
(2008) 07 AHC CK 0157

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18260 of 1997

Hari Shankar and others

APPELLANT

Vs

VIth ADDL.District Judge, Azamgarh and others

RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

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

Citation : (2008) 07 AHC CK 0157

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

Final Decision : Allowed

Judgement

S.U. Khan, J.

1. List revised. No one appears for the respondents. Heard Sri K.S. Rathore, learned counsel for the petitioners.

2. This is landlords' writ petition arising out of eviction/ release proceedings initiated by them against tenants respondent nos. 3,4, & 5 on the ground of bona fide need under Section 21 of U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 in the form of P.A. Case No.1 of 1994. Property in dispute is a shop, rent of which is Rs.90/ per month. Prescribed Authority /Civil Judge, Azamgarh through judgment and order dated 20.02.1996 allowed the release application holding the need of landlords to be bona fide. It was further held that landlords would suffer greater hardship if release was refused than the tenants in case release application was allowed.

3. Against the said judgment and order only Deepak respondent no.3 filed Misc. Appeal no.70 of 1996. The other tenants/opposite parties in the release application, i.e., respondent no.4, Panna and respondent no.5, Subhash Chandra did not file appeal. Probably they were impleaded as pro forma respondents in the appeal. VIth A.D.J., Azamgarh, allowed the appeal through judgment and order dated 23.04.1997 set aside the judgment and order passed by the Prescribed Authority and rejected the release application, hence this writ petition

by the landlords.

4. In the release application it was stated that Sanjay and Rajeev, sons of landlord petitioner no.1 had become major and required the shop for doing business. Tenants pleaded that Sanjay and Rajeev were doing lottery business. Landlord denied the said fact. It was specifically asserted by the landlords before the lower Appellate Court that tenants had not pointed out that from where Sanjay and Rajeev were doing business of selling lottery tickets. Lower Appellate Court recorded an extremely strange finding in this regard. It held that for doing business of selling lottery tickets neither any shop nor place nor any show room was required. Lower Appellate Court further held that the two sons of petitioner no.1 i.e. Sanjay and Rajeev had not filed any affidavit.

5. It was also pleaded that landlords petitioner nos.2 and 3, Uma Shanker and Vinod were also doing business from a tenanted shop. Lower Appellate Court held that tenanted shop was sufficient for their purpose.

6. Lower Appellate Court further held that landlord petitioner no.1 did not prove that any of his sons had got training of electric goods. Tenants had also pleaded that Rajeev had gone abroad. However, landlords stated that Rajeev had gone to Mauritius on a temporary visa and had returned. Appellate Court did not accept the case of the landlord in this regard on the ground that visa was not filed before it.

7. The findings of the lower Appellate Court on the question of bona fide need are utterly illegal. Availability of tenanted shop with the landlord is no ground to reject his release application vide AIR 2000 SC 656 "G. Kaushalya Devi v. Ghanshyamdas.

8. Even if it is assumed that Sanjay and Rajeev were doing lottery business it could not be a ground to reject release application for shop in question. In any case business of selling lottery tickets has come to an end. Tenant could not point out that the said business was being carried out from any permanent shop. Even if it is assumed that from some wooden Kiosk (khoka) Rajeev and Sanjay were selling lottery tickets, it could not be a ground for rejecting release application for their need. If for want of a proper accommodation someone starts doing temporary business, it is no ground to reject the release application. No landlord or no family member of landlord for whose need release application is filed is expected to remain idle until release application is finally allowed and possession is delivered to him. This process often takes decades. As far as petitioner no.1 Hari Shanker is concerned, he was also not having any shop. The tenant respondent no.3, Deepak stated that from a small platform adjacent to the shop in dispute Hari Shanker was doing business of selling betels (Paan). Lower Appellate Court held that even though in summer and rainy season it was difficult to do business from open place, however, Hari Shanker had not specifically stated that he felt any difficulty. The less said about this approach the better. Moreover, it is a very strange situation that landlord is doing business

from a small platform, in the open, adjacent to the shop in dispute and the tenant is enjoying a Pucca constructed shop and still the lower Appellate Court holds that landlord's need was not bonafide.

9. Accordingly, I hold that landlords fully proved that they bonafidely required the shop in dispute. In fact the need proved was more than bona fide.

10. As far as comparative hardship is concerned, tenants have several shops few of which were vacant when release application was made. However, the tenants got their properties divided in such a manner that vacant shops fell in the share of Subhash Chandra, respondent no.5. Initially Cheddi was the tenant in the shop in dispute. Deepak is grandson of Cheddi, Panna and Subhash Chandra, respondent nos. 4 and 5 are sons of Cheddi. The tenants had got their properties divided through compromise decree passed in 1994, after filing of the release application. The vacant shop and other shops belonging to Cheddi were given to Subhash. Firstly, the partition on the face of it was malafide. It was affected only to frustrate the release application filed by the landlord. Secondly, after the death of original tenant, all his heirs inherited the tenancy and if some of the heirs have got vacant shops available with them, question of comparative hardship has to be decided against the entire body of the tenants. In respect of some vacant shops Deepak gave an extremely lame explanation. He stated that those shops in future might be required by sons of Subhash.

11. Deepak also did not show that he made any efforts to search alternative accommodation. Accordingly, question of comparative hardship was very rightly decided against the tenant by the Prescribed Authority.

12. In my opinion, judgment of the lower Appellate Court is utterly illegal and liable to be set aside. Instead of deciding bona fide need of the landlord, the lower Appellate Court has discussed only the convenience and comfort of the tenant .

13. Accordingly, the writ petition is allowed judgment and order passed by lower Appellate Court is set aside and the judgment and order passed by the Prescribed Authority is restored. From today till actual eviction of the tenantrespondent through execution proceedings under Section 23 of the Act, tenants shall be liable to pay damages for use and occupation @ Rs.2000/ per month. This amount may be recovered under Rule 24 of the Rules framed under the Act. For the said purpose certified copy of this order shall be treated to be a certificate under Rule 24(2) in form G.

14. As no one has appeared on behalf of tenants respondents hence before issuing Paravana Dhakal/writ of possession on the application of landlord which may be filed under Section 23 of the Act in pursuance of this judgment and order, Prescribed Authority shall issue notice to the tenants respondents