

(2005) 11 AHC CK 0156

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25034 of 1988

Diptee Singh

APPELLANT

Vs

The IInd Addl. District Judge, Sri Dhruva Kumar and Smt.
Satyawati

RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 23

Citation : (2005) 11 AHC CK 0156

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Swaraj Prakash, for the Appellant; Ravi Kant, R.P. Dubey and S.R. Pandey and S.C., for the Respondent

Judgement

S.U. Khan J.

1. This is tenant's writ petition arising out of eviction/ release proceedings initiated by landlord respondent No 2 and 3 Sri Dhruv Kumar and Sim Satyawati against him on (he ground of Bonaire need u/s 21 of U.P. Act No. 3 of 1972. Release application was registered as Misc. Case No 50 of 1986, Prescribed authority, Shikohabad through judgement and order dated 16.2.1987 rejected the release application. Against the sand judgment and Border, landlord respondent No. 2 and 3 filed Mist Appeal No. 60 of 1987 I! Additional District Judge, Mainpuri judgment and under dated 26.11.1988 allowed the appeal, set-aside integument and order of the prescribed authority and allowed the release application of the landlord hence this writ petition by the tenant.

2. Property in dispute is a house rent of which is only Rs. 30/- per month. Prescribed authority found the need of (he landlord not to be noontide on the ground that in Village Asvai landlord had available with him a residential house Landlord had offered that he was ready to let out a pan of the said house to the tenant in case he vacated the house in dispute what in the town of sirsaganj.

Tebsil Shikohabad, district Presemed authority held that as the need of (he land/ Old was not bonafide hence there was no occasion for the landlord to offer the accommodation to the tenant.

3. The appellate court found that landlord Dhruv Kumar was employed in Allahabad bank and was posted at -Shikohabad which was are a short distance from Sirsaganj where the house in dispute is situate and that he was handicapped in the sense that there was a shortening in one of his legs and that it was quite difficult for him to go from village Asvai to Sirsaganj either on cycle or on scooter and then go to Shikohabad. Appellate court also found that mother of Dhruv Kumar i.e. respondent No. 3 was an old lady suffering from several ailments and in connection with her treatment she had to visit regularly town Sirsaganj. In view of these findings appellate court concluded that the need of the landlord was quite bonafide. In respect of comparative hardship appellate court found that tenant also had his own house in the village Gurau, which was at a short distance from Sirsaganj hence he would not suffer much hardship in case of eviction. Appellate court also held that the village of the tenant where his house was situated was m the Sirsaganj, htawah road In any case tenant did not show that what efforts he made to search alternative accommodation after filing of the release application. This by itself was sufficient to tilt the balance of comparative hardship against the tenant as held by the Supreme Court in Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, .

4. The Pescribed authority had adopted double standard for judging the case of both the panics I louse of landlord situate in adjoining village was found suitable for him while house of tenant also situate in another adjoining village was found in sufficient and improper for him. The prescribed authority even suggested the alternative means of transport to the landlord in order to reach his place of work from his village and go " back. If a landlord residing in a village wants to shift to town then his need can not be said to be not bonafide." A town or city contains math more facilities than a village.

5. Accordingly I do not find least error in the judgment and order passed by the appellate court holding the need of. the landlord to be bonafide and also deciding the question of comparative hardship in his favour.

6. However the matter does not end here. An amendment application dated 9.7.2004 was tiled by the tenant petitioner seeking amendment in the writ petition Through the amendment application, it has been sought to be brought on record that about three years before the filling of the amendment application i.e. around 2001 landlord has built his own house in Nagar Palika Shikohabad and his entire family has shifted in the said house. In the counter affidavit filed to the said amendment application, the said fact-has been admitted In Para 9 of the counter affidavit, it has been stated that landlords respondent Nos. 2 and 3 are ready to give compensation of Rs. 50000/- to the tenant petitioner in case he vacates the house in dispute. In Para K) of the counter affidavit, it has been stated that the house in dispute can mm be let out for Rs. 1500/- to 2000/- per

month rent.: Rejoinder , affidavit was also filed by the tenant petitioner and contents of Para 9 and 10 of the rejoinder affidavit were replied in Para 10 of the rejoinder affidavit In the said Para it has been slated that landlord was pressurizing tenant petitioner to accept Rs. 4 lakhs for vacating the house in dispute. It was also stated, m the said paragraph that house in dispute could fetch only Rs. 500/- per month rent. During arguments the court enquired from the learned counsel for the landlord as to whether landlord was ready to pay more compensation to the tenant for mitigating the hardship, which the tenant would lace in case of eviction. Learned counsel for the landlord stated that landlord was ready to offer even Rs 1 lakh for the said purpose. Learned counsel for the tenant alter consulting his client sated that the tenant was read)" to vacate the house on payment of Rs. 180000A which amount would include Rs. 1 lakh as compensation and Rs. 80000/-, which the tenant has spent in litigation. To this counter proposal learned counsel for landlord did not agree.

7. The question is as to whether the subsequent event of acquisition of a house by the landlord can be taken into consideration or not. On the question of taking into consideration the subsequent events in release matters on the ground of bonafide need there appears; to be some divergence of opinion among different authorities of the Supreme Court.

8. In Shakuntala Bai and Others Vs. Narayan Das and Others, decided on 5.5.2004, it was held that subsequent event of death of landlord is not to be taken into consideration. However in another authority decided on 13.10.2004 reported in K.R. Agarwal v. Dhanraji Devi 2004 (2) ARC 764 a contrary view was taken and it was held by the Supreme Court that death of the landlord during pendency of the writ petition for whose need the shop in dispute was released by the courts below made the release order f passed by the courts below ineffective and inexcusable as due to the death of the landlord the need vanished and in case his heirs were interested in doing business they could file a fresh release application. Unfortunately in the later authority of K.N. Agenda the earlier authority of Shakuntala Bai was not considered. In Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by LR"s., also it was held that death of the landlord does not make any difference. The said case arose out of U.P Rent Control Act and was considered in Shakuntulu Bui"s case.

9. It has also been held by the Supreme Court that if release is sought for business purposes then some job during the period when matter remains pending in the court does not disentitle the landlord from getting the benefit of the release order. In this regard reference may be made to Gaya Prasad Vs. Sh. Pradeep Srivastava, .

10. However there does not appear to be any divergence of opinion on the question of consideration of subsequent event of acquisition of property by the landlord In the following authorities of the Supreme Court, it has been held that if alter passing of the release order by the courts below and during pendency of the appeal/ revision or writ petition landlord acquires another accommodation

which completely satisfies his need then this fact / subsequent event will have to be taken into consideration and release order will have to be set-aside on this ground:-

1. P. Venkateswarlu v. Motor and General Traders AIR 1975 SC

2. Gulabbai Vs. Nalin Narsi Vohra and others,

3. Hasmat Rai and Another Vs. Raghunath Prasad,

11. Accordingly I hold that acquisition of the house by the landlord during pendency of the writ petition and shifting of his residence to the acquired house completely eclipsed his need. This fact is so important that it can not be ignored and it will have to be taken into consideration. Amendment application is therefore allowed. Due to acquisition of another house need of the landlord stands completely satisfied and the need, which he had has vanished,

12. Accordingly, due to acquisition of a house during pendency of the writ petition, this writ petition is allowed. Judgment and order passed by the appellate court is set-aside. Judgment and order passed by the prescribed authority is restored (even though on different grounds).

13. I have held in Khursheeda v. A.D.J. 2004 (2) ARC 64 that while granting relief to the tenant against eviction in respect of building covered by Rent Control Act, writ court is empowered to enhance the rent to a reasonable extent. Under somewhat similar circumstances the Supreme Court in the authority reported in Ansuyaben Kantilal Bhatt Vs. Rashiklal Manilal Shah and Another, enhanced the rent from Rs. 101/- per month to Rs. 3500/- per month with effect from the date of the judgment of the Supreme Court. For the period during which appeal remained pending before the Supreme Court rent was enhanced to Rs. 2000/- per month for some of the period and Rs. 2500 - per month for rest of the period. In the said authority release application of the landlord had been allowed by the courts below. The Supreme Court held that the landlord who had sought release of the building when he was about 54 years of age had become 87 years of age when the matter was decided by the Supreme Court hence he was not in a position to do any business. This fact of old age of the landlord was taken into consideration as relevant subsequent event by the Supreme Court.

14. In the instant case landlord has asserted that house in dispute which contains two rooms, varandah and other amenities can be let out for Rs 1500/ - to Rs. 2000/- per month. Tenant has asserted that it can not be let out for more than Rs. 500 - per month. Taking an average of these two figures, reasonable rent appears to be Rs. 800/- per month.

15. Accordingly, it is directed that with effect from 1.1.1989 till 31.12.1995, tenant petitioner shall pay the rent at the rate of Rs. 400/- per month. With effect from 1 1.1.1996 till 31 12.2005, he shall pay rent at the rate of Rs 600/-per month. With effect from 1.1.2006 onward, rent shall be paid at the rate of Rs 800/- per month. Entire arrears of rent at the above rates due till 31.12.2005

alter adjusting the rent already paid on the old rate shall be cleared in 18 (eighteen) equal monthly installments starting from 1.1.2006 If by June 2007, entire arrears of rent as aforesaid are not cleared then this writ petition shall be treated to have been dismissed and tenant petitioner shall be evicted in proceedings u/s 23 of the Act after June 2007. This order is being passed in the light of the judgment of the aforesaid authority of Supreme Court of A.K. Bhatt. In the said authority also, it was directed in the last but one sentence that if tenant committed default he should be liable to ejectment.