
(2005) 09 UK CK 0034

In the Uttarakhand High Court

Case No : Writ Petition No. 743 of 2002 (M/S)

Jagdish Lal Sah

APPELLANT

Vs

A.D.J., IInd Fast Track Court and Others

RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 2(1), 21(1), 22, 3

Citation : (2005) 4 AWC 3414 : (2006) 1 UC 300 : (2005) 2 UD 516

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Rajendra Dobhal and D.C.S. Rawat, for the Appellant; Sharad Sharma and Sanjeev Kamar, for the Respondent

Judgement

Prafulla C. Pant, J.—By means of this petition, moved under Article 227 read with Article 226 of Constitution of India, the petitioner has sought direction, quashing the impugned judgments and orders dated 31.3.1998 and 12.7.2002, passed by respondent Nos. 2 and 1 respectively, whereby the release application of the petitioner/landlord was rejected, and the appeal was also dismissed.

2. Brief facts of the case, as narrated in the petition, are that the petitioner is the landlord of accommodation in question, consisting of three rooms, a kitchen, bathroom and verandah, situated in 3rd floor of house No. 97/98, Bara Bazar, Mallital, Nainital. In said accommodation, Shri Gopal San was the tenant on rent at the rate of Rs. 500 per month. On 29.11.1987, the petitioner moved an application u/s 21(1)(a) of U. P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972, before the Prescribed Authority, Nainital. for release of the above accommodation. During the pendency of the release application, Shri Gopal Sah (tenant), died on 9.10.1988. He was an issueless person having lost his wife before his death. In the circumstances, the petitioner got substituted his real sister Smt. Parwati Sah, u/s 34 (4) of U. P. Act No. 13 of 1972, in the proceedings of the release application. Smt. Parwati Sah, stated before the

prescribed authority that she had no objection if the accommodation is released in favour of the landlord/ petitioner. However, Smt. Parwati Sah also died and her daughter Smt. Janki Sah was substituted and she too filed affidavit that she has no concern with the property in dispute. In the circumstances, respondent No. 3 Manoj Kumar Sah, moved an application for his impalement on the ground that Shri Gopal Sah has executed a Will dated 8.9.1986 in his favour giving him all his property. He further stated that he was living with Shri Gopal Sah, as such, has inherited the tenancy. Learned prescribed authority appears to have allowed the said application. After accepting evidence in the form of affidavits, filed by the parties and hearing them, prescribed authority, vide its order dated 31.3.1998 (copy Annexure-2 to the petition), rejected the application of the petitioner holding that his need is not bona fide. Aggrieved by said order, the petitioner filed an appeal u/s 22 of U. P. Act No. 13 of 1972, before the appellate court, which was registered as Rent Control Appeal No. 4 of 1998. During the pendency of appeal, an amendment was made by Legislature in Section 2 of Act No. 13 of 1972, whereby the Act was made inapplicable to the accommodation of which rent exceeds Rs. 2,000 per month. The appellate court, vide its order dated 17.11.2000, rejected the application of respondent No. 3 to raise objection on that ground. Thereafter, respondent No. 3, filed a Writ Petition No. 196 of 2000, against said order of rejection but. the same was withdrawn by him on 13.3.2001. But the appellate court, (respondent No. 1), after hearing the parties, dismissed the appeal on 12.7.2002 (copy Annexure-6 to the petition), on the ground that the provisions of U. P. Act No. 13 of 1972, are inapplicable to the building in question, as its rent is more than 2,000 per month. It further held that the need of the landlord is not bona fide. Hence, this petition was filed by the landlord, challenging both the impugned orders, passed by the prescribed authority as well as the appellate court (respondent No. 1), on the ground that the authorities below have erred in law in rejecting the release application of the landlord. Impugned orders are challenged also on the ground that respondent No. 3 is not legal heir of the deceased (original tenant). The landlord has also alleged that the provisions of U. P. Act No. 13 of 1972 are applicable to the building in question. He has further alleged that both the parties below have erred in law in holding that the need of the landlord is not bona fide, even after being established that the petitioner is a cancer patient and has breathing problem in scaling up the house at high altitude. The petitioner has further alleged that merely for the reason that he had constructed a house in Ayarpatta, Nainital, which is situated at an isolated place on a higher altitude, the need of the petitioner for the accommodation does not get diluted. Lastly, it has been mentioned in the grounds of the petition that authorities below have ignored that respondent No. 3 has neither paid any rent to the petitioner since 1989.

3. A counter-affidavit has been filed on behalf of the contesting respondent No. 3, in which he has stated that there is concurrent finding of the fact of the both the courts below that the need of the landlord is not genuine and as such it does not call for any interference by the High Court. However, it is admitted in the

counter-affidavit that Shri Gopal Sah was the original tenant in the house in question. It is also not disputed that the petitioner is the landlord of the house in question. In para 8 of the counter-affidavit, it has been stated that respondent No. 3 Shri Manoj Kumar Sah is the only heir of Shri Gopal Sah, who was living with him till his death. Smt. Parwati Sah or Smt. Janki Sah had no concern with the accommodation in question. Respondent No. 3 is the sole person who inherited the tenancy. It is further stated in the counter-affidavit that in view of the fact that rent of the entire building, which includes accommodation in question, being more than Rs. 2,000 per month, the building is out of purview of U. P. Act No. 13 of 1972. The answering respondent has stated that rate of rent of the accommodation in question is Rs. 560 per annum. Denying that the landlord is ailing, it is stated that since the petitioner has an alternative accommodation in the newly constructed house at Ayarpatta, as such, his need is neither genuine nor bona fide. As to the payment of rent, it has been stated in the counter-affidavit that respondent No. 3 is ready to pay the rent provided the petitioner is willing to accept it.

4. I heard learned Counsel for the parties and perused the record.

5. Admittedly, the petitioner is landlord of the house in question. It is also not disputed that Shri Gopal Sah was the original tenant in the accommodation. It is also not disputed that in the year 1987, a release application was moved against Shri Gopal Sah on the ground that the petitioner/landlord needs the accommodation for residence of his family and his hardship is greater than that of the tenant. Copy of said application is at Annexure-1 to the petition. It is also admitted to the parties that Shri Gopal Sah died issueless having lost his wife before his death. As such, the first question in controversy before this Court is whether respondent No. 3 inherited the tenancy or not? The respondent No. 3 has claimed to be the legal heir of the deceased (tenant) Shri Gopal Sah, on the basis of the Will dated 8.9.1986 (paper No. 66C, filed before trial court). On the basis of the Will, a person can inherit movable and immovable property but not the tenancy. The word "tenant" has been defined in clause (a) of Section 3, of U. P. Act 13 of 1972 which reads as under:

"Tenant", in relation to building, means a person by whom its rent is payable, and on the tenant's death or his heirs :

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death ;

(2) In the case of an non-residential building, his heirs.

Explanation.--An occupant of a room in a hotel or a lodging house shall not be deemed to be a tenant."

From the above definition, it is clear that to inherit the tenancy, in residential accommodation it is not only necessary to be the heir but also that such heir must have normally resided with the tenant at the time of his death. From the

evidence on record, particularly copy of ration card HOC (filed before prescribed authority), copy of voters list 106C to 109C (filed before prescribed authority), which corroborate the affidavits, filed in support of Manoj Kumar Sah, amply prove the fact that respondent No. 3 was continuously residing with Shri Gopal Sah (tenant) till his time of death. From the pleadings of the parties, it is clear that respondent No. 3 has claimed that he was adopted son of Shri Gopal Sah. There is no dispute as to the fact that Manoj Kumar Sah (respondent No. 3) is the son of niece of Gopal Sah (original tenant). To corroborate the fact, that being an issueless person, Shri Gopal Sah, has adopted Manoj Kumar Sah, as his son, apart from the voters list (paper No. 108C, filed before the prescribed authority), for the year 1988-89 and voters list (paper No. 109) for the 1983-84, have been filed in which father's name of Manoj Sah has been shown to be Shri Gopal Sah. Not only this, from the evidence on record, it is clear that even in college record, name of Shri Gopal Sah, has been found entered as father of Shri Manoj Sah. In the circumstances, there appears no illegality in the finding of the appellate court (respondent No. 1) that respondent No. 3, inherited the tenancy from Shri Gopal Sah, who died in the year 1988, during the pendency of the release application.

6. Now, I come to the next question for consideration before this Court, i.e., whether amendment brought by U. P. Act No. 5 of 1995 in U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, in its Section 2(1)(g), excludes the building in question from the purview of the said Act or not? Admittedly, in the present case, the release application was moved in the year 1987. The aforesaid amendment was inserted by U. P. Act No. 5 of 1995 w.e.f. 26.9.1994. By said amendment, in Section 2(1)(g) of U. P. Act No. 13 of 1972, a building whose monthly rent exceeds Rs. 2,000 has been excluded from the purview of the Act. But since the release application was filed on 29.11.1987, the law, as it stood on that day, would be applicable to the building and not the date of amendment which was made effective only from 26.9.1994. The said amendment was not retrospective (reliance placed in M/s. Ambalal Sarabhai Enterprises Ltd. Vs. M/s. Amrit Lal and Co. and Another, . Apart from this, "building" for the purposes of Section 2 (1)(g) means the accommodation, rented to the tenant against which the proceedings are initiated and it does not mean entire rental income of the building from various tenants. This view gets support from what has been held by Allahabad High Court in Ajay Kumar Jaiswal Vs. Smt. Shanti Singh and others, . As such, the view taken by learned Additional District Judge (respondent No. 1) that Act No. 13 of 1972 is inapplicable to the building is erroneous and against the law.

7. Now, I come to the question relating to the bona fide need of the landlord and greater comparative hardship, if any, in his favour. Learned counsel for the respondent No. 3, argued that where there is concurrent finding of the fact as to the bona fide need, High Court should not interfere into it. No doubt, that normally High Court should not interfere into the concurrent finding of the fact, arrived at by prescribed authority and the lower appellate court but where such

finding shocks conscience of the Court or is totally perverse, the High Court cannot close its eyes and sit helpless. From the evidence on record, it is amply proved that the landlord is a cancer patient and not only this, he suffers from breathing problem. Learned prescribed authority as well as learned appellate court, have not disbelieved it rather the appellate court (respondent No. 1) has in its judgment, observed that it cannot be overlooked that the petitioner is a cancer patient and has got one of his lungs removed, which is clear from the medical papers, filed by him. The said authority further observes that for such a patient, the house which is situated in a crowded place would not be convenient and his need cannot be said to be genuine, as he will have to climb the stair case for reaching the accommodation in question, which is 2nd and 3rd floor. Once, it is found established by both the authorities below that the petitioner/landlord is a cancer patient, having removed his lung and has a breathing problem, the authorities below have erred in law in holding that his need is not bona fide. From the evidence on record and the impugned judgments, it is very clear that the house in question is near to B. D. Pandey, District Hospital, Nainital. And what the petitioner has pleaded is that it will be convenient to him to approach the Doctor or to call him at the time of need from there. Both the authorities below have held the need of the landlord not genuine on the ground that in Ayarpatta, the petitioner had constructed a new house where he is living comfortably. From the Commissioner's report, it is clear that said house is much far from the hospital as against the house in question. The authorities below have erred in law by ignoring the fact that the landlord, after his retirement was not expected to sleep on the road and wait for years to get the accommodation in question vacated. There is no provision in the law, which disentitles the landlord to move release application, if he has got constructed some other house, which is not suitable to him. The authorities below have further erred in law in holding that because the accommodation in question is not in the ground floor, as such, it would not be convenient for the lung cancer patient to stay in the house. From the evidence on record, it is clear that the house, which was constructed during the pendency of the case, is situated at a high altitude in Ayarpatta, as against the house in question, which is in Bara Bazar, Mallital, Nainital. As such, the finding of the prescribed authority and that of the appellate court is not only perverse but also shocking to the conscience of this Court.

8. As far as comparative hardship is concerned in view of the illness of the landlord, his hardship is definitely much more greater to that of the tenant Shri Manoj Kumar Sah, who is living in the accommodation in question without paying any rent. In the counter-affidavit, the respondent No. 3 has merely stated that he is ready to pay the rent, provided the petitioner accepts it. This clearly shows how leisurely he is enjoying the property of the petitioner, who is a cancer patient.

9. In view of the above discussion, both the impugned orders, being erroneous in law are liable to be quashed. Accordingly the writ petition is allowed. The - impugned order dated 31.3.1998, passed by prescribed authority in Rent Control

Case No. 19 of 1987 and judgment and order dated 12.7.2002, passed by the respondent No. 2 in Rent Control Appeal No. 4 of 1998, are quashed. The release application of the landlord is allowed. The respondent No. 3 is allowed 30 days time from today to vacate the premises, failing which the petitioner/landlord will be at liberty to get executed the order through the prescribed authority according to law.