

(1998) 03 AHC CK 0098
In the Allahabad High Court
Case No : C.M.W.P. No. 44505 of 1997

Daya Shanker

APPELLANT

Vs

Xth Addl. District Judge, Kanpur and others

RESPONDENT

Date of Decision : 06-03-1998

Acts Referred:

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

Citation : (1998) 1 AWC 792

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

Bench : Single Bench

Advocate : S.M. Dayal, for the Appellant;

Final Decision : Dismissed

Judgement

J.C. Gupta, J.—Sri S. M. Dayal counsel for the petitioner filed rejoinder-affidavit whose copy was served upon the respondents' counsel on 23.1.98 and the same is taken on record.

2. Heard Sri S. M. Dayal counsel for the petitioner and Sri Yasharth counsel for the landlord-respondent No. 3.

3. This is landlord's petition against the order of respondent No. 2, the prescribed authority who allowed the landlord's release application. The appeal filed by the petitioner has also been dismissed by the respondent No. 1 by the order dated 5.12.97.

4. The dispute relates to a shop in which the petitioner is carrying on his business of sweetmeat. The landlord-respondent No. 3 applied for the release of the said shop, on the ground that his son Kailash Nath was without any Job and the shop in question was required for establishing him in his business. The landlord further alleged that he would also be sitting with the son in the shop in question and will carry on the business. The defence of the petitioner was that the landlord had no such need and he claimed that he was a poor person with

small income and he has been carrying on Halwai business in the said shop. It was denied that the son of the landlord was unemployed. According to him the claim was not bona fide. The prescribed authority by the order dated 7.9.91 dismissed the petition on the ground that under Rule 16 (2) (a) no benefit could be given to the son as he had not undergone any technical education. The prescribed authority further was of the opinion that the need of the landlord was not proved to be bona fide and genuine. The lower appellate court reversed the order of the prescribed authority and has recorded a finding of fact that the need of the landlord for the shop in question is bona fide and pressing and the landlord shall suffer a greater hardship than that of the tenant-petitioner. Aggrieved, the tenant has come up in this petition.

5. Counter-affidavit and rejoinder-affidavit have been exchanged, hence with the consent of the parties' counsel, this writ petition is disposed of finally.

6. Learned counsel for the petitioner Sri S. M. Dayal argued before this Court that there was evidence to the effect that during the pendency of appeal, the landlord got constructed another shop in near vicinity of the shop in question and has started business therein, therefore, the alleged need of the landlord stood satisfied. The stand of the landlord was that the accommodation as pointed out by the tenant was not suitable for carrying on business as it is in the shape of a small "kothri", underneath the staircase. Learned counsel for the respondents pointed out that when it was contended by the tenant that the shop was suitable for business by the landlord, the landlord offered the said accommodation to the tenant-petitioner to shift to that accommodation but he declined to do so on the ground that it was not suited to his business being of small in size. It has been rightly argued by the learned counsel that if the said accommodation was not suitable for the tenant as per his statement for carrying on business, the same could not be considered suitable for the landlord for establishing his business and could not be taken into account as an alternative accommodation available for the landlord to carry on his business and, therefore, It cannot be said that the need of the landlord for establishing his son in the business stood satisfied. A man cannot be allowed to found a claim upon his own Inequity (*Nemo ex proprio dolo consequitur actionem*). He cannot be allowed to blow hot and cold together. When an accommodation as per the own case of the tenant-petitioner was not suitable for business purposes, on the same test that would also not be suitable for the landlord and the claim of the landlord to have the accommodation in question for carrying on his business cannot be defeated on the ground of availability of alternative accommodation. The lower appellate court has gone into this question and has recorded a finding of fact against the tenant-petitioner. I also agree with the submission made by the learned counsel for the respondents that the aforesaid accommodation which according to the tenant has been raised by the landlord during the pendency of appeal cannot be construed as an alternative accommodation available to the landlord for establishing his son's business therein.

7. The finding of the lower appellate court that the landlord's need is bona fide is based on appraisal of evidence and is not to be interfered with in this writ petition.

8. So far as the question of comparative hardship to concerned, the lower appellate court weighed a number of factors and circumstances and then came to a finding that the balance of hardship tilts in favour of the landlord. The said finding could not be shown to be erroneous or suffering from any infirmity.

9. The writ petition which is concluded by findings of fact, is liable to be dismissed.

10. Learned counsel for the petitioner then made a request that atleast one year time be allowed to the petitioner to make some alternative arrangement so that he may shift his business to some other premises. Respondents' counsel vehemently opposed this prayer on the ground that the release application is pending since April, 1988 and almost a period of ten years has passed since then.

11. Having regard to the circumstances of the case, the petitioner is allowed six months time to vacate the shop in question and deliver its vacant possession to the landlord-respondent on or before the expiry of the said period. The eviction of the petitioner shall therefore, remain in abeyance till the expiry of the said period subject to the condition of petitioner filing an undertaking in writing on affidavit before the prescribed authority within three weeks from today to the effect that the petitioner shall hand over vacant possession to the respondent-landlord before the expiry of aforesaid period of six months and shall not induct any other person in the shop in question and shall also deposit the entire rent due upto date by 30th of March, 1998 and goes on depositing the same month to month by 15th of each succeeding month. On default if any of the above mentioned conditions this order of extending time of delivery of possession, shall stand vacated and it shall be open for the landlord to get the order of eviction enforced forthwith.

12. For the above reasons, this writ petition is dismissed with no order as to costs.