
(2012) 07 AHC CK 0050
In the Allahabad High Court
Case No : C.M.W.P. No. 33466 of 1998

Chhannu Lal (Since deceased) and Others	APPELLANT
Vs	
Vth Additional District Judge and Others	RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 2 AWC 1737

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Lal Babu Lal and Rajesh Tandon, for the Appellant; P.N. Srivastava, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Lal Babu Lal, learned counsel for petitioners and Sri P.N. Srivastava, learned counsel for respondents. Petitioner-landlord filed application, i.e. P.A. Case No. 89 of 1986 before the Prescribed Authority/Second Addl. Civil Judge, Varanasi seeking release of House No. K 46/108A, Harteerath, Varanasi to the extent of the accommodation on its western side consisting of one dalan, Latrine and Bathroom and the first floor consisting of four rooms and open roof on the ground of personal need. The aforesaid house is said to be the ancestral property of petitioners. Sri Chhannu Lal (now deceased) is the father and Sri Babbu and Sri Mahesh Prasad, petitioners No. 2 and 3 are his sons. Respondents 3 and 4 (now deceased and have been substituted by the legal heirs! were the tenants in the said premises. The application was partly allowed by Prescribed Authority vide order dated 14.9.1988 by releasing the accommodation on the ground floor but in respect to the accommodation on the first floor, It was rejected. Two appeals were filed, namely, Rent Appeal No. 232 of 1988 by petitioner-landlords and Rent Appeal No. 241 of 1988 by-respondent No. 3, i.e., the tenant. The appellate court vide judgment dated 18.7.1988 has dismissed petitioner-landlords" appeal but has allowed the respondent-tenant"s

appeal. Hence this writ petition challenging both the orders to the extent they have not been adjudicated in favour of petitioners for accepting their request for release of the entire accommodation as sought for.

2. Learned counsel for petitioners submitted that it is for the landlord to decide as to how and in what manner petitioners should live and they cannot be compelled to live in a particular manner by adjusting themselves; either by tenant or by Courts. The courts below in taking view otherwise have acted illegally. He placed reliance on Apex Court's decisions in *R.C. Tamrakar and Another Vs. Nidi Lekha*, and *Prativa Devi Vs. T.V. Krishnan*, .

3. He further contended that question of comparative hardship has also been illegally considered by the courts below and therefore, impugned judgments are liable to be set aside. He further contended that the tenant's wife had acquired an accommodation in Tarna Industrial Area, Varanasi, i.e., House No. Shiv-13/89A-1A and that being so the tenant having got an alternative accommodation, the question of considering comparative hardship was redundant and the issue ought to have been decided in favour of petitioners but the courts below have erred in law and in this regard he placed reliance on Apex Court's decision in *Shiv Singh Chak Vs. Baby Jain*, and *Ganga Devi Vs. Distt. Judge, Nainital and Others*, .

4. As a matter of proposition, 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.

5. In *Prativa Devi (supra)*, the Apex Court said that the landlord is the best judge of his residential requirement. He has a 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.

6. Similarly, in *R.C. Tamrakar (supra)* the Court in para 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 endeavour 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.

7. Having said so and respectfully following the exposition of law laid down by Apex Court, as discussed above, which is also binding on this Court. I, however, find that besides the accommodation in question, there was another accommodation in the vicinity namely House No. K46/109 in which also the landlord has certain accommodation in his possession since it was also a part of ancestral property of landlord. Besides, as a result of partition in the family, there was no occasion to keep some part of accommodation in House No. 46/108A, i.e., two rooms on the first floor for petitioner's nephews who had already got their own accommodation as a result of partition. This availability of accommodation would have satisfied the requirement of petitioners besides the fact that they have got another accommodation in House No. K46/109 which is a contiguous building with house in dispute and in the light of the said availability of accommodation, whatever accommodation the petitioner-landlords wanted to acquire after eviction of respondent-tenant, got satisfied. These facts have not been disputed nor findings recorded by Courts below in this regard have been challenged as perverse or contrary to material on record.

8. So far as alternative accommodation available to tenant is concerned, it is not disputed by learned counsel for petitioners that tenants wife got an accommodation in the industrial area meant for Industrial purposes and there was nothing on record to show that the said accommodation in Tarna industrial area could be permitted to be used for residential purposes. In these circumstances, it cannot be said that, by itself, the aforesaid accommodation can be treated to be an alternative residential accommodation. That being so, it cannot be said that the tenant had got another alternative residential building so as to disentitle him from his right to continue in the building in question. In these circumstances, the authorities cited at the bar are also not of any help to petitioners.

9. No other point has been argued.

10. In view of above discussion, I do not find any error apparent on the face of record in the order impugned in this writ petition warranting interference in exercise of power under Article 226/ 227 of Constitution. The scope of Judicial

renew under Article 226/ 227 is very-limited and narrow as discussed in detail by this Court in Writ Petition No. 11365 of 1998, Jalil Ahmad v. XVIth Addl. Distt. Judge, Kanpur Nagar and others, decided on 30.7.2012. There is nothing which may justify judicial review of orders impugned in this writ petition in the light of exposition of law, as discussed in the above Judgment.

11. In view of above, I do not find any reason to interfere.

12. Dismissed. Interim order, If any, stands vacated.