

(2008) 12 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 100 of 1998 (R/C)

Kusum Rani Rastogi

APPELLANT

Vs

Xth Addl. District Judge, Lucknow and others

RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 22

Citation : (2008) 12 AHC CK 0001

Hon'ble Judges : S.K.GUPTA, J

Final Decision : Allowed

Judgement

Shashi Kant Gupta, J.—Smt. Kusum Rani Rastogi has approached this Court questioning the validity of the judgment and order dated 29.5.1998 passed by 10th Addl. District Judge, Lucknow in Appeal No. 29 of 1994 setting aside the judgment and order dated 17.2.1994 passed by the 4th Additional Civil Judge (Senior Division) in P. A. Case No. 38 of 1987.

2. The background facts in a nut shell essentially are as follows:

3. The petitioner/landlord filed an application under Section 21 of U. P. Act 13 of 1972 (in short "Act") for release of the disputed residential accommodation (in short "disputed accommodation") on the ground of genuine and bona fide need of herself and her family members inter alia, on the following allegations:

(i) The family of the petitioner consists of self, Sri Om Prakash Rastogi (husband), Laxman Das Rastogi (father of the husband of the petitioner), Ram Pyari Rastogi (mother of the petitioner who is dependent upon her) Susheel Kumar Rastogi aged about 28 years (son of the petitioner), Sunil Kumar Rastogi aged about 26 years (son of the petitioner), Smt. Meenu Rastogi (daughter of the petitioner married on 22.3.1986)

(ii) The accommodation in possession of the petitioner comprises of two rooms and a bath room on the ground floor and two rooms, a store and a small kitchen

on the first floor.

(iii) The respondent No. 3 is a tenant of the petitioner on a monthly rent of Rs. 10 per month and the accommodation in possession of the tenant comprises of two rooms, one kothari on the ground floor; one room, a small kothari and a kitchen on the first floor. The family of the respondent No. 3 tenant consists of self, wife, two minor sons and one daughter.

(iv) The petitioner is engaged in business and the sons are major and are employed and are of marriageable age. The ground floor of the present accommodation of the petitioner has no living space as the outer room is used as a drawing room (11.10 ft x 6, 3 ft) and the inner room (10.00 ft x 8.6 ft) with no ventilation and the same is being used as a store room. The two rooms on the first floor are insufficient to cater the needs of the large family of the petitioner.

(v) The opposite party tenant is a resourceful person having a high financial status and has an alternative accommodation situated at Yahiganj Tagpatti, Lucknow which is kept locked by him to harass the petitioner. The need of the petitioner is bona fide and comparative hardship also leans in his favour.

4. The respondent No. 2 contested the release application and filed his written statement and inter alia alleged that neither the need of the petitioner is bona fide nor genuine and the comparative hardship also leans in favour of the tenant, it is further alleged that in the family partition he had relinquished his claim on the ancestral house and got the jewellery and cash in lieu thereof and the said house is in the possession of his brother and father. It is further alleged that Smt. Rampyari mother of the landlord applicant is residing in her own house in Farukhabad and she occasionally comes to Kanpur and does not stay with the landlord. The younger son Sri Sunil Kumar is employed in Sultanpur and is permanently residing there, daughter of the landlord applicant got married in 1987 and staying with her husband. It is further alleged that since the respondent No. 3 was not having any source of income, therefore, his wife installed sewing machines on the ground floor rooms for commercial purpose from which she is earning Rs. 300/ per month.

5. The petitioner filed his replication in reply to the written statement and rebutted the allegations of the tenant.

6. The commissioner report which also is on the record, provides as follows:

Petitioner's accommodation Ground floor. One room measuring 11.10 ft. x 6.3 ft. another room measuring 10 ft. x 8.6 ft. which is being used as store room, one verandah 12.4 ft x 7.6 ft. another verandah 3.1 ft 7.5 ft., one Court yard 10 ft. x 11 ft. one gallery x.1 ft x 3.5 ft., one bath room 4.1 ft. x 4.5 ft.

First floor. One room measuring 11.10 ft. x 6.3 ft., another room 8. 8 ft. x 10 ft., one store room 4.7 ft. x 4.9 ft., one Court yard and small Kothari.

Tenant's accommodation Ground floor. One room 14 ft. x 8 ft. wherein four

sewing machines are kept. One Kothari adjoining to the said room, another room measuring 17.11 ft. x 7. 5 ft., wherein six sewing machines are kept and all the said ten machines are run by power. One Court yard 11.11 ft. x 14.6 ft.

First floor. One room 14.2 ft. x 7. 10 ft., one adjoining small kothari, one kitchen in the corner covered by asbestos sheet.

7. After the exchange of pleadings and affidavits, the prescribed authority allowed the release application by order dated 17.2. 1994.

8. Respondent No. 3 aggrieved by and dissatisfied with the order passed by the prescribed authority filed an appeal under section 22 of the Act before the Court of District Judge, Lucknow which was registered as Rent Appeal No. 29 of 1994. The lower appellate Court allowed the aforesaid rent appeal of the opposite party No. 3 tenant and dismissed the release application of the petitioner landlord by judgment and order dated 29.5.1998. Hence this writ petition.

9. Learned Counsel for the petitioner has submitted that the disputed premises in question was allotted to Udai Shyam Rastogi (Opposite Party No. 3) for residential purposes (the allotment order has been filed by the tenant as Annexure No. CA1 to the counter affidavit).

10. It is further submitted by the learned Counsel for the petitioner that the petitioner is engaged in business and his both sons are major, one employed in service and other is in business. The existing accommodation in possession of the petitioner is highly insufficient and inadequate considering the need, status and requirement of the petitioner. The petitioner and her family members are facing extreme hardship. The younger son of the petitioner is employed in Sultanpur. Earlier he used travel to and fro from Lucknow to Sultanpur but due to paucity of accommodation at Lucknow he was compelled to reside in Sultanpur resulting extra financial burden upon him.

11. It is further submitted by the learned Counsel for the petitioner that the opposite party has a share in ancestral property at Yahiganj, Tatpatti, Lucknow but he is deliberately keeping the said premises locked, although the same can be utilized by him and his family members, it is further submitted that there is no specific denial to Para 8 of the release application wherein it was stated that one room on the ground floor being used as store room is dark and dingy having almost no ventilation.

12. It is further submitted by learned Counsel for the petitioner that tenant himself has admitted that the premises in question was allotted to him vide allotment order dated 27.9.1972 for residential purpose; the opposite party tenant has also admitted in Para 30 of the written statement to his using the ground floor portion of the said house for the business purpose by his wife. It is further submitted that pursuant to family settlement, opposite party relinquished his claim over the ancestral property in lieu of jewelry and cash. The learned Counsel for the petitioner referred to an affidavit dated 17.8.1990

(Annexure No. 4 to the writ petition) wherein the factum of marriage of her son Susheel Kumar Rastogi with Smt. Roopa Rastogi was brought on record.

13. It is further submitted that the prescribed authority rightly allowed the application of the petitioner after evaluating and assessing the evidence on record, wherein it categorically upheld that the need of the petitioner to be bona fide and genuine, the petitioner and her family members shall suffer greater hardship than the opposite party and moreover the opposite party tenant was using the ground floor portion for business purpose and was living only on the first floor.

14. The learned Counsel for the petitioner has further contended that the accommodation in possession of the petitioner is highly insufficient and inadequate and the bathroom is only available to the petitioner in the ground floor portion causing extreme hardship to the petitioner and her family members who have to come down from the first floor for using the said amenity on the ground floor even at the odd hours in the day and night and that too when the tenant opposite party is not using the ground floor for residential purpose.

15. Per contra, learned Counsel for the respondent No. 3 has supported the judgment and order passed by the appellate Court and has submitted that neither the need of the petitioner is bona fide nor genuine and the hardship leans in favour of respondent No. 3 tenant. It was further submitted that the accommodation already in possession of the landlord is sufficient to cater the needs of the petitioner and his family members and further submitted that the daughter of the petitioner is already married and one son Sunil Kumar is employed in Jagdishpur (District Sultanpur) as such their need cannot be considered and also disputed the fact that the mother of the petitioner is residing with the petitioner.

16. It was further submitted by the learned Counsel for the respondent No. 3 that in the family settlement the tenant opposite party had to relinquish his right over the ancestral property to maintain peace and harmony in the family and further admitted that the respondent No. 3 tenant is using the ground floor accommodation for the business purpose since he has got no other source of income.

17. Heard the learned Counsel for the parties at length and perused the record.

18. The following vital facts emerged from the pleadings and evidence available on the record.

(A) The family of the petitioner consist of following members:

(i) Self

(ii) Om Prakash Rastogi (husband)

(iii) Mother in law

(iv) Susheel Kumar Rastogi (son)

(v) Smt. Roopa Rastogi (wife of Susheel Kumar Rastogi)

(vi) Sunil Kumar Rastogi (son, employed in Sultanpur)

(vii) Rajshree Rastogi (wife of Sunil Kumar Rastogi)

(viii) Master Divanshu (son of Sunil Kumar)

(ix) Meenu Rastogi (married daughter of the petitioner)

(B) The family of the tenant consist of the following members: (i) Uday Shyam Rastogi

(ii) Wife

(iii) Two minor children

(C) The accommodation in possession of the petitioner, as per Commissioner's report as follows:

Ground floor. One room measuring 11.10 ft x 6. 3 ft., another room measuring 10 ft. x 8.6 ft. which is being used as store room, one verandah 12. 4 ft. x 7. 6 ft. another verandah 3. 1 ft. x 7. 5 ft., one Court yard 10 ft. x 11 ft., one gallery 8.1 ft. x 3. 5 ft., one bath room 4. 1 ft. x 4. 5 ft.

First floor. One room measuring 11.10 ft. x 6. 3 ft., another room 8.8 ft. x 10 ft., one store room 4. 7 ft x 4.9 ft., one Court yard and small kothari

(D) The accommodation in possession of the tenant in the disputed premises, as per Commissioner's report as follows:

Ground floor. One room 14. ft. x 8 ft. wherein four sewing machines are kept. One kothari adjoining to the said room, another room measuring 17.11 ft. x 7. 5 ft., wherein six sewing machines are kept and all the said ten machines are run by power. One Court yard 11.11 ft x 14.6 ft.

First floor. One room 14.2 ft. x 7. 10 ft., one adjoining small kothari, one kitchen in the corner covered by asbestos sheet.

(E) It is admitted by both the parties that the disputed accommodation in possession of the tenant was allotted to him for only residential purpose.

(F) It is also admitted that tenant is using the ground floor accommodation for commercial purpose, although the same was allotted for residential purpose.

(G) Sunil Kumar Rastogi son of the petitioner is employed and residing in Sultanpur.

(11) According to the tenant, he relinquished his claim over the ancestral house in lieu of jewellery and cash.

19. The Trial Court upheld the need of the petitioner to be genuine and bona fide

and also found the comparative hardship in favour of the petitioner but the appellate Court set aside the order of the prescribed authority mainly on the following grounds

(i) The petitioner could shift her goods from the store room in the ground floor into verandah and could start using it for residential purposes. The learned Appellate Court below while holding the need of the petitioner to be mala fide gave suggestions as to how and in what manner the petitioner as landlady could use the accommodation with her, including for the guests and relatives.

(ii) The use of the ground floor portion by the opposite party for business purposes was necessary for the livelihood of his family.

(iii) The need of Sunil Kumar Rastogi, son of the petitioner cannot be considered as he is employed in Sultanpur.

(iv) The need of the married daughter Meena Rastogi cannot be considered.

(v) The tenant has got no other source of income as such he is justified to use the ground floor portion for commercial purposes.

(vi) On comparative hardship it was held that the opposite party tenant shall suffer greater hardship.

20. The appellate Court has no jurisdiction to assess or compel the landlady to use the accommodation available to her so as to enable the tenant to continue to live. The Appellate Court misconstrued the word "bona fide required" as provided in section 21 (1) (a) of the Act. The law does not compel or command the landlord to squeeze tightly into the premises so as to protect tenant's occupancy. The Appellate Court below completely ignored to consider the vital fact on the record about the bathroom available to the petitioner and her family members situated only in the ground floor causing extreme hardship to the petitioner and her other family members to come down from the first floor for using the said amenity in the ground floor, even at odd hours in the day and night and that too when the tenant opposite party along with the family are not using the ground floor rooms for residential purpose.

21. This Court in Shiv Murti Sharma v. A. D. J. 1999 (35) ALR 635. has held that the tenant cannot dictate as to how the (landlord) will adjust himself without getting possession of the tenanted premises while deciding the question of bona fide need of the landlord and how the landlord could have adjusted himself.

22. In Shiv Sarup Gupta v. Dr. Mahesh Chandra Gupta. (1999) 6 SCC 222=1999 SCFBRC 330 =AIR 1999 SC 2507. it has been held that phrase "requires bona fide" is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of any the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradiction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the

family would entitled him to seek ejectment of the tenant. Once the Court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing one or more then one accommodation available to the landlord his subjective choice shall be respected by the Court. The Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the Court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life.

23. In *Sarla Ahuja v. United India Insurance Co. Ltd.* (1998) 8 SCC 119=AIR 1999 SC 100, it has been held that the Rent Controller should not proceed on the assumption that the landlord's requirement is not bona fide. When the landlord shows a prima facie case a presumption that the requirement of the landlord is bona fide is liable, to be drawn, it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without giving possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an end eavour as to how else the landlord could have adjusted himself.

24. In *M. L. Prabhakar v. Rajiv Singhal*. 2001 (43) ALR 488 (SC). the Apex Court has followed its judgment pronounced in *Shiv Sarup Gupta's* case.

25. *Regavendra Kumar v. Firm Prem Machinery and Company*. 2000 (38) ALR 458 (SC). is an authority for the proposition that the landlord is the best judge of his own requirement for residential or commercial purpose and has complete freedom in the matter. In this authority the Apex Court has relied upon its earlier judgment in *Prativa Devi v. T. V. Krishnan*. (1996) 5 SCC 353.

26. In *joginder Pal v. Naval Kishore Behalf* the Apex Court with a reference to the provisions of East Punjab Urban Rent Restriction Act, on the question of bona fide need, after surveying its earlier pronouncements, has held that the requirement of a major son and a coparcener in a Joint Hindu family intending to start a business is the requirement of the landlord himself as was held in *B. Balaiah v. Chandool Lachaiah*. AIR 1965 AP 435. The words "for his own use" must receive a wide liberal and useful meaning rather than a wide liberal and useful meaning rather than a strict or narrow construction, it has been further held that while casting its judicial verdict, the Court should adopt a practical and meaningful approach guided by the realities of life.

27. *Jagdish Chandra v. District Judge, Kanpur Nagar and others*. 2008 (2) ARC 756=2007 (6) ALJ (DOC) 328. it was held that if the landlord wishes to live with comfort in a house of his own, law does not compel or compel or command him to squeeze tightly into lesser premises protecting tenant's occupancy. Need for proper kitchen and separate latrine is the basic amenities to live and necessary

to comfortable living. A drawing room, a kitchen, a living room and garage are the bare necessities for a comfortable living.

28. The Appellate Court below has committed a manifest error of law in holding that the. Opposite party tenant is entitled to carry out the business from the ground floor portion for their livelihood otherwise the tenant will come on street is totally irrelevant for consideration of comparative hardship of respective parties. It is admitted fact that the disputed premises was allotted to the opposite party tenant only for residential purpose but the ground floor portion was converted by the opposite party tenant for commercial purpose and under the Act tenant cannot be permitted to convert the use of the premises from residential to commercial purpose. The nonuse of the ground floor portion by the tenant for residential purpose clearly indicates that the same is not required by the tenant for residential purpose but still this very vital fact has been totally ignored by the Court below and the Appellate Court has recorded an erroneous finding in utter disregard to the mandatory provisions of law which resulted into miscarriage of justice.

29. Sunil Kumar Rastogi son of the petitioner is employed in Sultanpur, earlier he used to travel to and fro from Lucknow to Sultanpur but due to paucity of accommodation in Lucknow he was compelled to reside in Sultanpur along with his family resulting in extra financial burden, it is an admitted fact that Sultanpur is hardly 120 Kms. from Lucknow and Lucknow being a far bigger city has not many more facilities and amenities including educational institutions, compared to Sultanpur. Susheel Kumar has got every right to live in Lucknow with his parents and other family members and to enjoy better facilities and amenities in Lucknow. Even otherwise he is entitled to retain at least one room for himself and his family, considering the vital fact that District Sultanpur is very close to Lucknow. The need of the married daughter also cannot be ignored completely, she has got right to come and stay with her parents as and when she desires. In the present social set up, married daughters along with their family quite frequently visit to their parents and is always desirable to have some reasonable additional accommodation for the visiting members of the family including the married daughters.

30. This Court in Dharam Pal Singh v. Him Lal. 2008 (70) ALR 511 (HC). has held as follows:

"A daughter does not cease to be member of the family of the landlord. She continues to be daughter for all purpose. She needs support from her parents and needs to look after her parents in old age. She inherits under the personal law applicable to all the religions. Her presence with her husband and children on all festivals family get together and religious ceremonies is a source of happiness to the entire family. The definition of the family under section 3 (g) of the Act restricted to spouse; male lineal descendants; parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her

and includes, in relation to a landlord, any female having a legal right of residence in that building, is for the purposes of various provisions in the Act which include the consideration of bona fide need for release of the building under occupation of the tenant under section 21 (1) (a) of the Act. The restricted meaning of the family however will not preclude the landlord, who does not have reasonable additional accommodation for the visiting members of his family including his married daughters to claim for release of the building or a portion thereof for such need. The words "building is bona fide required either in its existing form or after demolition and new construction, by the landlord for occupation by himself or any member of his family or any person for whom the benefit is held by him, will not entitle him to claim release only for such member of the family, who is not included in the definition of the family under section 3 (g) of the Act. Where the landlord requires the additional accommodation exclusively for the person who is not the member of his family under section 3 (g), the release shall not be allowed. However where the need of the landlord includes (ie visits of his married daughter, sister and other members of his family, the need has to be taken to be personal to him and not for a particular member of the family."

31. Learned Counsel for the petitioner has submitted that there is no specific denial of the fact stated in Para 8 of the release application that one small room on the ground floor is dark and dingy having no ventilation and is being used as store room. This important fact has not been taken into consideration by the appellate Court while setting aside the order passed by the prescribed authority, even the size of the rooms in the possession of the petitioner are quite small and cannot be said to be adequate. The appellate Court did not consider the fact that the elder son of the petitioner Susheel Kumar Rastogi was also married with Roopa Rastogi as such the need of the petitioner has further increased. It is notable that the prescribed authority did take into consideration the factum of marriage of Susheel Kumar Rastogi with Roopa Rastogi.

32. The contention of the respondent No. 3 regarding the relinquishment of his claim over the ancestral property due to family settlement also does not appear to be very inspiring. It is very strange that respondent No. 3 who do not have any other house in Lucknow will ever relinquish his claim over the ancestral house. The tenant did not file any cogent and satisfactory evidence to support his contention. To my mind mere filing of photo state copy of the alleged family settlement is not enough.

33. On the question of comparative hardship the release application was ejected only on the ground that the opposite party tenant needs a place to carry out his business or else he would lose his source of livelihood. The appellate Court has failed to consider that the opposite party made no attempts to search any alternative accommodation. The Apex Court in the case of Bega Begum and others v. Abdul Ahad Khan. 1979 AIR SC 272. has held that in every case where an order of eviction is passed the tenant will come on the street. The fact

that .all tenants will come on street if eviction is ordered, is not at all relevant for consideration of a comparative hardship of the respective parties. It is for the tenant to find out alternative accommodation. In absence of any material to show that any attempt was made by the such tenant to find out alternative accommodation release application cannot be rejected on ground that such tenant would suffer greater hardship if the release application allowed. Appellate Court below was swayed by illegal and irrelevant consideration.

34. The learned Appellate Court below also completely failed to consider that the monthly rent payable by the opposite party is just Rs. 10/ and is earning about Rs. 300/ per month from the alleged business carried out by him from the tenanted accommodation of the ground floor. The premises is being used for unjust enrichment by the opposite party.

35. The Apex Court in R. K. Barnwal v. Ram Lakhan. 2007 (68) ALR 136 (SC)=2007 (54) AIC 52. has held that even if the landlord lost his release application from both the Courts below still if in the opinion of the High Court impugned orders are erroneous in law then all efforts must be made to decide the writ petition finally instead of remanding the matter. The same view has also been taken by Apex Court in G. C. Kapoor v. Nand Kumar Bhasin and others. 2001 (45) ALR 808 (SC). Wherein the Apex Court out rightly allowed the release application of the landlord which had been dismissed by the Prescribed Authority/ Appellate Court as well as High Court.

36. A bare perusal of the judgment of the Trial Court clearly shows that entire order is lop sided and the approach adopted by the Lower Appellate Court is too casual and technical and it cannot be countenanced. The need of the petitioner is bona fide and genuine and the comparative hardship also tilts in favour of the petitioner.

37. In view of the above discussions, the judgment and order dated 29.5.1998 passed by Xth Addl. District Judge, lucknow cannot be sustained and is accordingly set aside and this writ petition succeeds and is allowed. However, petitioner is granted three months time to vacate the disputed premises provided that within one month from today tenant files an undertaking before the prescribed Authority to the effect that on or before the expiry of the aforesaid period of three months he will willingly vacate and handover the possession of the property in dispute to the petitioner. In case of default in compliance of the aforesaid condition, petitioner shall be evicted through process of Court after one month.

Writ Petition Allowed.