

(2003) 09 AHC CK 0180

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22196 of 2003

Kaushal Kishore Shukla and Ors.

APPELLANT

Vs

Xth Additional District Judge, Kanpur Nagar & Ors.

RESPONDENT

Date of Decision : 04-09-2003

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(7)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 16(2)(b)

Citation : (2003) 09 AHC CK 0180

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

Final Decision : Dismissed

Judgement

S.U. Khan, J.—This writ petition has been filed by the tenant. Release application under Section 21 of U.P. Act No. 13 of 1972 numbered as Rent Case No. 26 of 1984 was allowed on 4121995 by the Prescribed Authority/Special Chief Judicial Magistrate, Kanpur Nagar. Appeal filed by the tenant/petitioner under Section 22 of the Act registered as Rent Appeal No. 254 of 1995 was dismissed by Additional District Judge, Court No. 10, Kanpur Nagar by order dated 1942003. This writ petition is directed against the aforesaid judgments and orders. Release application was filed by Ram Chandra Beri who died during the pendency of the release proceedings and was substituted by his legal representatives who are respondents in the instant writ petition. In the release application it was stated that family of the applicant consisted of eleven members. That two sons of the applicant were grown up, married and had their own families and that the sons were not contended to live and work together with the applicant. It was further pleaded that the applicant was carrying on cloth commission agency and that he intended to set up one of his sons i.e. Naresh Chandra separately. It was also stated that the business of printing press carried out by the initial tenant i.e. father of the petitioner from the premises in dispute was almost closed down.

2. Before the Courts below as well as in this writ petition it was asserted with

great vehemence on behalf of the tenant petitioner that after the death of the initial landlord release application was not suitably amended and legal representatives of the landlord did not plead their own need in substitution of the need of the deceased landlord as required by Section 21 (7) of the Act. The said argument is not tenable as in the release application, (Annexure 1 to the writ petition) itself it had been stated by the landlord that the shop in dispute was required for one of his sons i.e. Naresh Chandra for starting separate business. Evidence was adduced for the need of Naresh Chandra.

3. The other argument of the learned Counsel for the petitioner is that the premises bearing No. 48/200, Generalganj where initial landlord was carrying on his business was sold by his sons after his death during the pendency of the case. The case of the landlord taken in the release application was that in the aforesaid premises No. 48/200 he was carrying on business alongwith his sons and he proposed to settle one of his two sons i.e. Naresh Chandra in business from the shop in dispute. After the death of the initial landlord both of his sons became entitled to do business separately and the other son i.e. Ishwar Chandra was carrying on the business in the said premises No. 48/200 alongwith his father. According to the landlord respondent the said shop/accommodation was sold under acute financial pressure in order to clear the loan of the market. Release application is pending for about 19 years. Selling a property under acute financial pressure may not in every case disprove the bona fide need. In the instant case the property sold was being used for business purpose by landlord respondent Ishwar Chandra. In case he decided to sell the property then it may disprove his need but not the need of his brother Naresh Chandra respondent No. 5. As after the death of their father both respondent Nos. 4 and 5 became owners of the property No. 48/200 hence, Naresh Chandra was necessary party to the sale deed and in his absence sale deed could not be executed. Both the Courts below have held that from the property No. 48/200, Ishwar Chandra was carrying on the business. In my opinion therefore, selling of property No. 48/200 does not disprove the need of Naresh Chandra respondent No. 5.

4. The Courts below have also held that as the tenants had established printing press in premises No. 34/130, Hawai Singh Ka Hata, Kanpur Nagar hence they will not suffer much hardship in case building in dispute where they were initially carrying on the business of printing press was released. By virtue of Rule 16 (2) (b) in such situation there shall be greater justification for allowing the release application. The Courts below have also rightly held that even though release application was filed in the year 1984 still the tenant did not try to obtain alternative accommodation. An application moved by the tenant for allotment in the year 2002 rightly held to be nothing more than an eyewash.

5. Learned Counsel for the petitioner has placed reliance upon several authorities most of which have been discussed by the Courts below. In 2001 (3) AWC Page 2168, release was refused on the ground that landlord had number of alternative accommodation for starting business. In the instant case landlord has got no

alternative accommodation to start the business. In 2001 (8) SCC Page 718, it was held that the need of the landlord was not bona fide. In the instant case the need of the landlord is quite bona fide. Every adult member of a family is entitled to start separate business.

6. Accordingly, there is no merit in this writ petition and it is hereby dismissed.

7. Tenantpetitioner is granted six months" time to vacate provided that within one month from today he files an undertaking before the Prescribed Authority that within the aforesaid period of six months he will willingly vacate the premises in dispute and handover its vacant possession to the landlordrespondent.