
(1995) 05 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 37049 of 1991

Gopal Krishna Gupta

APPELLANT

Vs

IV Addl. D.J., Kanpur Nagar & Ors.

RESPONDENT

Date of Decision : 24-05-1995

Acts Referred:

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

Citation : (1995) 05 AHC CK 0053

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Narayan, J.—This writ petition is directed against the order of the Prescribed Authority, dated 7101989, whereby he allowed the reels application of the landlady respondent No. 3 filed under Section 21(1)(a) of U. P. Urban Building (Regulation of Letting, Rent and Eviction) Act 1972 (In short "the Act") and the order of respondent No. 1, dated 18111981, dismissing the appeal against the aforesaid order.

2. The facts in brief are that Raja Babu Agarwal was owner of premises No. 31/128 Lathi Mohal, Kanpur. He sold two portions separately one to Raj Kumar and his brothers on 14101977 and another portion to portion to Smt. Kamla Devi (respondent No 3) through registered sale deed dated 14101977. Raja Babu Agarwal died in the year 1978. Thereafter his h sold third portion to Smt. Pratap Devi in the year 1980. Smt. Pratap Devi motherinlaw of Gopal Krishna, the petitioner. The portion purchased by respondent No. 3 was numbered as 31/128, portion purchased by Raj Kumar and others was numbered as 31/128A and the portion purchased by Smt. Pratap Devi was numbered as 31/128B. The petitioner has a shop in The portion purchased by Raj Kumar and carrying on hardware business He ha, also a portion of premises No. 31/128 owned by respondent No 3 which consist, of tin shed about 10"x10", a Kothan about 7"X4" and some of space. The dispute relates to this portion. The petitioner has further in t occupation two godowns which are in portion 31/128B which is owned by his

motherinlaw Smt. Pratap Devi. The landlady respondent No. 3 has a shop in a portion of 3 L/128 towards south to the dispute accommodation, the size of which is approximately 13"X17". On the ground floor is the shop in which the landlady and her sons are carrying on hardware business. There is a Dochatti (Mezenine floor). There is first floor, second floor and floor is alleged to be open space. These portions are being utilised for residential purpose of respondent No. 3 and her family.

3. Respondent No. 3 filed an application on 2881992 under Section 21(1)(a) of the Act on the allegation that she requires the disputed accommodation for expansion of the business. The area covered by shop her occupation was too small and insufficient for keeping hardware articles and some times the customers are to return back. It was stated that the tenantpetitioner would not suffer any hardship as he has got a shop in adjoining portion and the other two godowns which are owned f by her motherinlaw.

4. The petitioner contested the application, it was denied that the need of respondent No. 3 was bona fide as she has sufficient accommodation for the business purpose. During the pendency of the application, respondent No. 3 tiled an application for amendment of her petition on 671984 taking the plea that the accommodation for residential purposes was also insufficient for her occupation which is on the first ami second floors of the shop which was in her occupation. Her family consisted of herself, two sons namely Rajendra Prasad and Shiv Prasad and her daughter Urmila Devi. Rajendra Prasad has wife and three daughters. Shiv Prasad has wife and two daughters. The Court appointed a Commissioner to inspect the entire premises No. 31/128. First Commission report, dated 2571983 was set aside and thereafter another Commission was appointed who submitted his report on 1521988. This report was confirmed. The Prescribed Authority allowed the application of respondent No. 3 holding that her need for commercial purposes as well as for residential purpose was bona fide and in case her application is rejected, she would suffer greater hardship than the petitioner who has got some alternative accommodation. The petitioner preferred an appeal against the said order which has been dismissed by respondent No. 1 on 18111991.

5. I have beard Sri K. M. Dayal, Senior Advocate on behalf of the petitioner and Sri S. N. Verma, Senior Advocate on behalf of respondent No. 3.

6. The first submission of learned counsel for the petitioner is that respondent No. 3 had already a hardware shop and there was no allegation in the application filed by her that she needs further accommodation to augment her income and further there was no proof of the income and further such income was not shown to be insufficient to maintain her family and in absence of such plea and proof, the respondents acted illegally in allowing her application. It is not denied that respondent No. 3 has a shop, the dimension of which is 13" X 17", just behind the shop towards north the petitioner is a tenant of the premises in question which consists of tin shed about 10" X 10", a Kothari 7" X 4" and some open

space adjoining it. He is admittedly not carrying on hardware business in this premises. He has a hardware shop towards west of it which is not in dispute and he has further two godowns towards east to the disputed premises which is also not in dispute. This tin shed and kothari are allegedly being used by the petitioner for storing hardware goods and the land is being used for ingress and egress to reach the godown and the shop as the land intervenes between the other two godowns (which are not in dispute) and the shop. The respondent No. 3 claimed that this disputed premises could be used for expanding her shop as the shop is small for carrying on hardware business which requires sufficient space particularly for storing hardware articles. In case the rear wall of the shop is demolished and it is extended further towards north, the shop can be extended and accordingly hardware business can be expanded.

7. The question is whether in these circumstances it was necessary for the petitioner to plead that respondent No. 3 required the accommodation to augment the income of the business and to lead evidence to prove this fact. Section 21 (1) (a) of the Act provides that a tenant can be evicted in case it is required bona fide by the landlord either for residential purpose or for purpose of any profession, trade or calling. The only test is whether the building is bona fide required. What is the meaning of "bona fide requirement" has been subject matter of consideration in various pronouncements. This has to be assessed objectively depending upon various facts and circumstances of the case. In *Mattu Lal v. Radhey Lal*, AIR 1974 SC 1596 it was pointed out that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show that he genuinely required the accommodation. When the need can be said to be only a desire and when it is genuinely required, cannot be tested on the criteria of the absolute necessity. The meaning of bonafide requirement was considered in *N. S. Datta v. VII Additional District Judge, Allahabad and others*, 1984 (1) ARC 113, as follows:

"Mere desire or absolute need or necessity are both, it has been held, erroneous approaches in this behalf, vide *Janki Prasad v. II Addl. District Judge and others*, 1980 (UP) RCC 602. The word "bonafide" means genuinely, sincerely i. e., in good faith in contradiction to mala fide. A Full Bench of this Court construed this to mean to genuinely or in good faith" and conveying an idea of absence of any intent to deceive *Chandra Kumar Sah v. District Judge, Varanasi*, AIR 1976 All. 328 : 1977 ARC 142 FB. It will not be bonafide requirement of the landlord if release is sought for as ulterior purpose of fanciful whim, vide *Dr. Sita Ram Gandhi v. District Judge, Meerut*, 1978 (2) All India RCJ 326 ; *Smt. Kamla Ahuja v. VII Addl. District Judge. Meerut and others*, 1981 ARC 371."

8. In case the landlord has some business and requires expansion of his business by asking for some additional accommodation in the accommodation in which he is carrying on the business, it cannot be rejected simply on the ground that his need cannot be taken as bona fides unless he proves his income. A landlord can expand his business and he may require its bonafide. It is not in every case that

the Court is required to examine the income from a business which such a landlord is already carrying on. A person may have income from a business and may start another business in addition to it. It is difficult to assess as to what income will suffice the need of a man or his family members. A limited income for one man is sufficient to maintain the landlord and his family members but for other the income may be treated as insufficient. The Court will not sit as a Chartered Accountant to find out the true income of the landlord or his family members. The Court has to examine whether the requirement is bona fide in the context of Section 21 (1) (a) of the Act.

9. In *Ved Prakash v. Naresh Chandra and others*, 1977 ARC 188, the landlord filed an application under Section 21 of the Act on the allegation that he required the tenanted shop for starting cloth business. The Prescribed Authority rejected the application on the ground that the landlord had income from other sources. This view was not accepted by this Court and it was held that the Prescribed Authority was not at all justified in entering into the question as to other sources of income of the landlord's family or other properties owned by the family. The question for consideration was whether the landlords bonafide intended to start the business and whether any other accommodation was available for carrying on business.

10. In *Brij Nandan Saran v. The Additional District Judge and others*, 1978 ARC 235, this Court emphasised that every citizen is entitled to expand his business and augment the income therefrom. If an application is filed by a landlord for the purpose of expanding his business or opening a new one, the same cannot be rejected simply on the ground that such an application is not maintainable. What is required to be seen in such case is whether the need set up is bonafide, and that the premises in the tenancy of a tenant is required for the genuine need of the landlord.

11. The question as to the bonafide requirement of the landlord for expanding the business and the comparative hardship which may arise in the event the order of eviction against the tenant is passed, should not be mixed up. It is for the Prescribed Authority or the Court to consider the attending circumstances when a person is to be evicted having no business and the other having a business, wants to evict for expanding the business. The Prescribed Authority has first to record a finding about bonafide requirement of the landlord and thereafter to consider the question of hardship of the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application.

12. Learned counsel for the petitioner placed reliance upon the decision in *Ved Prakash Agarwal v. III Additional District Judge, Bulandshahr and others*, 1981 ARC 649. In this case the landlord had filed an application under Section 21 (1) (a) of the Act on the ground that he was due to retire on 30th June, 1978 and thereafter it would become necessary for him to engage himself in some business to earn his livelihood, as he did not want to be dependent upon his

three sons who were all employed. The Court on the facts of that case held that the Prescribed Authority was justified in examining the source of income of the landlord when he himself came with the plea that his income was insufficient and, therefore, he wants to carry on business.

13. In another case *M/s. Lalita Printers Stores v. VII Additional District Judge, Kanpur and others*, 1981 ARC 649, an application was filed on the ground that the landlady required the accommodation for setting her two sons who were unemployed. It was found that all the sons of the landlady were carrying on business in a partnership firm. It was later on argued that though the sons were carrying on business but their income was not sufficient. The Court in those circumstances held that once it is pleaded that the income was insufficient, the insufficiency of the income assumes importance and it becomes the duty of the landlord to produce the accounts book so that a correct finding could be recorded in that behalf. Similarly, in *Ram Bharose and others v. Nanak Ram and others*, 1982 (2) ARC 342, it was held that when the release application is filed on the ground of augmenting income, the landlord should establish those facts. In all these cases the landlords themselves came up with the case that they want an accommodation to establish or carry on business to augment their income as their income was insufficient. In these circumstances it became relevant to examine the income of the landlord. These were not the cases where the landlord sets up a pleading that he wants to expand business in addition to the business already existing without taking a plea for augmentation of his income to justify his bonafide need.

14. In the present case, the respondent No. 3 is carrying on hardware business in the shop which is 13" X 17" and just behind it is the disputed premises and if the rear wall towards north is demolished, this shop can be extended. The disputed premises, as stated above, consists of a tin shed 10" X 10", a kothari 7" X 4" and space adjoining it. The petitioner in para 4 of his objection dated 11th October, 1982 (Annexure 3 to the writ petition) stated that mostly the shops in the market are 10" X 10" and the business of the petitioner is of average standard and is not as big as stated by the landlady. It is not denied that respondent No. 3 is carrying on hardware business and according to the petitioner the business of respondent No. 3 is small. The desire to expand the business by getting some space by respondent No. 3 in these circumstances, as found by both the authorities below, cannot be held to be not bona fide. The petitioner is himself carrying on hardware business and the size of his shop is much bigger than respondent No. 3 and further he has got two separate godowns which are not in dispute.

15. Learned counsel for the petitioner urged that the open space in the disputed premises is being used as an access for godowns which are situated towards east of his shop as the intervening premises is the only access to reach those godowns and it is more convenient as it is just behind the petitioner's shop. The respondents 1 and 2 have found that the petitioner has an alternative passage

by going through main road by covering a little more distance. In these circumstances it was found that the respondent No. 3 requires the premises for expanding his business and the disputed premises is being partly used for godown and passage by the petitioner and it will not justify rejection of the application of respondent No. 3 after considering the hardship of respondent No. 3 and also taking into consideration the hardship likely to be caused to the petitioner.

16. The second ground on which the application has been allowed is that the respondent No. 3 requires the disputed premises for his residential purpose as well. Her allegation was that her family consisted of herself, her son Rajendra Prasad, another son Shiv Prasad and daughter Vimla Devi. Rajendra Prasad has wife and three daughters, Shiv Prasad has also wife and two daughters. This need was set up by filing an application for amendment of the application. Petitioner filed objection to the application. In the objection it was stated that Rajendra Prasad was not living with respondent No. 3 later on an affidavit was filed by the petitioner and it was stated that Rajendra Prasad is not son of respondent No. 3. The respondents 1 and 2 held that Rajendra Prasad is son of respondent No. 3 and considering the number of members of the family and the accommodation which is in her possession for residential purpose hardly sufficient for residential purpose. Learned counsel for the petitioner has challenged these findings in this writ petition. It is urged that Rajendra Prasad is not son of respondent No. 3 and the landlady failed to lead any evidence that he is her son. The application was filed for amendment of the application under Section 21 of the Act on 6th July, 1984 by respondent No. 3 giving the details of her family members. The petitioner filed objection on 15th July, 1985 and in the said objection only it was stated that Rajendra Prasad does not reside with her but he filed an affidavit on 8th July, 1986 in which it has been categorically deposed that Smt. Kamla Devi has got only one son namely, Shiv Prasad. , Respondent No. 3 filed her own affidavit stating that Rajendra Prasad is her son and disclosed the names of his wife and three daughters. Respondent No. 3 had personal knowledge about his sons. The petitioner denied it. If respondents 1 and 2 have believed the affidavit of respondent No. 3 and recorded finding that Rajendra Prasad is son of respondent No. 3, such finding is not vitiated, The mere ground that some more additional evidence could have been adduced to prove whether he is son of respondent No. 3 was for the Authorities below to consider. Respondent No. 1 has further relied upon the Ration Card which indicates the name of Rajendra Prasad as son of respondent No. 3. The finding cannot be said to be perverse or based on no evidence. It is, however, not denied that Shiv Prasad is son of respondent No. 3 who has two daughters and further Urmila Devi is daughter of respondent No. 3.

17. Another submission of learned counsel for the petitioner is that respondent No. 3 has sufficient residential accommodation in her possession for her family members. The Prescribed Authority had appointed two Commissioners. The report of first Commissioner was set aside and the report of second

Commissioner was confirmed. The Commissioner in his report dated 15/2/1988 had given the details of dimensions of the accommodation. The petitioner filed objection to the report of the Commissioner dated 7/9/1988. The dimensions as given by the Commissioner have not been denied. It is not denied that the shop on the ground floor covers an area of approximately 13" X 17" and the residential accommodation is just above the shop, Respondent No. 3 and her family members go through the stair case on the first floor and second floor of this accommodation. The area on the first floor and the second floor cannot be more than the area of the shop. The report submitted by the Commissioner indicates that there is Dochatti (Mazanine space) where the goods are stored. The first floor consists of one room, one temple, bath room and latrine, on the second floor one room, kitchen, bath room and Verandah and the third floor was found with open space on which a latrine was constructed. The petitioner filed an objection and in the objection it was stated that the report of the Commissioner that there was a temple, is incorrect. As regards the second floor the objection was that the area shown as verandah was not in fact verandah but a lounge which can be utilised for residential purpose. It is urged that the respondents 1 and 2 did not consider this objection, Even if it is assumed that the room which is called as temple and verandah can be used as lounge, it did not make much difference as looking on the map it is clear that the space is very small one and the area of the shop is approximately 13" X 17" and any accommodation constructed on the first and second floor could hardly be more than the area covered by the said shop. Considering the members of the family of respondent No. 3 two or three rooms are hardly sufficient for their need. The findings recorded by respondents 1 and 2 that respondent No. 3 requires the disputed premises for residential purpose as well, do not suffer from any manifest error of law.

18. In the result, the writ petition is dismissed. The parties shall, however, bear their own costs.