
(2010) 05 AHC CK 0238
In the Allahabad High Court
Case No : Writ A. No. 41919 of 2004

Krishna Chandra Verma

APPELLANT

Vs

Ram Gopal

RESPONDENT

Date of Decision : 24-05-2010

Acts Referred:

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

Citation : (2010) 05 AHC CK 0238

Hon'ble Judges : Devendra Pratap Singh, J

Final Decision : Allowed

Judgement

Devendra Pratap Singh,J.

1. Heard learned counsel for the parties.
2. This petition by the landlord is directed against an appellate order dated 21.2.2000 by which the order of the trial court allowing the release application of the petitioner has been set aside and the release application has been rejected.
3. The petitioner landlord filed an application under Section 21(1)(a) of U.P. Act No. 13 of 1972 (herein after referred to as the "Act") for release of the disputed shop in his favour on the ground that he has retired from service and thus needs the disputed shop to engage himself in the business of electric goods for which he has financial capability. It was also pleaded that this would consequently increase his income. Further it was pleaded that the respondent tenant was very old and virtually was doing no business from the disputed shop. In the application it was stated that the respondent has a huge house no.83/152 at Paranpurwa in Kanpur Nagar itself where he could carry out his business and in case of rejection of his application, he would suffer greater hardship.
4. The tenant respondent filed his objection inter alia with the allegation that after retirement the petitioner has no necessity of the disputed shop and he has not disclosed his monthly income. It was further pleaded that he was running the

disputed shop with the help of his two sons where he has been a tenant for the last more than 40 years. It was further pleaded that there were other tenants also but he was singled out for release.

5. The trial court, after considering the evidence of the parties, came to the conclusion that the need of the petitioner was both bonafide and genuine and it further found that the respondent tenant had a huge building wherein he could carry out his business operation. It went on to hold that no serious effort was made to search out another shop and with these findings, it allowed the application. However, the appellate court rejected the release application on the grounds that the petitioner had not disclosed his total income and he had further not stated that no other alternative place was available to start his proposed business and since he had sufficient fund, there was no requirement to run a business.

6. It is urged that the approach of the appellate court was entirely vitiated and findings are based on extraneous consideration which was not germane to the consideration of need and hardship.

7. A perusal of the appellate judgment shows that the Court was more concerned with the requirement of the tenant than in examining the bonafide need. The simple case set up by the landlord and accepted by a reasoned order by the trial court was that he required the disputed premises for engaging himself in business after his retirement. The trial court also found as a matter of fact that the landlord had no other alternative accommodation where he could carry on his business and it was never even suggested by the tenant. However, the appellate court after recording a finding that the landlord had not stated that he had no other alternative accommodation, rejected his bonafide need despite the fact that neither it was pleaded by the tenant nor the appellate court recorded any such finding that any alternative accommodation was available. The appellate court has further erred in rejecting the need on the ground that the landlord had not disclosed his income. Assuming it to be correct, it was the tenant's case himself that the landlord was earning about Rs.10,000/ a month, but, that was not the real issue. It was not the case of the landlord that he required the premises to carry on the business to increase his income, that aspect was only consequential but the main need was set up for his occupation after retirement.

8. Further, the appellate court erroneously placed the burden on the landlord to prove that the alternative accommodation available with the tenant was suitable for business, though that was not the case set up by the tenant and he did not prove that the entire premises was either let out or residential. Thus, considering the findings recorded by the appellate court, it has to be accepted that the very approach of the appellate court was vitiated and erroneously he has reversed the finding of the trial court merely on the ground that another view was possible.

9. For the reasons above, this petition succeeds and is allowed and the impugned order of the appellate court dated 21.2.2000 is hereby quashed and that of the

trial court is restored.

10. In the circumstances of the case, no order as to costs.

11. After the matter had been heard and allowed, the learned counsel for the respondent tenant upon instruction of his client, has given an undertaking that in case some reasonable time is granted to vacate the premises, he will handover vacant possession within the said period and pay the rent also.

12. The respondent tenant shall hand over the vacant possession of the disputed premises without creating any third party rights to the petitioner landlord on or before 27.8.2010 and also deposit the entire rent upto that date within a period of three weeks from today, failing which he shall be liable for eviction forthwith.