
(2011) 03 AHC CK 0436
In the Allahabad High Court
Case No : C.M.W.P. No. 17068 of 2011

Devi Das and Others

APPELLANT

Vs

Tej Bahadur Saxena and Others

RESPONDENT

Date of Decision : 24-03-2011

Acts Referred:

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

Citation : (2012) 4 AWC 5307 : (2012) 1 RCR(Rent) 165

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : H.C. Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record. This writ petition has been filed by the petitioner tenants challenging the validity and correctness of the judgment and order dated 9.11.2010 passed by the Additional District Judge/Special Sessions Judge, J.P. Nagar in Rent Control Appeal No. 1 of 2008, Devi Das and Others v. Tej Bahadur Saxena and Others as well as the judgment and order dated 16.2.2008 passed by the Civil Judge(Senior Division)/Prescribed Authority, J.P. Nagar in P.A. Case No. 5 of 1994, Tej Bahadur and Another v. Shobha Ram and Others.

2. The petitioners have also prayed for issuance of a writ of mandamus directing the respondents not to dispossess the petitioners from the shop in dispute as described in the plaint of P.A. Case No. 5 of 1994 during the pendency of the writ petition.

3. The facts of the case in brief are that respondent nos. 1 and 2 in the writ petition are the landlords. They filed P.A. Case No. 5 of 1995 in the Court of Prescribed Authority/Civil Judge (Senior Division), J.P. Nagar against Sri Shobha Ram, the predecessor-in interest of petitioners Devi Das and others and

proforma respondent nos. 3 to 8 for eviction from the shop in dispute detailed at the bottom of the plaint.

4. The aforesaid suit was contested by filing written statement by the petitioners and proforma respondent nos. 3 to 8. During the pendency of suit Sri Shobha Ram expired on 14.11.1999 and the petitioners as well as proforma respondent nos. 3 to 8 were substituted in his place as his legal heirs and representatives.

5. The parties adduced evidence and the Prescribed Authority after hearing the parties allowed P. A. Case No. 5 of 1995 vide judgment and order dated 16.2.2008 directing the petitioners to vacate the shop in dispute and hand over its vacant possession to the landlords within a period of two months.

6. Aggrieved by the aforesaid judgment and order dated 16.2.2008, the petitioners filed Rent Control Appeal No. 1 of 2008 before the District Judge, J.P. Nagar, which was also dismissed vide judgment and order dated 9.11.2010 directing the appellants to vacate and handover peaceful possession of the shop in dispute to the contesting respondents within a period of two months.

7. This writ petition has been filed for setting aside the judgments and orders dated 16.2.2008 and 9.11.2010 passed by the Prescribed Authority as well as appellate Court respectively.

8. It appears from the record that an application u/s 21(1)(a) of Uttar Pradesh Urban Buildings (Regulation Of Letting, Rent And Eviction) Act, 1972 (hereinafter referred to as U.P. Act No. 13 of 1972) was filed by the landlords on the ground of bona fide need. It was registered as P.A. Case No. 5 of 1994, Tej Bahadur and Another v. Shobha Ram and Others.

9. The judgments and orders of the courts below have been challenged on the ground that the orders impugned have been passed without application of independent judicial mind by the courts below and that they have not considered the pleadings and evidence of the parties. The orders are also assailed on the ground that the Prescribed Authority did not consider the fact that the alleged need of the petitioners has been continuously changing; that initially the need was set up for sons and daughters and thereafter the need was set up for Pankaj and daughter Nisha Saxena and lastly the need was pressed only for Nisha Saxena by moving amendment application.

10. It is stated that Nisha Saxena was employed and there was sufficient evidence produced by the petitioners in this regard to show that she does not have any bona fide need of the shop in dispute as the shop in dispute was treated to be a part of the residential house as well as that the rulings cited by the counsel for the petitioners have not been appreciated properly.

11. It is argued that the courts below have committed manifest error of law in not considering the fact that another shop has been released for the use and occupation of the son and daughter of the respondents as such the impugned orders are perverse, illegal and liable to be set aside.

12. Having heard learned counsel for the parties and on perusal of the judgment of the trial Court it appears that an application u/s 21(1) (a) of U.P. Act No. 13 of 1972 was moved by the landlords alleging that the shop in dispute was under the ownership of Gulabdei and after her death her legal heirs and representatives Tej Bahadur and Chunni Lal became its owner. Thereafter on the death of Chunni Lal Sri Yuvraj Bahadur was substituted as his legal heir and representative. Suit No. 305 of 1996 was instituted by Yuvraj Bahadur against wife of plaintiff no.2 in which a compromise has been arrived at between the parties. According to the compromise, wife of plaintiff no. 1 became co-owner of the shop in dispute. Plaintiff no. 1 claiming himself to be a retired employee of Consolidation Department alleged that he had two sons and three daughters. First son of the plaintiff no. 1 namely, Shyam ji is mentally retarded to some extent and younger one Pankaj has passed the B.A. as such the shop in dispute is required for the aforesaid two sons for settlement in business. The daughters are already married and are on visiting terms with the petitioner and that the plaintiff is unable to meet the 4expenses of the family as such the shop in dispute is required for augmenting his need as well as for establishment of his two sons therein.

13. It also appears that an amendment application was filed for adding paragraph 8 wherein it has been averred that mere is another shop of the plaintiff under the tenancy of Mohabbe Ali which is separated from the shop in dispute by a partition wall; that his daughter Nisha Saxena has now been divorced and she is living with her minor son Suyash along with the plaintiff landlord, hence shop in dispute was required for his need so that he will establish his daughter in business of lady garments.

14. From reading of the plaint it is apparent that many vacant shop sare available in Amroha which can be taken on rent by the petitioners tenants but they are not vacating the shop in dispute only due to reason that the rent of the shop in dispute is Rs.31.25 paise per month; and that the petitioner tenant also is owner of his own shop situated nearby. The petitioner tenant appears to have denied the fact that he has any shop in Darbar Kala and pleaded hardship on the ground that his family is a big one consisting of his wife, three sons and two daughters.

15. The contention of learned counsel for the petitioners is that divorce decree in Suit No. 305 of 1996 between Nisha Saxena and her husband is a collusive decree which has no effect for the purpose of adjudication of the rent case. The son of the landlord has taken a shop on rent in which he can run his business and if the petitioner tenant is directed to vacate the shop in dispute, he will suffer comparatively greater hardship. Learned counsel for the petitioners has also emphasized that the divorcee daughter is teaching in a college as such she does not require the shop in dispute. The court below considering the ground of bona fide need has held that Smt. Nisha Saxena, the daughter of the landlord was granted a divorce 5decree from her husband on 18.3.1993. She is technically educated lady and has passed the examination conducted by Akhil

Bhartiya Vyvashayik Pariksha Cutting Tailoring from State Industrial Institute Lakhimpur Kheri. The court below has also noted the fact that the petitioner has his own shop at Kailash Road nearby in which he can shift his business as such the petitioner tenant will not have any hardship.

16. As regards comparative hardship is concerned, the court below has come to the conclusion that shop adjacent to the shop in dispute is not available to the petitioner as Mohabbe Ali has filed a writ petition which is pending before the High Court whereas the need of the landlord is pressing and the landlord do require the shop in dispute bona fide. The findings recorded by the Prescribed Authority have been confirmed by the appellate Court holding that there is no illegality or infirmity in the conclusions arrived at by the court below.

17. After hearing learned counsel for the parties I am of the considered view that in view of the admitted fact that the daughter of the landlord Smt. Nisha Saxena has been granted a divorce decree by the court, hence it cannot be said that the divorce decree is a collusive one for the reason that Smt. Nisha Saxena, the daughter of the landlord is separated from her husband for the last 14 years and has also a son, who is now quite grown up. It is therefore but natural for the landlord to ensure that divorcee daughter as well as her son are also shifted who are living with him. Admittedly also, the elder son of the petitioner is mentally retarded but is able to do little helping work. The petitioner can take a shop on rent to shift his son. The need of the landlord of the shop in dispute is bona fide as the landlord will try to shift his son in his own shop and not in the rented shop. From the record it is apparent that shops are vacant in Amroha nearby which can be taken on rent by the petitioner. Even otherwise, he has no shop at Kailsha road nearby to the shop in dispute, hence in totality of the facts and circumstances of the case, the courts below have not committed any illegality or infirmity in arriving at the conclusions that bona fide need and comparative hardship of the landlord is greater than that of the tenant.

18. For all the reasons stated above, the writ petition is dismissed. No order as to costs. As prayed by the learned counsel for the petitioners, petitioners are granted two months' time to vacate and handover peaceful possession of the shop in dispute to the landlord within a period of two months from today.