
(2012) 08 AHC CK 0258

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13621 of 2003

Jagdish Prasad Barnwal

APPELLANT

Vs

Gopal Prasad Misra @ Jagdish Prasad Pandey and others

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21

Citation : (2012) 10 ADJ 554

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : A.N. Sinha, for the Appellant; Siddhartha, S. Verma and S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Sudhir Agarwal, J.—Heard Sri A.N. Sinha for the petitioner and Sri S. Verma for the respondent. The petition relates to a godown situated in two storey building No. CK 63/202-203, Chotti Pyari, Varanasi owned by Gopal Prasad Misra, respondent (hereinafter referred to as "respondent landlord"). It was let out to petitioner's father long back by erstwhile owner Smt. Ram Devi prior to enforcement of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act 1972"). The petitioner inherited tenancy rights after death of his father and the respondent landlord became owner of the premises in dispute pursuant to a gift deed executed by Smt. Ram Devi sometime in the year 1980. The respondent landlord filed an application dated 24.3.1993 before the Prescribed Authority u/s 21(1)(a) of Act 1972 for release of the building in dispute from petitioner's tenancy on the ground of personal need. The application was registered as P.A. Case No. 13 of 1993 and was contested by the petitioner tenant by filing his written statement dated 26.3.1994. The Prescribed Authority rejected the application by order dated 20.4.1996 holding that the respondent landlord already held appropriate

commercial accommodation to start his business and, therefore, neither his need is genuine nor issue of comparative hardship lies in his favour.

2. The matter was taken in appeal by respondent landlord i.e., Rent Appeal No. 54 of 1996 which has been decided by the appellate Court vide impugned judgment dated 21.3.2003, allowing the appeal and having set aside the judgment and order of trial Court dated 26.3.1994, it has released the accommodation in question in favour of respondent landlord directing the petitioner tenant to hand over its vacant possession to respondent landlord.

3. Sri A.N. Sinha appearing for the petitioner tenant contended that appellate Court has misdirected itself and committed manifest error of law by not considering certain relevant aspects of the matter though the same were raised before it and have also been noticed in the appellate judgment. He drew my attention to the fact that during the course of proceedings before trial Court, one shop of respondent landlord fell vacant but instead of taking that shop for establishing business, the landlord allowed the said shop to be allotted on rent to one Mohd. Irshad and what impact it would have on the present proceedings. It was argued before the appellate Court that this aspect has to be examined as to when the shop was vacated, in what circumstances it was vacated and when and how it was let out to Sri Mohd. Irshad. In order to judge genuity and bona fide need of landlord the learned appellate Court expressed its view that this aspect shall be considered later on but thereafter in the entire appellate order this aspect has completely been ignored.

4. I find force in the submission of Sri Sinha.

5. Certified copy of the appellate order, on internal page 16, reads as under:

A shop had fallen vacant during the proceedings of this case and that was allotted to Mohd. Irshad. The appellate Court should record a finding as to when the shop was vacated and when it was allotted to Mohd. Irshad; this aspect should also be considered.

(English Translation by Court)

6. Having observed that issue with respect to the shop which was allotted to Mohd. Irshad shall be considered by the appellate Court, which in view of this Court, was a relevant fact, but I find that in the entire subsequent judgment, the appellate Court has completely overlooked to consider this aspect of the matter in deciding bona fide need and comparative hardship between the parties with respect to shop in question.

7. Learned counsel for respondent having gone through the impugned judgment could not dispute that so far as this aspect is concerned, it has not at all been discussed by the appellate Court in its entire judgment.

8. Sri Sinha has rightly referred to Apex Court's judgment in Amarjit Singh Vs. Smt. Khatoon Quamarain, , wherein the Apex Court has observed that if landlord

requires a particular accommodation for a bona fide need and another accommodation in the meantime becomes available to it, unless it is shown that such another accommodation did not satisfy landlord's requirement in all respects, it ought to have taken possession of that accommodation and having failed to do so, the landlord's conduct may disentitle it to evict tenant on the ground of bona fide need.

9. In paras 18, 19 and 20 of the judgment, the Apex Court has observed:

.....The Rent Restriction Acts deal with the problem of rack renting and shortage of accommodation. It is in consonance with the recognition of the right of both the landlord and the tenant that a harmony is sought to be struck whereby the bona- fide requirements of the landlords and the tenants in the expanding explosion of need and population and shortage of accommodation are sought to be harmonised and the conditions imposed to evict a tenant are that the landlord must have bona fide need. That is satisfied in this case. That position is not disputed. The second condition is that landlord should not have in his or her possession any other reasonably suitable accommodation. This does not violate either Article 14 or Article 21 of the Constitution. (Para-18)

.....If the landlady or the landlord could have reasonable accommodation after his or her need arose and she by her own conduct disentitled herself to that property by letting it out for higher income, she would be disentitled to evict her tenant on ground of her need. The philosophy and principle of rent restriction law have nothing to do with the private exploitation of property by the owners of the property in derogation of the tenant's need of protection from eviction in a society of shortage of accommodation. (Para 19)

.....in view of the undisputed facts that the landlady had in her choice to go into the premises in question but she did not, she has become disentitled to the right of eviction.(Para 20)

10. To the same effect is the view taken by this Court in an earlier decision in Sri Ramesh Ji Nigam and others v. The District Judge, Kanpur and others, 1980 ARC 134 4. Similarly in Tilak Ram v. Om Prakash and others, 1992(2) ARC 486, this Court said that for determining bona fide need of landlord, accommodation in possession of a tenant is an irrelevant factor. On the contrary, the landlord has to establish that he is not possessed of any other alternative accommodation from where he/his family member may start proposed business. It is no doubt true that mere availability of an accommodation to the landlord may not be sufficient to disentitle him for release of accommodation in question but the landlord has to show that other accommodation is not suitable for the purpose, he needs accommodation in question to be released. These aspects involve investigation into facts and no thumb rule applies.

11. However, in the present case, once it is not in dispute that a commercial accommodation became available to the landlord during the proceedings before Court below but instead of using the same or getting the said premises released

for the purpose of business, the landlord chose to let it out to another tenant, I find it a relevant factor which had to be considered in determining his bona fide need for seeking release of accommodation in question. Since on this aspect the lower appellate Court has simply made a mention of the bare fact and has not discussed in the context of the issue in question, the appellate Court's judgment cannot sustain.

12. Resultantly, the writ petition is allowed. The judgment of appellate Court dated 21.3.2003, in so far as it has reversed the Trial Court's judgment and has allowed release application of the landlord, is hereby set aside. The matter is remanded to the appellate Court to consider the effect and consequence of the availability of the shop which was subsequently allotted to Mohd. Irshad though fell vacant during the course of proceedings before Court below, and, then to consider bona fide need and comparative hardship, in the present matter and thereafter pass order accordingly. The Appellate Court shall pass the order as directed above within three months from date of presentation of certified copy of this order in accordance with law after affording an opportunity to both the parties. There shall be no order as to costs.