High Court
Case No : C.M.W.P. No. 3900 of 1995

Chaudhry Ram

APPELLANT

Vs

IIIrd Addl. District Judge, Saharanpur and others

RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(2), 21, 21(1)

Citation : (1999) 4 AWC 3505 : (1999) AWC 3505

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Pushkar Mehrotra and Ravi Kiran Jain, for the Appellant; S.C. and Rajesh Tandon, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Gupta, J.—This is tenant's writ petition.

2. Being aggrieved by the order dated 18.1.1995 passed by the appellate authority reversing the order of the Prescribed Authority dated 16.2.91 and releasing the premises in question for business purpose in favour of landlord, the tenant-petitioner has now approached this Court for redress seeking quashing of the order of the appellate authority.

3. The dispute relates to a shop situated in main bazar Sarsawa district Saharanpur, which is under occupation of the petitioner as tenant. The landlords moved application for the release of the said shop u/s 21 (1) (a) of U. P. Act No. XIII of 1972, (hereinafter referred to as the "Act"). The release of the shop was sought for setting Jagmohan, the third son of respondent No. 2 in business who according to the landlords' case was unemployed and was sitting idle and since no other suitable accommodation was available with the landlords, their need of the shop in question was most genuine and pressing. The claim of the landlords was contested by the tenant-petitioner on the grounds that Jagmohan was not unemployed and the need shown was not bona fide ; that the landlord has

available with him some other accommodations wherein he could settle his son Jagmohan if at all he was to be so set up. Parties adduced evidence on affidavits before the Prescribed Authority who recorded a finding in favour of the landlords on the question of bona fide need to the effect that Jagmohan was unemployed and the claim of the landlord that the said son was to be set up in business was not unjustified. However, while considering the hardships of the parties the Prescribed Authority recorded a finding that since the landlords have available with them shop No. 410 and the same was lying vacant, the proposed business of Jagmohan could be started in the said shop. The Prescribed Authority also recorded a finding that the tenant has earned a good-will and therefore, he would suffer a great hardship in the event of his being dislodged from the business of fertilizer and of agricultural equipments which he was carrying in the shop in dispute for the last so many years.

4. In the appeal filed by the landlords, the appellate authority reversed the judgment and order of the Prescribed Authority specifically touching all the findings recorded by the Prescribed Authority. The appellate authority has affirmed the finding of the Prescribed Authority so far as it related to the question of need of the landlord's son Jagmohan. Both the Courts below have thus found that Jagmohan was unemployed and his need to set up business of hardware was genuine and pressing. Learned counsel for the petitioner has not been able to point out that this concurrent finding of fact recorded by the Courts below is any way erroneous and/or unjust.

5. Learned counsel for the tenant-petitioner, Sri Ravi Kiran Jain argued that the lower appellate authority for unjustifiable reasons has reversed the finding of the Prescribed Authority regarding availability of Shop No. 410 to the landlords. This submission of the learned counsel must be rejected as untenable. Before the Courts below, the landlords' case with regard to shop No. 410 was that the same could not be considered as available to them because of its dilapidated condition. The Prescribed Authority rejected the said assertion of the landlords observing that there was no evidence in support of that assertion, though in fact enough material had been brought on record by the landlords in support of their plea that the said shop was not capable of being used for any purpose. The appellate authority has pointed out that evidence and material and on appraisal thereof, a clear cut finding has been recorded that shop No. 410 has been rendered roofless and its walls are in a ruinous condition and the shop is beyond repairs. It has also been held by the appellate authority that the said shop in its present state is not suitable for any use and the landlords cannot be forced to reconstruct the same for establishing Jagmohan in business therein. It could not be pointed out by the learned counsel for the petitioner that the aforesaid finding of the appellate authority is perverse or is vitiated on account of any other error which may call for intervention of this Court. It may also be pointed out that it has been found by the appellate authority that it is fully borne from the record that the said shop had fallen down even before proceedings u/s 21 (1) (a) of the Act were initiated. It must therefore, be held that the said shop has rightly been left

out from consideration by the appellate authority as an alternative accommodation available to the landlord for their bona fide need.

6. Next it was argued by the learned counsel for the petitioner that the tenant-petitioner has specifically pleaded that the landlords are in occupation of a big "Haveli" and in the ground floor thereof many rooms were available which could be conveniently utilised for the proposed business as many shops were situated in the near vicinity of that Haveli wherein business of grocery, sringar, prasad, etc. were being carried on, but while dealing with that question, no specific finding has been recorded by the appellate authority that no space was available to the landlords in the said "Haveli" for being used for the proposed business. In reply, learned counsel for the respondent Sri Rajesh Tandon submitted that it was the definite case of the landlords before the Courts below that the Haveli was being used exclusively for residential purpose and It has no shops either in the ground floor or in any part thereof. It was pointed out that the tenant-petitioner in the affidavits filed before the Courts below never came with the case that the Haveli has any shop or any part thereof was being used for non-residential purpose and no such case was also pleaded in the written statement. He submitted that appellate authority has recorded a specific finding of fact that the said Haveli is used for residential purpose only. It was pointed out that in paragraph 15 of the rejoinder-affidavit filed on behalf of the landlord before the Court below, it was specifically stated that the residential house of the landlord was situated in a purely residential locality and there was not a single vacant or surplus space in the ground floor of their residential Haveli which could suffice the bona fide need of the landlords of settling Jagmohan in the proposed business. It was submitted that when a building is used exclusively for residential purpose, the landlord cannot be compelled to convert any portion of their residential house for non-residential use and thereby reduce the extent of their residential accommodation. In support of his argument learned counsel placed reliance on the decision in Prem Prakash Gupta and others v. IInd Addl. District Judge, Allahabad and others. 1993 (1) ARC 77, wherein a learned single Judge of this Court held :

"It may further be noticed that taking into consideration the policy and the object behind Section 21 of the U. P. Act No. 13 of 1972 which Is for the benefit of the landlord, there can be no manner of doubt that the intention has been not to reduce the availability of the residential accommodation. Sub-clause (ii) of the third proviso to Section 21 prohibits release of any portion of residential accommodation for business purpose. This provision re-enforces the above aspect. When an accommodation in the occupation of a tenant which is being utilised for residential purpose cannot be allowed to be used for business purpose and released on this account, there can arise any question of compelling a landlord to convert a part of the residential building in his occupation for use of business purpose and refuse the grant of release on the ground that a part of the residential accommodation can be utilised for business purpose compelling thereby the reduction of residential accommodation contrary to the policy

underlying the provisions contained In Section 21 of the Act."

7. Similarly in the case of Jagdish Prasad v. IXth Additional District Judge, Kanpur and others 1993 2 ARC 63, the view taken was that the landlord could not be compelled to use a portion of the residential accommodation for business purpose and thereby reduce the availability of residential accommodation.

8. It is well-established principle that every landlord possesses a right to live comfortably in his residential house and, therefore, he cannot be forced to convert any portion of his residential house for commercial purpose as that would not only reduce the extent of residential accommodation but may also result In disturbance of his peaceful living In the said house and the same will be contrary to the policy underlying the provisions contained in Section 21 of the Act. In the present case it has been found as a fact by the appellate authority on appraisal of evidence that the Haveli of the landlords is used exclusively for residential purpose and therefore, the landlords could not be compelled to set up Jagmohan in business in any part of the Haveli. This holding of the appellate authority is in consonance with the policy underlying the provisions contained in Section 21 of the Act and therefore, no interference is called for by this Court.

9. The lower appellate authority has recorded a finding of fact also that It is proved from the evidence on record that the tenant-petitioner has available with him shops, godown and other buildings in Sarsawa. Lower appellate authority has placed reliance on the evidence led on behalf of the landlord that the tenant-petitioner Chaudhary Ram has purchased a property in Mohalla Bazar (Ambala Road). Sarsawa through sale deed dated 12.1.1989 in the name of his sons Sarvshri Satish Kumar and Harish Kumar and the certified copy of the sale deed was brought on record. A shop has been constructed in the said property and as per the finding of the appellate authority the petitioner has shifted his old business of Fertilizers and Cement etc. in the said shop and a new business of cloth has been started in the shop in dispute. Chaudhary Ram in his affidavit filed before the appellate court admitted that he has closed the business of Fertilizer and has started cloth business in the disputed shop. It is, therefore, fully borne out from the record that the tenant-petitioner has with him an alternative accommodation at Ambala Road and In fact has already shifted his business of Fertilizers and Cement etc. therein. The finding of the appellate authority, therefore, on the question of comparison of hardship is in line with Rule 16 (2), clause (b) of the Rules framed under the Act which provides that where the tenant has available with him suitable accommodation to which he can shift his business without substantial loss, there shall be greater justification for allowing the release application and since the Fertilizer business has already been shifted to another shop by the petitioner himself there is no question of rejecting the claim of the landlord on the basis of the allegation that the tenant has earned a good-will of his business of Fertilizer in the shop in question. The view taken by the lower appellate authority on the question of comparative hardship, therefore, does not suffer from any manifest error of law. As the entire matter has been

examined objectively by the lower appellate authority which is also a fact finding authority and when this exercise has been made in a proper and legal manner. this Court will not Interfere since the matter of appreciation of evidence is the domain of the fact finding authority.

10. No other point has been pressed or urged.

11. For the reasons stated above, this writ petition has no merits and is accordingly dismissed. Stay order granted earlier shall stand vacated. In the circumstances, the parties shall bear their own costs.