
(2008) 08 AHC CK 0166

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42090 of 2008

Hoti Lal Khandelwal

APPELLANT

Vs

A.D.J.Court No.9, Agra and others

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

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

Citation : (2008) 08 AHC CK 0166

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

Final Decision : Dismissed

Judgement

S.U. Khan, J.

1. Heard learned Counsel for the petitioner as well as Shri P.C. Jain, learned Counsel for landlordrespondents 3 to 5 who has appeared through caveat.

2. This is tenant's writ petition arising out of. eviction/release proceedings initiated by landlords against him on the ground of bona fide need under section 21 Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 in the form of P.A Case No. 23 of 2007. Prescribed Authority/Judge Small Causes Court, Agra through judgment and order dated 1.3.2008 allowed the release application. Against the said judgment and order tenantpetitioner filed R.C. Misc. Appeal No. 49 of 2008. Additional District Judge, Court No. 9, Agra dismissed the appeal through judgment and order dated 25.7.2008 hence this writ petition.

3. Tenanted property in dispute is spread over two floors i.e., ground floor and first floor. On the ground floor there is a baithak/drawing room rent of which is Rs. 200/ per month. On the first floor there are four rooms rent of which is Rs. 35/ per month. Release application was filed by Bankey Behari and Rajeev Kumar. During pendency of release application Bankey Behari died and was substituted by his two sons Vipin Behari and Raj Behari respondent Nos. 3 and 4 (Rajeev Kumar Khandelwal is respondent No. 5) in the writ petition.

4. In the release application it was stated that the property in dispute on both the floors jointly belonged to the landlordsapplicants however under mutual family arrangement rent of four rooms on the first floor was being realised by applicant No. 1Bankey Behari and rent of Rs. 200/ per month of the ground floor was being realised by Rajeev Kumar applicant landlord No. 2. It was stated in the release application that family of Vipin Behari one of the landlords consisted of himself, a married son having two children and an unmarried daughter. It was further stated that Vipin Behari was working as an employee of Khandelwal Glass Works and by virtue of his employment his employer had given him a residential quarter and he was to retire within six months. He further stated that his daughter and daughterinlaw were not on good terms. As far as Raj Behari landlord is concerned, it was stated on his behalf that his family consisted of himself, his wife, a son and daughter and that he was residing at Aligarh in a rented house and was paying Rs. 3,700/ per month as rent and was doing business of retail sale from a shop and his business was not flourishing hence he intended to shift to Agra. On behalf of third landlordRajeev Kumar it was stated that his family consisted of himself his wife, old mother, two sons and two married daughters and four married sisters and on the second floor of the accommodation in dispute he had three rooms and on the first floor he had two rooms which were not sufficient for him.

5. In my opinion there is absolutely no error in the finding of bona fide need and comparative hardship recorded by both the Courts below. Vipin Behari must have retired by now and either he must have left the accommodation provided to him by his employer or his employer must be compelling him to vacate the said accommodation. Raj Behari stated that he was paying exorbitant rent at Aligarh i.e., Rs. 3,700/ per month and his business was not flourishing there hence he intended to shift to Agra. His version was found to be correct by both the Courts below. Accordingly, the need of these two brothers is more than genuine.

6. Learned Counsel for the tenant petitioner has vehemently argued that according to the allegations made in the release application, rent of first floor accommodation in tenancy occupation of the tenant consisting of four rooms was being realised by Banke Behari and rent of the ground floor accommodation was being realised by Rajeev Kumar, hence ground floor accommodation could not be released as Courts below found the need of sons of Banke Behari to be bona fide and not of Rajeev Kumar.

7. In my opinion, this argument is not tenable. In the release application, there was no such allegation that formal partition had taken place in between Banke Behari and Rajeev Kumar. The only thing, which was stated, was a mutual arrangement to share the rent. Such arrangement does not amount to partition and in spite of such arrangement all the landlords remain joint.

8. A wonderful argument was raised before the Courts below by the tenant to the effect that on the ground floor there were eight shops in possession of different tenants and landlord instead of filing application against petitioner should have

filed applications for vacation of those eight shops against their tenants to satisfy his residential need. The said argument was rightly rejected. In respect of comparative hardship the Courts below held that tenant did not show that he made any effort to search alternative accommodation. Accordingly question of hardship was decided against tenant. This view is perfectly in consonance with the judgment of Supreme Court in *Badrinarayan Chunilal Bhutada v. Gouindram Ramgopal Mundada* 2006 (63) ALR 438 (SC). Accordingly, there is no merit in the writ petition hence it is dismissed.

9. Tenantpetitioner is granted ten months time to vacate provided that:

1. Within one month from today tenant files an undertaking before the Prescribed Authority to the effect that on or before the expiry of aforesaid period of ten months he will willingly vacate and handover possession of the property in dispute to the landlordsrespondents.

2. For this period of ten months, which has been granted to the tenantpetitioner to vacate, he is required to pay Rs. 10,000/ (at the rate of Rs. 1,000/ per month) as rent/damages for use and occupation. This amount shall also be deposited within one month before the Prescribed Authority and shall immediately be paid to the landlordsrespondents.

10. In case of default in compliance of any of these conditions tenantpetitioner shall be evicted through process of Court after one month. It is further directed that in case undertaking is not filed or Rs. 10,000/ are not deposited within one month then tenantpetitioner shall be liable to pay damages at the rate of Rs. 2,000/ per month since after one month till the date of actual vacation.

11. Similarly, if after filing the aforesaid undertaking and depositing Rs. 10,000/ the house in dispute is not vacated on the expiry of ten months then damages for use and occupation shall be payable at the rate of Rs. 2,000/ per month since after ten months till actual vacation. It is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and initiate execution proceedings under section 23 of the Act.

Writ Petition Dismissed.