
(1995) 02 AHC CK 0130
In the Allahabad High Court
Case No : C.M.W.P. No. 8637 of 1983

Ganesh Lal Agrawal

APPELLANT

Vs

Radhey Shyam Bagaria and Others

RESPONDENT

Date of Decision : 03-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)

Citation : (1996) AWC 88 Supp

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Advocate : D.V. Jaiswal and V.K. Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

N.L. Ganguly, J.—This writ petition is by the tenant of the residential accommodation, which was released by the order of the prescribed authority dated 16.9.1982 in a proceeding u/s 21(1)(a) of the U.P. Act No. 13 of 1972 and the appeal of the Petitioner against the said judgment was also dismissed by the II Addl. District Judge, Kanpur by the order dated 5.1.1983 affirming the judgment of the prescribed authority.

2. The landlord Respondent sought for release of the accommodation in the tenancy of the Petitioner in premises No. 28/106 Pheel Khana, Kanpur consisting of 3 rooms, verandah, latrine, bath-room and Chhajja in the first floor. The Respondent-landlord pressed his case on the genuine and bona fide need for the accommodation in question for his own family on the ground that his family consisted of eight persons. There was one married couple, one major son and children between 3 to 15 years of age when the application for release was filed in the year 1981, Anil Kumar was a student and three daughters of the Respondent were students of Class I, II and VII at that time. Another son Pramod Kumar was unemployed. It was also said that Pramod Kumar was of

unsound mind, who needed one room exclusively. The Respondent had in his possession one room 9" x 8" a tinshed 7" x 6", used as a kitchen, a Kothari 5" x 5" on the ground floor. There was no study room for the children or sitting room or a guest room. The Respondent-landlord, who was an Instructor at I.I.T., needed the accommodation in possession of the tenant for his own use and occupation. The tenancy was inducted by the Respondent in the year 1959 when the size of the family of the Respondent was small.

3. The family of the Petitioner consisted of one married couple and seven children. The eldest son of the tenant was an earning member and was in service.

4. The application for release was contested by the Petitioner saying that the need of the landlord was not genuine. The number of family members of the Respondent and unsound minded Pramod, son of the Respondent was not disputed. The Petitioner has said that the landlord desired to raise the rent, hence mala fide the application for release was filed by him. It was also said that the landlord will suffer no hardship, as he was already settled and the tenant shall be put to a greater hardship and will be thrown on the street if the application for release was allowed. It was also said by the Petitioner that the Respondent had let out a room in the ground-floor recently. Had there been a genuine need, the Respondent would never have let out the said room in the ground-floor. The Petitioner also said to have invested thousands of rupees in improving the condition of the tenanted accommodation.

5. Before the prescribed authority, the parties filed their evidence in the shape of affidavits and a commission was also issued, who submitted a report and map of the premises showing the portions in possession of the Petitioner and the landlord respectively.

6. The lower appellate court, who concerned with the judgment of the prescribed authority had also made a local inspection of the premises in presence of the parties on 13.4.1983 and found that the ground floor Kothari is not fit at all for habitation having no ventilation for light and air. The room was said by the lower appellate court to be totally dark opening to the gallery on one side and having closed door in a shop on the ground floor which is also adjoining to the gallery having a nominal width and much longer length. The Commissioner had also reported that the accommodation in possession of the Respondent-landlord was wholly insufficient to accommodate the Respondent with eight family members. The lower appellate court recorded a finding after inspecting the accommodation in possession of the Respondent that in the room on the second floor measuring 9" x 8". by no stretch of imagination, not more than two cots can be put. Thus the authorities below recorded a finding, after appreciation of evidence, that the need of the Respondent-landlord for the accommodation in the tenancy of the Petitioner was more pressing, genuine and bona fide and was to be released in favour of the Respondent.

7. The lower appellate court also considered the accommodation in possession of

the Petitioner which consisted of one room, one small room, a covered verandah and a kitchen on the first floor and also observed that when the accommodation was let out 25 years ago, the family of the landlord was not in existence. The comparative hardship was also considered by both the courts below and the finding of fact arrived at was that the balance of convenience about hardship was in favour of the landlord. in case the release application was not allowed the hardship caused to the landlord would be much more and greater in comparison to the hardship caused to the Petitioner in case the application is allowed. It is known fact and settled law that whenever the tenant is to vacate the tenanted accommodation he is to face certain problems and hardship but it will be unjust and unfair that the person, who is the owner of the building should be deprived of its use and occupation forever even if it is proved that his need was genuine, pressing and bona fide.

8. The learned Counsel for the Petitioner Shri K. M. Dayal, senior Advocate, assisted by Shri Atul Dayal, rightly and correctly not assailed the findings recorded by both the authorities at all about the bona fide, pressing and genuine need and comparative hardship, as contained in the said two judgments. This petition was filed by the Petitioner on 27.7.1983. The lower appellate court while dismissing the appeal was pleased to allow two years time for vacating the premises by the Petitioner on 14.4.1983. Since the Petitioner had obtained an interim stay order staying the eviction from the accommodation in question, he continued to remain in possession for more than ten years by now.

9. The learned Counsel for the Petitioner by an application dated 11.11.1990 supported with an affidavit prayed that subsequent events may be taken. in the affidavit. It was stated in para 4 that the eldest son of the Respondent, namely Pramod Kumar, who was insane, had died in 1987 and two daughters of the landlord were married. The learned Counsel for the Petitioner submitted that during the pendency of this writ petition, the number of family members of the landlord has reduced by three out of eight. It was further submitted that a Kothari in the ground floor had fallen vacant and the landlord's son is residing therein. He also got a shop vacated in the ground floor and is doing in Parchun business therein. The learned Counsel for the Petitioner argued that the need of the landlord-Respondent has thus vanished and the release granted in his favour deserves to be set aside and quashed. A copy of the application along with that of the affidavit was served on the counsel for the Respondent Smt. Poonam Srivastava but no counter-affidavit has been filed on behalf of the Respondent. Even in the revised list, the counsel for the Respondent, Smt. Poonam Srivastava, failed to appear.

10. After hearing the learned Counsel for the Petitioner, this Court has to see whether the subsequent events, as pointed out by the Petitioner, have to be accepted as sacrosanct, which occurred during the pendency of the writ petition remained pending for more than eleven years. Even if it is accepted for argument sake that one insane son died and two daughters in the family of the Respondent

since have been married during the pendency of the writ petition, whether the need of the Respondent ceased to be there and the accommodation sought to be released be refused on this ground alone. It is also a fact to be considered and borne in mind that when the release application was filed in the year 1981, the ages of the dependent children of the Respondent-landlord, who making a family consisting of eight persons, were between 3 to 15. It is now said in the affidavit showing the changed circumstances that two of the daughters have since been married, the other children who were between 3 to 15 years of age in 1981, have now become grown up and are presumed to be 18 years and above of age. Thus by reduction of number in the family members, the growth in the ages of the family members has also to be taken into consideration whether the release granted by the two authorities below be interfered with. I am of the view that even if the fact that has been stated in the affidavit is taken to be correct for argument sake, then also it cannot be said that the need of the Respondent-landlord has come to an end or has reduced to such an extent that the small accommodation possessed by the Respondent would be sufficient to accommodate the grown up and growing members of the family besides the couple of the landlord. No doubt one son had died, who was of unsound mind. That would not be very material or necessary circumstances calling for interference under Article 226 of the Constitution. It is further a fact to be taken into consideration whether subsequent event is to be taken into consideration always in a writ petition. This question was considered by me in the case Smt. Raj Kumari Padma Singh v. V Addl. District Judge. Allahabad and Ors. AIR 1994 SC 21. While deciding the said case a decision was considered by me reported in Pharma Traders v. VII Addl. District Judge, Kanpur 1992 (2) ARC 592. The facts of the said case and the present writ petition are similar to certain extent. In that case, the writ petition was pending for about 12 years before this Court and during the said period the landlord, who was occupying the tenanted accommodation at the time of filing of the release application was compelled to acquire a two-room flat for abode as the landlord of the said building was pressing for vacating the tenanted-accommodation. The other similarity was that the son of the landlord in that case, who was a student, and the daughter, who was too young at that time, completed their education and got married also and settled in life. These circumstances were taken not compelling circumstances for interference in the writ petition and sending back the case for decision on these questions again since these events had happened during the pendency of the writ petition in the High Court for a large number of years. No doubt, there are decisions and precedents on the question that subsequent events, which happened during the pendency of the case, deserve to be considered when writ petitions are finally decided. In the case cited above the decisions on the question whether subsequent events are to be taken into consideration while deciding the writ petitions were also considered by me and referred to in the said judgment in paras 19, 20, 21 and 22. I am supported in taking the view that subsequent events are not to be always taken into consideration in view of the decision 1992 (2) ARC 592 . The decision reported in Hasmat Rai and Another

Vs. Raghunath Prasad, , was of a constitutional Bench of the Supreme Court. The observations of the Supreme Court are quoted as under:

Once an appeal against decree or order of eviction is preferred, the appeal being a continuation of suit, the landlord's need must be shown to continue to exist at appellate stage. If the tenant is in a position to show that the need or requirement no more exists because of subsequent event, it would be open to him to point out such events and adjudicate the same. Otherwise the landlord would derive unfair advantage.

Relying on the said observations of the Supreme Court in 1992 (2) ARC 192 this Court was pleased to ignore the subsequent events which had happened during the pendency of the writ petition and the view taken in 1992 (2) ARC 592 by this Court was affirmed by the Hon''ble Supreme Court in SLP No. 14136 of 1992 decided on 27.11.1992.

11. I am also informed that the judgment reported in 1994 (24) ALR 21 has also been affirmed by the Hon''ble Supreme Court by dismissal of the S.L.P.

12. As already observed, even if the facts and circumstances, which had occurred subsequently during the pendency of the writ petition, are taken into consideration for argument sake, the facts, which are abundantly clear from the record, have to be taken into consideration and by reduction in the number of family members by reason of death of one son and marriage of two daughters are not sufficient which may completely extinguish the bona fide and genuine need of the Respondent. The two daughters, who are married, are not supposed to be away forever. They, as it happens in our society, come with their husbands and kids to stay with their parents. Will it be just and reasonable to presume that the parents would ask their married daughters not to visit their parents' place since they are married. The other fact that the members of the family by now have become of mature age and major, who may further need more accommodation. The allegation that one shop was got vacated by the Respondent in which a Parchun shop had been opened by the son of the Respondent is not, in any manner, to solve the need of the landlord. The other room said to have been available to the Respondent, which is said to be in possession of the Respondent's son. as is evident from the report of the commissioner and lower appellate court's observation after inspection, is not habitable. Thus I am of the view that the facts and circumstances of the case show that all the additional pleas raised after more than 11 years, if taken into consideration, would not justify interference or call for any interference under Article 226 of the Constitution and the writ petition deserves to be dismissed with costs.

13. Sri K. M. Dayal, learned Counsel for the Petitioner, submitted that the Petitioner is in occupation of the accommodation for such a long time. If the accommodation is asked to be vacated just now, he shall be put to irreparable hardship. Therefore, some time be allowed to him to enable him to vacate the

accommodation. The lower appellate court had granted two years time and the Petitioner made no attempts to find out any other alternative accommodation and was living in the accommodation for more than 11 years during the pendency of this writ petition. However, considering the request of Sri K. M. Dayal I direct that the judgment of the courts below for release shall not be executed for a period of four months from today provided within one month from today the Petitioner furnishes an undertaking affidavit before the prescribed authority that he shall vacate the premises on or before the expiry of four months from today and hand over vacant possession of the accommodation to the Respondent and shall deposit within this one month period from today the entire amount of dues, if any, and damages for use and occupation for four months, which he would enjoy under the orders of this Court in advance, which may be paid to the Respondent. in case of default of either of the conditions stated above, the concession of occupation for four months from today shall stand automatically vacated and the Respondent shall be free to put the orders of the authorities below for execution.

14. With the above observations, the petition is dismissed with costs.