
(1973) 04 AHC CK 0039
In the Allahabad High Court
Case No : C.M. Writ No. 2447 of 1971

Jagannath Prasad Srivastava

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 23-04-1973

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3, 7F

Citation : (1973) 43 AWR 622

Hon'ble Judges : R.L. Gulati, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.L. Gulati, J.—This Is a petition Under Article 226 of the Constitution.

2. The Petitioner is a tenant of two rooms on the ground-floor of house No. 268, Daraganj, Allahabad and is carrying on the business of chemist in the aforesaid accommodation for the last twelve years in the name and style of "Beni Madho Clinic". The fourth Respondent is the landlady and resides on the second floor of the house in dispute. She made an application u/s 3 of the U.P. (Temp.) Control of Rent and Eviction Act before the RC and EO, Allahabad, for permission to file a suit for the ejectment of the Petitioner from the premises in dispute on the ground that she required the same for the use of her son, who wants to set up his own business in the accommodation in possession of the Petitioner. She had stated that when the accommodation in dispute was let out to the Petitioner, her son Was a minor. He has since become major and is carrying on business in a rented shop. She wants that her son should run the business in his own house. The RC and BO rejected her application whereupon she and her son filed a revision before the Commr. Allahabad Division. The Commr. after hearing the parties rejected, the revision petition and confirmed the order passed by the RC and EO. Thereupon the Respondent Nos. 4 and 5 approached the State Govt. u/s 7-F of the Act. The State Govt. has set aside the order of the Commr. and has granted the permission to file a suit against the Petitioner. This order of the State

Govt. is challenged in this petition.

3. Ordinarily, an order passed u/s 7-F by the State Govt. is not open to challenge because essentially it is based upon a finding of fact as to whether or not the need of the landlord is genuine and is greater than that of the tenant. But I find in the instant case that the approach of the State Govt. is contrary to the established law. This Court and the Supreme Court have recently ruled in number of cases that in a case like the present one, the need of the landlord and the tenant should be compared and the landlord should be granted permission to eject his tenant only if his need is greater than that of the tenant. The mere fact that the need of the landlord is genuine by itself is no ground for granting the permission to eject the tenant. Now, in the instant case the State Govt. has emphasised the need of the landlady and has shown that her need is genuine and bonafide. But it has not given any consideration to the need of the tenant. In fact the State Govt. seems to be under the impression that once the need of the landlord is established, the need of the tenant must be sacrificed. This view is patently erroneous.

4. It is necessary to emphasise here that the considerations which prevail for an accommodation which is being used for business purposes are different than the considerations applicable to a residential accommodation. In a case of residential accommodation a landlord would ordinarily be entitled to get possession of his house, if he needs the same for his own use, provided the tenant is likely to get an alternative accommodation elsewhere. But in the case of an accommodation used for business purposes, this is not enough. A businessman ordinarily acquires a good-will where he carries on business for a long time and to provide him an alternative accommodation in a different vicinity may not serve the purpose and in fact may put him to an irreparable loss, because he will be the clientele and the good-will which he has built over a number of years. In the instant case the Petitioner is carrying on the business of a chemist for the last twelve years. He must have built up a good-will and a clientele which would not be available to him if he is forced to shift his business to any other locality. This plea was specifically raised by the Petitioner before the RC and E Authorities as also before the State Govt. While due consideration was given to it by the RC and EO and by the Commr. no importance was attached to it by the State Govt. It is here that the State Govt. has committed a manifest error.

5. The learned Counsel has raised a preliminary objection. He says that the suit has already been filed and by revoking the permission granted by the State Govt., the validity of the suit cannot be affected. In other words, the argument is that the present petition has become infructuous. There is no force in this contention. The jurisdiction of this Court Under Article 226 of the Constitution cannot be said to have been taken away by the filing of the suit. The order of the State Govt. granting permission having been quashed it will be open to the Petitioner to raise an objection to the continuation of the suit before the court concerned. It is not necessary to express any opinion on the validity of the suit

as a result of this judgment, because the Petitioner has not claimed any relief against the court in which the suit is pending.

6. In the circumstances this petition must succeed and is allowed. The order of the State Govt, dt. 25-3-1971 passed u/s 7-F (Annexure "C" to the writ petition) is quashed. It will, however, be open to the State Govt. to take up the matter again and to decide it afresh in accordance with the law and the observations made above.

7. The Petitioner is entitled to his costs. Petition allowed.