
(1995) 01 AHC CK 0132
In the Allahabad High Court
Case No : C.M.W.P. No. 7198 of 1993

Ganga Prasad and Others

APPELLANT

Vs

Ist Addl. C.J. and Others

RESPONDENT

Date of Decision : 09-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh (Temporary) Occupation and Requisition Act, 1947 — Section 21, 22, 23
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21, 21(1)

Citation : (1995) 01 AHC CK 0132

Hon'ble Judges : A.B. Srivastava, J

Bench : Single Bench

Advocate : C.K. Parekh, for the Appellant;

Final Decision : Dismissed

Judgement

A.B. Srivastava, J.—This is tenants' petition Under Article 226 of the Constitution of India whereby they have sought writ of certiorari quashing the order dated 11.2.1991 of the prescribed authority allowing the landlords application for release of accommodation in the tenancy of the Petitioners and the order dated 5.12.1992 of the Additional District Judge, Varanasi confirming the same in appeal.

2. The Respondent No. 3 Chunni Lai, (Landlord) filed the release application u/s 21(1) of Act 13 of 1972. (hereinafter referred as the Act) against late Prahlad Das, the Father of Petitioner Nos. 1 and 2 and grandfather of Petitioner No. 3 the Respondent Nos. 4 to 6 daughters and Smt. Bahuwa, the widow of Thakur Das the elder brother of Prasad Das, with allegations that the shop in question situate on the ground floor of house No. 20/9 Thatheri Bazar, Varanasi was in the tenancy of Thakur Das, who died in December 1980 leaving his widow and three daughters. Initially Thakur Das and Prahlad Das had a joint business of utensils in this shop, but due to differences between them, the said business ceased in

1972 and Prahlad Das started his own business in the said shop which was also discontinued near about the year 1981 and his sons are engaged in the profession of broker in sari market. The shop in question, it is alleged, is lying vacant and locked. The widow and daughters of Thakur Das had at no stage any concern with the shop in question, and have been impleaded formally to avoid any complication. The landlord has a large family to support, his residential house is a small one situate in a narrow lane. He is a sweetmeat seller by profession and is running a small sweetmeat business in a tenanted house in mohalla Sidheshwari, the landlord of which is pressing him to vacate. His son named Pramod is having a sweetmeat shop in 23 x 6 feet shop in house No. CK 20/9 Thatheri Bazar the width being narrow, there is no proper place for keeping the counter and for the customers to sit and eat, the furnace and cooking is on the third floor, also causing inconvenience, two other sons of the landlord, Atma Ram and Rajesh Kumar are unemployed, the shop In question being adjacent to the shop of Pramod Kumar, on getting it the landlord will convert the two shops into one by removing the partition wall and all his three sons could well be accommodated gainfully In the said business. Consequently, the need of the landlord was alleged to be bona fide and pressing.

3. The release application was contested by the Petitioners who pleaded that originally Prahlad Das had taken a three dar shop In house No. CK 20/9 Thatheri Bazar Varanasi from Smt. Bltto, the mother of Respondent No. 3 Chunni Lai. After her death, Chunni Lai and his brother Ganesh Prasad became co-landlords. Later Prahlad Das vacated one dar on the shop in favour of Ganesh Prasad and the tenancy remained in respect of remaining two darsi the business wherein was being run by Prahlad Das and Thakur Das. Later due to old age, Thakur Das withdrew from the said business, and it was agreed that Prahlad Das will be the sole owner of the said business and shall pay to Thakur Das, and after him to his heirs, Rs. 50 per month. After death of Thakur Das, his widow and daughters also had no concern of the tenancy and Prahlad became the sole tenant and after him the Petitioners inherited the tenancy. In the course of time, utensil business discontinued, and the Petitioners are running the business of Banarasi Sarees In the said shop. It is wrong to say that they have kept it locked. The Respondent landlord does not bonafide require the shop In question as his sons are comfortably engaged in the business of sweetmeat in the shop already in their possession. As the customers consider it uncivilized to eat sweetmeat in the shop, no place for them inside the shops is required, rather, the customers after purchasing sweetmeats from the shops in Thatheri Gall consume It elsewhere. The application for release have been filed with ulterior motives and the Petitioners will suffer great hardship if they are made to vacate the same.

4. The learned prescribed authority allowed the prayer of the landlord for release with the finding that the landlord bona fide requires the shop in question for occupation by himself, to provide suitable space to extend the sweetmeat shop of his eldest son Pramod Kumar, and to engage his two other grown up sons Atma Ram and Rajesh Kumar ; the Petitioner tenants are not carrying on business of

Banarasi Saris in the shop in question, and that greater hardship will be caused to the Respondent landlord if the release is refused than to the Petitioners if the same is allowed.

5. On appeal being preferred by the Petitioners, the learned Additional District Judge held that although Initially both Thakur Das and Prahlad Das were carrying on Joint business In the shop in question, subsequently, Thakur Das withdrew from the business and the tenancy and Prahlad Das continued to carry on the business In the premises in question as its tenant, which status was also accepted by the landlord, the release application was consequently maintainable. He also agreed with the conclusions of the learned Prescribed Authority on the question of bona fide need of the landlord and also on the point of comparative hardship. He, accordingly, dismissed the appeal.

6. In this petition, affidavits have been exchanged between the parties, hence in accordance with Rules of the Court It is being finally disposed of at admission stage.

7. The first contention advanced on behalf of the Petitioners In this case is with regard to the maintainability of the release application u/s 21(1) of the Act. The contention is that the Respondent himself In his release application in para 2 having pleaded that it was Thakur Das who was the tenant of the shop in question, the release u/s 21 could be sought only against the heirs of Thakur Das and not the Petitioners, who are the heirs of Prahlad Das, the younger brother of Thakur Das. As per the averments In the release application, it is contended, the status of Prahlad Das, or for that matter, the Petitioners, could be of an unauthorised occupant or sub-tenant and for their eviction, proceedings u/s 21 could not be initiated. This contention, however, loses sight of the fact that firstly the heirs of Thakur Das have also been impleaded as opposite parties to the application u/s 21. Secondly, the tenor of the pleadings of the Respondent is to the effect that Prahlad Das was inducted to carry on joint business by Thakur Das, since inception of the tenancy and subsequently when Thakur Das became very old, Prahlad Das alone carried on his business therein. There Is no whisper in the pleadings of the Respondent that he did not acquiesce to the induction of Prahlad Das as a co-tenant.

8. There is nothing to show that there was any allegation or evidence to the effect that there was any separation between the two brothers, Thakur Das and Prahlad Das. In fact, on behalf of the Petitioners themselves, evidence was sought to be led to show that Prahlad Das in his own right, was the tenant of this shop. It is true that in some of the affidavits filed on behalf of the Respondent, the status of Prahlad Das as co-tenant was disowned, but in the context of all the attending circumstances, particularly the pleadings, the same loses importance and was rightly not taken notice of by the authorities below.

9. Even if it may be assumed that the status of Prahlad Das was of a subtenant, the release application would not become non-maintainable, in view of the

principles laid down in *Culam Rasool v. Smt. Puspa Devi* 1987 (2) ARC 294. in *Smt. Suman Lata v. Prescribed Authority, Etawah and Ors.* 1985(2) ARC 454. relied on by the Petitioners, the landlords themselves had averred the person in occupation to be an unauthorised occupant. It was in these circumstances that the application u/s 21 was held not maintainable. 1981 ARC 3, cited by the Petitioners relates to a case under U.P. (Temporary) Occupation and Requisition Act, 1947, and the question in issue was not the one with which we are confronted in the present case.

10. In view of these facts and circumstances, therefore, it is not open to the Petitioners to oppose the release application as being incompetent.

11. In fact Section 23 of the Act also takes care of such a situation, wherein the prescribed authority has been authorised to use force for evicting any tenant, against whom an order is made u/s 21 or 22 or against any person found in actual possession, and for putting the landlord into possession.

12. The next ground of attack by the Petitioners is on the point of the bona fide need of the Respondent landlord. It is contended that the authorities below have wrongly concluded that the Respondent requires the shop In question for extending the area of the adjacent sweetmeat shop of his elder son and to engage his two other sons In the same business. A perusal of judgment of the prescribed authority as well as that of the appellate authority would go to show that in coming of their conclusion about the bona fide requirement of the landlord, they have considered all the relevant aspects of the evidence, as well as the circumstances, and by re-assessing the evidence, the same cannot be interfered with in the present proceeding. The contention of the Petitioner that the sons of the landlord do not genuinely require to extend the area of the adjoining shop to provide for space to the customers for consuming sweetmeat and for display of the prepared articles, because people consider it an uncivilised act to consume sweetmeat at the shops situated in the said locality, is hardly one which can stand to reason. Obviously a shop with attendant facilities of a show-cafe, the space to sit and eat, will fetch more income than a shop which does not have such a provision and is situated In a rather narrow room. Equally untenable was the contention that the landlord can convert his upper story rooms into shops to engage his two unemployed sons into business.

13. As far as the question of comparative hardship is concerned, there again is a concurrent finding of fact of both the authorities below, based on an appraisal of evidence. In view of the proposition of law laid down in *Muni Lal and Others Vs. Prescribed Authority and Others*, , It is not open to this Court to substitute its finding in place of the same. The order or release passed by the two courts below, thus does not suffer from any manifest error of law or error of Jurisdiction so as to call for any interference.

14. The writ petition being devoid of merit is hereby dismissed. No order as to costs.