
(2007) 03 AHC CK 0041
In the Allahabad High Court

Dal Chand

APPELLANT

Vs

Prem Chand Goyal

RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2008) 2 AWC 1969

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. The petitioner is a tenant of the property in dispute which is in the nature of a shop. The sole respondent Sri Prem Chand Goyal is the landlord of the aforesaid shop.

3. After giving notice of termination of tenancy u/s 106 of the Transfer of Property Act read with Section 20 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. XIII of 1972) the landlord filed an application u/s 21(1)(a) of the aforesaid Act No. XIII of 1972 (hereinafter referred to as the Act) on the ground of bona fide need for his eldest son who is said to be unemployed. It was averred in the application that not only his son would be settled in life, the income of the family would also augment.

4. The petitioner-tenant filed his written statement before the court below stating, inter alia, that the eldest son of the landlord is not unemployed. It was further averred by him in the written statement that there were two vacant shops with the landlord which he may utilize to settle his eldest son.

5. The Prescribed Authority vide order dated 29.7.2005 rejected the aforesaid release application filed by the landlord u/s 21(1)(a) of U.P. Act No. XIII of 1972.

6. The notice of terminating the tenancy of the petitioner-tenant given by the

landlord u/s 106 of the Transfer of Property Act read with Section 20 of U.P. Act No. XIII of 1972 has not been produced before the trial court by the respondent-landlord and in the circumstances the tenant has denied service of the aforesaid notice. The contention of the landlord that notice was given by him to the tenant terminating his tenancy, therefore, has no legs to stand.

7. On the question of bona fide need the trial court held that the claim of the landlord was that his son was High School failed and was unemployed. The trial court on this point has recorded his finding that the son of the landlord had failed in the High School about 15 years back when he was 15 years of age. It is not on record as to what he was doing in the last 15 years as the present age of the son of the landlord is about 30 years.

8. Considering the fact that the landlord himself is 65 to 70 years of age and is doing some business in the shop and his son is taking training from him, hence in the circumstances the trial court presumed that the son who is stated to be taking training from his father in the shop was in fact running the shop and the landlord was supervising the work of his son in the shop.

9. The other circumstance which appears to have been considered by the trial court in determining the bona fide need of the landlord is that the son of the landlord allegedly shown his intention to start a separate business only in January, 2003. The trial court in this regard has recorded his finding that two shops fell vacant during the pendency of the release application which had been given by the landlord on rent to Raj Kumar and Shyam Kumar. If the need of the landlord was bona fide, one of the aforesaid two shops which were being used by the earlier tenants as go-downs could have been given by the landlord to his son for running his business, hence the trial court disbelieved the case of the landlord taking the two shops as vacated during the pendency of the release application. The finding of the trial court is as under:

mi;qZDr fu.kZ; blfy, ykxw ugha gksrk D;ksfd oknh dh nks nqdkusa [kkyh gS A bldk ykHk oknh dks ugha igqaWpkrk gS oknh us dksbZ cksuk QkbM fjDok;jesUV ugha fn[kk;k gS A mldh mlh nqdku ls IVh gqbZ nqdku miyC/k gS yM+dk fuf"pr gh nqdku IEHkkyrk gS A firk dsoy cSBrk gS D;ksfd vk;q firk dh ,slh gS A 15 o"kZ rd yM+dk D;ks [kkyh jgsxk A tcfd nqdkus miyC/k gS] vr% oknh dks dksbZ cksuk QkbM fjDok;jesUV ugh gS vkSj u gh oknh dks izfrokn dh vis{kk vf/kd vko;"drk gS A

10. While deciding the case the trial court has referred to certain cases which have been quoted in the body of the order and which have been brushed aside merely observing that the same do not apply to the facts of the case.

11. Aggrieved by the aforesaid order Rent Appeal No. 19 of 2005 was filed by the landlord.

12. Considering the number of family members as well as the bona fide need and comparative hardship of the parties the lower appellate court has held that there

was no dispute with regard to family status of both the parties. The appellant has three sons and one unmarried daughter. The eldest son of the appellant named Naresh Chand Goyal has four children while the respondent Dal Chand has two sons and two daughters alongwith his wife. In this way the family of the respondent-appellant/landlord was bigger and grown up and two sons of the landlord namely Naresh Kumar Goyal and Chandra Prakash Goyal were unemployed and the third son Yogesh Kumar was the student of B.A. Besides a marriageable daughter when the landlord is aged about 65 to 70 years.

13. The lower appellate court further recorded a finding that the appellant-landlord suggested three options to the tenant, firstly, the residential house of the tenant is situate in the main market ; secondly, the tenant can shift to the vacant shops of his brothers Harish Chandra and Kanti Prasad ; and thirdly, there were many shops vacant in Town Rabbupura where he can do his business in any of the vacant shops. Out of these three options the lower appellate court relied upon the third option suggested by the landlord as the Court did not think it proper that the landlord should take a shop on rent or construct a shop for him despite having his own shop occupied by the tenant. A house or a shop cannot permanently be given on rent by a landlord to a tenant. For a temporary period of course the landlord can let out his house or a shop but whenever the landlord would require for his bona fide need the tenant would have to vacate the same and the tenant can either construct his own house or shop for his requirement. On the comparative hardship also the lower appellate court recorded its finding that the respondent-landlord would suffer greater hardship than the petitioner-tenant.

14. On the basis of the aforesaid findings of fact the lower appellate court vide his judgment and order dated 7.10.2006 allowed the appeal filed by the respondent-landlord and set aside the judgment and order of the trial court dated 29.7.2005. The relevant extract is as under:

mHk;Ik{k dh ikfjokfjd fLFkfr ds lEcU/k esa dksbZ fookn ugh gS A ;kph ds ifjokj esa vc mlds rhu iq= ,d vfookfgr iq=h gS] cM+s iq= ujs" k pUnz xks;y ds Loa; pkj cPps gS] tcfd foi{kh Mky pUn ds ifjokj esa mldh ifRu o nks iq= o nks iqf=;kW a gS A bl rjg ifjokj ds rgyukRed v/;;u ls ;kph dk ifjokj cM+k o vf/kd ftEesnkj izrhr gksrh gS A mYys[kuh; gS fd ;kph ds nks iq= ujs" k dqekj xks;y o pUnz izdk" k csjkstxkj gS] rhljk iq= ;ksxs" k ch0,0 dk Nk= gS A ,d toku iq=h fookg ds fy, Hkh gS rFkk ;kph Loa; esa Hkh o`) 65&70 o" kZ dk crk;k x;k gS A

foi{kh ds okLrs ;kph us rhu fodYi Hkh j[ks gS A igyk ;g fd mldk edku Loa; eq[; cktkj es fLFkr gS] tgkWa yksgkj] ukbZ o jks" k ljkZQ dh nqdku gS ijUrq bl lUnHkZ esa ;kph jkds" k dqekj ljkZQ o yksgkj] ukbZ dks lk{; es izLrqr ugh dj ldk] u dksbZ vfHkys[k izLrqr dj ldk A vr% ;g ugh ekuk tk ldrk gS fd foi{kh dk edku eq[; cktkj esa gks A foi{kh ds okLrs ;kph us mlds HkbbZ gjh" k pUnz iq= ckch dh nqdku rFkk dkUrhd izlkn dh nqdku Hkh [kkyh gS ;g Hkh fdlh vfHkys[kh; ;k vU; fo"oluh; lk{; ls lefFkZr ugha gS A ;kph }kjk foi{kh ds okLrs rhljk dFku ;g fd;k x;k gS fd dLck jcwijjk esa dbZ nqdkus [kkyh gS vkSj og iwjk dLck jcwijjk esa

dksbZ vU; nqdku fdjk;s ij ysdj viuk dkjksckj dj ldrk gS ;kph dk rhlj rdZ lp izrhr gksrk gS D;ksfd jcwijqk esa dsoy ogh nqdku ugh cfYd vU; nqdkusa Hkh gksxh ftudks foi{kh fdjk;s ij ysdj viuk dkjksckj dj ldrk gS A bl lEcU/k esa ;gkWa bl rF; dk Hkh mYys[k djuk mfpr gksxk fd fd ;kph ds fy, mldh Loa; dh nks nqdkusa gksrs gq, U;k;ky; ;g vis{kk ugh dj ldrk fd og dksbZ vU; nqdku fdjk;s ij [kkst ysa vFkok cuok;s A tgkWa rd eS le>rk gwWa fd dksbZ Hkh O;fDr nqdku@Hkou fufeZr djokrk gS ijUrq ml nqdku@Hkou dks gj le; ds fy, fdlh fdjk;snkj dks ugh lkSaik tk ldrk A ;fn fdjk;snkj dks dksbZ vko;"drk gS rks og ;k rks Loa; viuh nqdku fufeZr djok;s vFkok vU; dksbZ nqdku fdjk;s ij [kkst ldrk gS A mijksDr n`f"V esa nqdku [kkyh gksus ds lEcU/k esa mHk; i{k ds rqyukRed] vf/kd dfBukbZ dk ewY;kadu djus ij U;k;ky; ;gh ikrk gS fd fookfnr nqdku [kkyh u gksus ls ;kph dks cgqr vR;/f/kd dfBukbZ dk lkeuk djuk gksxk D;ksfd mlds ikl bl le; Loa; dh dksbZ nqdku ujs"k dqekj xks;y iq= ds dkjksckj djkus gsrq [kkyh ugh gS A tcfd ujs"k dqekj xks;y rhl o"kZ dh vk;q dk pkj cPpks dk fir k csjkstxkj O;fDr gS A ;kph Loa; izsepUnz xks;y o`)koLFkk esa gS vkSj ftlls flQZ ,d nqdku ds lgkjs iwjs ifjokj dk ikyu iks"k.k djuk lEHko ugh ekuk tk ldrk A blds vykok ;kph dk nwljk iq= Hkh csjkstxkj gS A

rnuqlkj i=koyh ij miyC/k lk{; ds ifj"khyu ls la{ksi esa gh ;g U;k;ky; bl fu"d"kZ ij igqapr gS fd flfoy tt lhfu;j fMohtu dk vkns"k fnukafdr 2-7-2005 lk{; ds lgh ewY;kadu ds vk/kkj ij ugh gS A vr% flfoy tt lhfu;j fMohtu }kjk ikfjr vkns"k fnukafdr 29-7-2005 vikLr dj vihy Lohdkj fd;s tkus ;ksX; gS vkSj vihy Lohdkj dh tkrh gS A

15. The contention of the learned Counsel for the petitioner is that earlier the respondent claimed that the petitioner was managing the property/shop of his uncle Sri Kamlesh Gupta who was and is ready to give his shop to the petitioner on the same rent of the shop in dispute, hence the tenant-petitioner may shift to the shop of his uncle Sri Kamlesh Gupta.

16. On 9.1.2007, the Court granted time to the petitioner to file affidavit stating whether he is ready to accept the alternate shop offered by the respondent belonging to his uncle Kamlesh Gupta. The petitioner filed his affidavit stating that there is no such person by the name of Sri Kamlesh Gupta as his uncle and that two shops of the petitioner which were vacated earlier by the tenants have been given to Raj Kumar and the other to Neetu during the pendency of the litigation. It is averred that if the respondent/landlord needs any shop he can easily get those shops vacated instead of pursuing release application against the petitioner-tenant.

17. The respondent submitted that due to typographical error the name had been wrongly typed as Kamlesh Gupta instead of Kamlesh Goyal.

18. On 15.1.2007, the Court passed an order that if the uncle of the petitioner is agreeable, he may hand-over possession of the shop and file an affidavit before this Court.

19. On 7.1.2007, the respondent filed an affidavit of Kamlesh Goyal, wife of Sri Ishwar Dayal Goyal, stating that she is ready to give her shop on rent to the

petitioner.

20. The learned Counsel for the petitioner states that the petitioner has acquired good-will in the shop of the respondent-landlord which is his only source of livelihood as has been held by both the court below ; that respondent/landlord has two other vacant shops which have been let out by him to other persons illegally without any allotment order. He has relied upon a decision of this Court in Gauhar Hasan v. Addl. District Judge, Saharanpur and Ors. 1981 ARC 226, wherein it has been held that the landlord can apply for a shop which is lying vacant and not to apply for the release of the shop in dispute by dislodging a tenant.

21. He further submits that if the petitioner is shifted from the present shop he will be deprived of his livelihood particularly when he has two sons and two marriageable daughters and the marriage of one of the daughters is scheduled to be performed on 28.2.2007.

22. In the affidavit the respondent has offered alternative shop to the petitioner which is in possession of the family of his uncle who is agreeable to let out the same to the petitioner. The averments made in the affidavit are as under:

That deponent also manages the property of his uncle namely Sri Kamlesh Gupta, who is owner of shops adjacent to the shop of one Sri Sachin. Each shop has measurement 6ft. x 8ft. The deponent has contacted Sri Kamlesh Gupta and he is ready to let out these shops to the petitioner. These shops may be taken as alternative shop. Hence, the petitioner can have alternative shop using any one of two shops and deponent is ready to let out that shop to the petitioner.

23. Though the landlord is not bound to offer any alternative shop to the tenant but in this case alternative offer had been given by the landlord to the tenant in the same locality which he refused to accept.

24. In this view of the matter the Court comes to the irresistible conclusion that the tenant only wants to keep the shop in dispute under his possession with some ulterior motive and as such in my opinion the tenant will not suffer greater hardship than that of the landlord in case the tenant is evicted from the shop in dispute. For the reasons stated above, the writ petition is dismissed. No order as to costs. The petitioner is granted one month's time to vacate the shop in dispute.