
(2016) 02 AHC CK 0006
In the Allahabad High Court
Case No : Rent Control No. 14 of 2013

Jameel Ahmad And Ors.

APPELLANT

Vs

Additional District Judge/Special Judge (Sc/St)Act & Ors.

RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 21(1)(b)

Citation : (2016) 115 ALR 771 : (2016) 1 ARC 821

Hon'ble Judges : Anil Kumar, J.

Bench : Single Bench

Advocate : Mohd. Aslam Khan, Advocate, for the Appellant; Manish Kumar and Ashish Mishra, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J. - Heard Sri Mohd. Arif Khan learned Senior Advocate assisted by Mohd. Aslam Khan for the petitioners, Sri Ashish Mishra, learned counsel for landlords/opposite party no.3 and perused the record.

2. Controversy in the present case relates to commercial property/shop situate at Mohalla Brahmanipura, Bahraich under the tenancy of the petitioners at the monthly rent of Rs. 45/- in regard to which respondent no.3/landlord moved an application for release under section 21(i) (a) and (b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (hereinafter referred as Act no.13 of 1972) on 19.2.1992 registered as R.C. No. 4 of 1992 (Sushil Kumar Agarwal v. Jameel Ahmad and others) before Civil Judge (J.D.) Bahraich/Prescribed Authority. On 8.11.1993 a written statement has been filed by the petitioners to which landlord has filed their replication.

3. On behalf of landlord in order to prove his case besides pleadings, examined himself and one Sri Hari Shanker son of Moti Lal as witness to establish the bona fide need in respect to release of shop in question.

4. By order dated 13.8.2002, Civil Judge (J.D.) Bahraich/Prescribed Authority allowed the release application under section 21(1) (a) and (b) of Act no.13 of 1972 releasing the shop in question in favour of the landlord, challenged by filing Rent Appeal No. 62 of 2002 (Jameel Ahmad and others v. Susheel Kumar Agarwal and another), allowed by order dated 30.8.2008 and the matter was remanded to the prescribed authority to decide afresh.

5. Order dated 30.8.2008 passed by appellate authority, challenged by landlord/opposite party no.3 by filing Writ Petition No. 130 (RC) of 2008 (Susheel Kumar Agarwal v. Additional District Judge, Special Judge, S.C./S.T. District Bahraich and others), allowed by order dated 24.9.2008, the operative portion reads as under:-

"In view of above discussion, the writ petition is allowed and the order passed by the Appellate Authority dated 30.8.2008 is quashed. The matter is remanded to the Appellate Authority for deciding it afresh. This Court is of the view that the Appellate Authority should give a fresh look to the appeal taking into account the latest rent laws, which have been spelt out in the present judgment and other judgments which may be placed by the contesting parties including tenant and form its opinion based on law and after considering all these points, the Appellate Authority shall deliver its judgment. The appeal shall be decided within six weeks from the date of presentation of a certified copy of this order. It is made clear that unnecessary adjournments shall be avoided."

6. Thereafter on behalf of the petitioners an application for recall of the judgment dated 24.9.2008 has been moved, dismissed.

7. Accordingly, the matter has come up for consideration before the Appellate Authority, who by order dated 4.12.2012 dismissed the Rent Appeal No. 62 of 2002 (Jameel Ahmad and others v. Shushil Kumar Agarwal and another).

8. Mohd Arif Khan, learned Senior Advocate for the petitioners while challenging the impugned orders submits that the need of the landlord is not genuine and bone fide because he has sufficient number of shops in order to carry out his business for selling the cloth for which purpose release application is moved and from the statement given by the Landlord/Shushil Kumar and his witness, the position which emerge out is that landlord/sushil Kumar is doing business from the shop which is the possession of his family members, ignoring the said material piece of evidence, courts below have passed orders order under challenge in the present petition, the same are contrary to fact of the case, liable to be set aside.

9. Next arguments advanced by Mohd. Arif Khan, learned Senior Advocate is that the shop in question is situated in a place where the business for selling bangles are carried out by other shopkeepers, so from said place landlord cannot do the business of selling the cloth and he wants to get shop sell out.

10. It is further submitted on behalf of the petitioner that initially order passed

by the Civil Judge (J.D.) Bahraich/prescribed authority has been set aside by the appellate authority in Rent Appeal no. 62 of 2002 by order dated 30.8.2008 against which a writ petition has been filed by the landlord/opposite party no.3, ex party allowed by judgment dated 24.9.2008 with the observation made therein, so the appellate authority while deciding the appeal was under influenced as per directions given by this Court, so the order passed by appellate authority dated 4.12.2012 thereby dismissing the petitioners' appeal is in violation of principle of natural justice .

11. Lastly, it has been argued by learned counsel for the petitioners that during the pendency of litigation father of landlord/opposite party no.3 Sri Shiv Shanker Lal and two sons namely Sri Subhash Chandra @ Lallu and Shashi Kumar @ Raju have died, so opposite party no.3/landlord has got ample place to do business in order to earn his livelihood from the lodge initially looked by his father and from the shop in which opposite party no.3/landlord along with his brother is doing business of cloth, so the impugned order passed by Civil Judge (J.D.) Bahraich/prescribed authority thereby allowing the release application dated 13.8.2002 and the order dated 4.12.2012 passed by appellate authority liable to be set aside.

12. Sri Ashish Mishra, learned counsel for landlord submits that there are only two shops in the possession of landlords' family in addition to the shop in question from which business for selling the cloth is doing, the petitioner off and on sits in the said shops. However, when he was married in the year 1989 in order to settle his own business and to earn his livelihood of his family, a release application has been moved in the year 1992 and since the date of moving of release application, no effort has been made by the tenants/petitioners in order to search out alternate accommodation in the city of Bahraich, so it cannot be said that the need of the petitioners is not genuine and bona fide and the shop in question has rightly been released in favour of the landlord/respondent no.3 In support of his arguments, He place reliance on the following judgments:-

1. Prakash Chandra Agarwal v. 8th Additional District Judge, Lucknow and others, 2006 (24) LCD 1434.
2. Mohd Aslam v. IVth A.D.J. Barabanki, 2011(20) LCD 782.
3. Sarju Prasad v. 8th Additional District Judge, Faizabad and others, 2006(24) LCD 1201.
4. Braham Kumar and others v. Raja Ram and others, 2006 (1) ARC 93.
5. Sidhnath Shukla v. Judge, Small Causes (prescribed Authority), Lucknow and others, 2007(25) LCD 1475.
6. Ram Raj v. 1st Additional District Judge and others 2010 (28) LCD 662.
7. Sri Virendra Kumar Khanna v. Manish Chhatwal, 2009 (27) LCD 779.
8. Rajeshwari Prasad Nigam(dead) through L.Rs v. Vth Additional District Judge,

Barabanki and others, 2008(2) ARC 71.

13. Sri Ashish Mishra, learned counsel for the landlord/opposite party no.3 further submits that landlord is the best judge to choose in what manner and from which place he has to carry out his business, the tenant cannot dictate the landlord in this regard, so looking into said facts as well as the need of the landlord to get shop in question to do his independent business, his need is bona fide one, the same has been upheld by the courts below by giving concurrent findings. In support of his arguments, he has placed reliance on the following judgments:-

1. Smt. Savitri Devi v. 10th Additional District Judge, Moradabad and others, 2006(24) LCD 843.

2. Prakash Chandra Agarwal v. 8th Additional District Judge, Lucknow and others, 2006 (24) LCD 1434.

3. Sarju Prasad v. 8th Additional District Judge, Faizabad and others, 2006(24) LCD 1201.

4. Braham Kumar and others v. Raja Ram and others, 2006 (1) ARC 93.

5. Smt. Vidyawati v. Additional District Judge, Lakhimpur Kheri, 2010(28) LCD 780.

6. Sri Virendra Kumar Khanna v. Manish Chhatwal, 2009 (27) LCD 779.

7. Smt. Bibi Begum v. Dr. Awadhesh Narain and others, 2009 (27) LCD 222.

8. M/S Hotel Vilas and another v. Sri Anil Roy and others, 2007(25) LCD 613.

9. Mohd. Aslam v. ivth A.D.J. Barabanki, 2011(29) LCD 782.

14. While rebutting the contention as raised on behalf of the petitioners, that landlord/opposite party no.3 may look after the business of lodge, initially looked by his father, is an argument which has got no force as no one can compel to landlord to participate in the family business. In support of his arguments, reliance placed on the decision given by this Court in the case of Punit Kohli v. Vinod Kumar Jain and others, 2008 (1) ARC 159.

15. Sri Ashish Mishra, learned counsel also made arguments on behalf of the petitioners that two shops from which business of selling cloth has been done by his brothers, namely Subhash Chandra @ Lallu and Shashi Kumar @ Raju and the opposite party no.3 is looking after the said business along with them so after their death petitioner can do the business from the said shops and his need does not exists to get the shop in question vacated/release to do the business for selling the cloth, cannot be a ground for rejecting the landlord/opposite party no.3" release application as the crucial date for deciding the bona fide need of the landlord is the date on which release application is moved.

16. Lastly, it is argued by Sri Ashish Mishra, learned counsel for landlord that

shop in question is situated on the place where the bangle business is done so it is not practicable for the landlord to run his business for selling the cloth, is factually incorrect and even otherwise on the said ground release application cannot be dismissed as the landlord is the best judge to do his business from the place where he chooses, so there is no illegality or infirmity in the impugned orders under challenge in the present writ petition.

17. I have heard learned counsel for the parties and perused the record.

18. Taking into consideration the facts as stated herein above and the fact that on 19.2.1992 a release application has been moved on behalf of the landlord/respondent no.3. In para 16 of the said application it has been stated that tenant Jameel Ahmad near his resident has got another building in which there are eight shops, out of said eight shops six shops are on rent and two are still vacant. In para-17 of the release application it has been pleaded on behalf of the landlord that in addition to accommodation as mentioned in para 16 of the said application there are three other shops owned by tenant situate at Chowk Bazar, Bahraich and from one of the said shop, tenant is doing business of selling bangles. In written statement filed on behalf of the tenant, the reply given to the averment as made in para- 16 and 17 to the release application is " Asatya hai, Aaswikar hai". And in para-30 of the additional plea it has been pleaded that assertion made in para 17 of the release, are incorrect and the tenant has got two shops which are under the tenancy for last fifty years, there is no third shop as mentioned in para-17 of the release application.

19. Further, neither by way of pleadings nor by way of any evidence oral or documentary there is no contradiction in the pleadings of para 16 of the release application in which it has been categorically pleaded that tenant Jameel Ahmad near his resident has got another building in which there are eight shops out of which six shops are rented and two are vacant. In this regard the court below has given a findings of fact that taking into consideration the said fact the need of the landlord is bona fide and genuine one. As there is also no denial in this regard in writ petition so as per the said fact as well as the fact that application for release has been moved in the year 1992 and since than no effort has been made by the tenant for searching out the alternative accommodation so, in view of law laid down by Hon"ble Apex Court in the case Badri Narayan Chunni Lal Bhutada v. Govind Ram Ram Gopal Mundada, AIR 2003 SC 2713, the tenant has no right to plead hardship. The balance of "comparative hardship" tips in favour of the landlord. (seen also Sidh Nath Shukla v. Judge, Small Causes (Prescribed Authority) Lucknow and others, 2007 (25) 1475)

20. Moreover, from the perusal of the material on record, the position which emerge out that landlord's family has got only two shops from which business for selling the cloth are done by his brothers and he is assisting them and when he got married in the year 1989 in order to earn his livelihood an application for release has been moved in the year 1992, so keeping in view the said fact as well as the law laid down by Hon"ble Apex Court in the case of Sushila v. A.D.J.,

AIR 2003 SC 780 and Rishi Kumar Govil v. Maqsoodan and others, 2007 (4) SCC 465 and by this Court in the case of Punit Kohli (Supra) that no one can compelled a landlord to participate in the family business, argument in question advance on behalf of the petitioners/tenant has got no force, rejected.

21. So far as the arguments advanced on behalf of petitioners/tenants that during the pendency of litigation father of landlord/opposite party no.2 Sri Shiv Shanker Lal and two brothers, Subhash Chandra @ Lallu and Shashi Kumar @ Raju have died, so he has got ample place to do business in order to earn his livelihood from the lodge initially looked by his father and from the shop of his brothers, has also got no force because crucial date for deciding bona fide requirement of the landlord is the date on which his release application is moved(See G.C. Kapoor v. Nand Kumar Bhasin and others, AIR 2002 SC 200).

22. The submission made on behalf of the petitioners that the shop in question is situated in a place where the business of Bangles are done by other shopkeepers, so from the said place land lord/opposite party no.3 can not do the business of selling the cloth, has also got no force rather the said arguments is contrary to the fact on record because from the material on record, the position which emerge out is to the effect that "Vivadit dookan ke bagal se choori wali gali shuroo ho jati hai" even otherwise the said arguments has got no force because landlord is the best judge to choose in what manner from which place ha can carry out his business.

23. Lastly as argued by learned counsel for the petitioner that the appellate court while passing the impugned order dated 4.12.2012, has influenced the directions as given by this Court in Writ Petition No. 130 (RC) of 2008 (Susheel Kumar Agarwal v. Additional District Judge, Special Judge, S.C./S.T. District Bahraich and others), is misconceived because the petitioners/tenants has filed application for recall of the said order, dismissed. Said order has not been challenged by any higher forum coupled with the said fact as well as the findings given by this Court that petitioner - Jameel Ahmad/tenant has got eight shops in another building which is owned by him, out of which six shops are under the tenancy and two shops, are lying vacant as they have not made any effort for searching out alternative accommodation, so the arguments in question has got no force because it is settled proposition of law that the equity follows law and so does sympathy. If the factors mentioned in Rule 16 are considered, taking into consideration the facts of this case, no doubt it is an old tenancy but there is nothing to show that any real efforts were made by the tenant to find another accommodation, since the date of moving of release application. (See also Govind Narain v. 7th Additional District Judge, Allahabad and others [2008(1) ARC 526] and Rani Devi Jain v. Badloo and another [2008 (3) ARC 351])

24. For the foregoing reasons, I do not find any illegality or infirmity in the judgments which are under challenge in the present writ petition.

25. Accordingly, the writ petition lacks merit and is dismissed.

26. However, looking into facts and circumstances of the case as the petitioners/ tenants are doing business from the shop in question,so they are permitted vacate the same on or before 30th August, 2016.