
(2003) 12 AHC CK 0069

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 54453 of 2003

Daujee

APPELLANT

Vs

Govind Prasad and Others

RESPONDENT

Date of Decision : 10-12-2003

Acts Referred:

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

Citation : (2003) 12 AHC CK 0069

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.

The present Writ Petition has been filed by the petitioner under Article 226 of the Constitution of India, inter alia, praying for quashing the judgment and order dated 3rd September, 1998 (Annexure 7 to the Writ Petition) passed by the learned Civil Judge (Senior Division) I/Prescribed Authority, Mathura and the judgment and order dated 7th November, 2003 (Annexure 8 to the Writ Petition) passed by the learned Additional District Judge, Court No.8, Mathura. (Appellate Authority)

The dispute relates to an accommodation in premises No. 1507, situate at Halanganj, Vrindaban Darwaja, Mathura, the details whereof are given in the release application referred to hereinafter. The said accommodation has, hereinafter, been referred to as "the disputed accommodation".

From a perusal of the averments made in the Writ Petition and the annexures thereto, it appears that the respondent Nos. 1, 2 and 3 herein and one Deo Prakash (collectively referred to as the landlords) filed a release application under Section 21(1) (a) of the U.P. Act No. XIII of 1972 (in short "the Act") against the petitioner for release of the disputed accommodation. It was, inter alia, stated in the said release application that the need of the landlords for the disputed accommodation was genuine; and that in case, the release

application was rejected, the landlords would suffer great hardship, while the petitioner would not suffer any hardship in case, the release application was allowed. The said release application was registered as P.A. Case No. 36 of 1994. Copy of the said release application has been filed as Annexure 2 to the Writ Petition.

It further appears that the petitioner contested the said release application, and filed written statement, a copy whereof has been filed as Annexure 4 to the Writ Petition.

It further appears that the parties filed affidavits and documentary evidence in support of their respective cases.

It further appears that during the pendency of the said release application before the Prescribed Authority, the said Deo Prakash died on 1st April, 1998.

It further appears that by the judgment and order dated 3rd September, 1998 (Annexure 7 to the Writ Petition), the learned Civil Judge (Senior Division) I/ Prescribed Authority, Mathura allowed the said release application filed by the respondent Nos. 1, 2 and 3 and the said Deo Prakash. It was, interalia, held that the landlords had proved that the need was bona fide and the comparative hardship was in favour of the landlords.

Thereupon, the petitioner filed an Appeal under Section 22 of the Act which was registered as Rent Control Appeal No. 4 of 2002.

By the judgment and order dated 7th November, 2003 (Annexure 8 to the Writ Petition), the learned Additional District Judge, Court No.8, Mathura (Appellate Authority) dismissed the said Rent Control Appeal No. 4 of 2002 filed by the petitioner. The Appellate Authority, interalia, confirmed the findings recorded by the Prescribed Authority in the said judgment and order dated 3rd September, 1998.

Thereafter, the petitioner has filed the present Writ Petition seeking the reliefs, as mentioned above.

I have heard Shri S.K. Chaturvedi, learned counsel for the petitioner and perused the record.

Shri S.K. Chaturvedi, learned counsel for the petitioner submits that the findings recorded by the authorities below on the question of bona fide need and comparative hardship were erroneous. It is submitted that by the sale deed (Annexure 1 to the Writ Petition), the petitioner had purchased only a shop No. 1099 Vrindaban Darwaja, Halanganj, Mathura, and the authorities below acted illegally in considering the said accommodation as available to the petitioner for residence.

I have considered the submission made by Shri S.K. Chaturvedi, learned counsel for the petitioner. In paragraphs 17 and 18 of the written statement (Annexure 4 to the Writ Petition) filed by the petitioner in the said P.A.Case No. 36 of 1994,

the petitioner made averments regarding the said property purchased by him by the said sale deed (Annexure 1 to the Writ Petition). It is, inter alia, stated in the said paragraphs 17 and 18 of the written statement that about 30 years ago, the petitioner purchased the said property and at that time, there was a shop on the ground floor; and that about 20 years back, the petitioner constructed a room and kitchen on the first floor of the said property.

In view of the said admission made by the petitioner in his written statement that he had constructed a room and kitchen on the first floor of the said property, purchased by him by the sale deed (Annexure 1 to the Writ Petition), I am of the opinion that the authorities below had not committed any illegality in considering the said accommodation of the petitioner.

The authorities below, on a consideration of the material on record, have recorded findings on the questions of bona fide need and comparative hardship. The findings on the questions of bona fide need and comparative hardship are findings of fact. Normally, the High Court in exercise of its Writ Jurisdiction under Article 226 of the Constitution of India does not interfere with the findings of fact unless such findings are shown to suffer from any jurisdictional error or any illegality or perversity.

The Authorities below have considered in detail the material on record and have recorded findings of fact on the questions of bonafide need and comparative hardships. No jurisdictional error or illegality or perversity has been shown in the findings recorded on the questions of bonafide need and comparative hardships. Therefore, no interference is called for with the said finding of fact recorded by the authorities below.

Reference in this regard may be made to certain judicial decisions.

In *M/s India Pipe Fitting Co. v. Fakruddin M.A. Baker and another*, AIR 1978 SC 45, it was laid down by their Lordships of the Supreme Court that the conclusions of fact cannot be interfered with by the High Court under Article 227 of the Constitution of India. The findings on the question of bona fide requirement of the landlord recorded by the courts below by appreciating the entire evidence cannot be interfered with by the High Court under Article 227 of the Constitution of India. Their Lordships of the Supreme Court opined as under (paragraphs 5, 6, 7 and 8 of the said AIR):

"5. The limitation of the High Court while exercising power under Article 227 of the Constitution is wellsettled. Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts however erroneous those may be. It is wellsettled and perhaps too late in the day to refer to the decision of the Constitution Bench of this Court in *Waryam Singh v. Amarnath* 1954 SCR 565: (AIR 1954 S.C. 215) where the principles have been clearly laid down as follows : (at page 217 of AIR)

"This power of superintendence conferred by Article 227 is, as pointed out by

Harries, C.J., in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee* AIR 1951 Cal. 193 (SB) to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors".

The same view was reiterated by another Constitution Bench of this Court in *Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam*, 1958 S.C.R. 1240 : AIR 1958 S.C. 398) Even recently in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte* (1975) 1 S.C.C. 858 : (AIR 1975 S.C. 1297), dealing with a litigation between a landlord and tenant under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, this Court relying on its earlier decisions observed as follows : (at pp 1301, 1302 of AIR) :

"If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the Legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts."

6. Whether the landlord's requirement is bona fide and reasonable has been concurrently found by the two Courts below against the landlord by appreciating the entire evidence. After examining the reasons given by both the Courts it is not possible to hold that the conclusions are "perverse" or even that these are against the weight of evidence on record. It is a case of reasonably possible factual appreciation of the entire evidence and circumstances brought on the record.

7. It is possible that another Court may be able to take a different view of the matter by appreciating the evidence in a different manner, if it determinedly chooses to do so. However, with respect to the learned Judge (Vaidya. J.) that will not be justice administered according to law to which courts are committed notwithstanding dissertation, in season and out of season, about philosophies.

8. We are clearly of opinion that there was no justification for interference in this case with the conclusion of facts by the High Court under Article 227 of the Constitution. We are also unable to agree with the High Court that there was anything so grossly wrong and unjust or shocking the Court's "conscience" that it was absolutely necessary in the interest of justice for the High Court to step in under Article 227 of the Constitution. Counsel for both sides took us through the reasonings given by the High Court as well as by the Courts below and we are unable to hold that the High Court was at all correct in exercising its powers under Article 227 of the Constitution to interfere with the decisions of the Courts below. In our opinion the High Court arrogated to itself the powers of a court of

appeal, which it did not possess under the law, and has exceeded its jurisdiction under Article 227 of the Constitution."

In *Munni Lal and others vs. Prescribed Authority and others*, AIR 1978 SC 29, it was laid down by their Lordships of the Supreme Court that the finding on the question of comparative hardship of the landlord was finding of fact, and the same cannot be interfered with by the High Court in the exercise of its writ jurisdiction under Article 226 of the Constitution of India. Their Lordships of the Supreme Court observed as follows (paragraph 1 of the said AIR):

"1.There can be no doubt that a finding that the need of respondent 3, landlord was greater than that of the appellant/tenant is a finding of fact and when the High Court has refused to interfere with this finding of fact, we cannot find fault with the High Court, even if the findings were wrong on the evidence before the Court. It is not for the High Court in the exercise of its jurisdiction under Article 226 of the Constitution to reappraise the evidence and come to its own conclusion which may be different from that reached by the District Judge or the Prescribed Authority. We do not, therefore, see any reason to interfere with the decision of the High Court".

In *Ashok Kumar and others v. Sita Ram*, 2001(2) ARC 1 = 2001 (43) ALR 783 (SC), their Lordships of the Supreme Court held as follows (paragraphs 9 and 15 of the said ARC):

"9. The position is too well settled to admit of any controversy that the finding of fact recorded by the final Court of fact should not ordinarily be interfered with by the High Court in exercise of writ jurisdiction, unless the Court is satisfied that the finding is vitiated by manifest error of law or is patently perverse. The High Court should not interfere with a finding of fact simply because it feels persuaded to take a different view on the material on record.

15. The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter, which no reasonable person was likely to take. In that view of the matter there was no justification for the High Court to interfere with the order in exercise of its writ jurisdiction. In a matter like the present case where orders passed by the Statutory Authority vested with power to act quasijudicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High Court is not expected to interfere with the final order passed by the Statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another Appellate Court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case."

In *Surya Dev Rai Vs. Ram Chander Rai and others*, 2003 All. L.J. 2057, their

Lordships of the Supreme Court laid down as under (paragraph 38 of the said All. L.J.):

"38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1)Amendment by Act No. 46 of 1999 with effect from 172002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India.

(2)Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3)Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4)Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5)Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6)A patent error is an error which is selfevident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a longdrawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7)The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or

grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, orders or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

(Emphasis supplied)

In view of the aforesaid discussion, I am of the opinion that this Writ Petition lacks merit, and the same is liable to be dismissed. The Writ Petition is accordingly dismissed.

Sri S.K. Chaturvedi, learned counsel for the petitioner then submits that reasonable time be granted to the petitioner for vacating the disputed accommodation.

I have heard Shri S.K. Chaturvedi, learned counsel for the petitioner on the said question also.

Having considered the facts and circumstances of the case and the submissions made by Shri S.K. Chaturvedi, learned counsel for the petitioner, it is directed that the petitioner will not be evicted from the disputed accommodation till 30.4.2004 provided the petitioner gives undertaking on his personal affidavit within six weeks from today incorporating the following conditions :

1.The petitioner will vacate the disputed accommodation on or before 30.4.2004 and will handover its peaceful vacant possession to the landlords/respondents.

2. The petitioner will continue to pay rent/damages in respect of the disputed accommodation to the landlords/respondents till the date of vacating the disputed accommodation.

In case the requisite undertaking is not given within the aforesaid period or any of the conditions incorporated in the undertaking is violated, this order granting time to the petitioner for vacating the disputed accommodation will stand automatically vacated, and it will become open to the landlords/respondents to execute the release order forthwith.