
(1999) 10 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11328 of 1985

Lal Chand Goyal and Others

APPELLANT

Vs

IInd Additional District Judge, Saharanpur and Others

RESPONDENT

Date of Decision : 08-10-1999

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 22

Citation : (1999) 10 AHC CK 0063

Hon'ble Judges : Shitla Prasad Srivastava, J

Final Decision : Allowed

Judgement

Shitla Prasad Srivastava, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner for quashing the judgment and order, dated 23/4/1985 passed by the respondent No. 1 (IInd Addl. District Judge] Saharanpur) which has been filed as (Annexure 16 to the writ petition).

2. Brief facts, as stated in the writ petition, are that the petitioners claimed themselves to be the owner and landlord of shop bearing Municipal No. 4/1, Bomanji Road, Saharanpur (hereinafter referred to as disputed shop). The petitioners sought a relief by filing an application under Section 21(1)(a) of the U.P. Act No. XIII of 1972 (hereinafter referred to as the Act). The application was filed on 22/9/1980 against the respondent No. 3, tenant in occupation, showing the need for the shop is bona fide and genuine and greater than that of the alleged need of the tenant. The need which was shown in the application was that the petitioner Nos. 1, 3 and 4 have attained the marriageable age and are not being married and their marriages are being postponed on account of the fact that they do not have any permanent business and a permanent source of earning. It was stated that the petitioner No. 1 expressed his bona fide and genuine need to settle his two sons in some permanent business at Saharanpur and the disputed accommodation being suitable one for the iron business, therefore, it may be released. It was specifically stated that the petitioner Nos. 3 and 4 have got experience of the: business of iron and the petitioners Have

sufficient funds for the purpose of establishing the said business in the disputed accommodation. In paragraph No. 5 of the writ petition, it is stated that the petitioner Nos. 3 and 4 are not highly, educated persons and they have no permanent source of business or earning.

However, by way of stopgap arrangement, they have been doing some retail and casual business at Ambala for earning their bread, therefore, they want to start their own business in the premises in question. The respondent No. 3 (tenant) contested the application on the ground that the petitioner No. 1 alone is the landlord of the disputed accommodation, which was let out by him and the petitioner Nos. 2, 3 and 4 are not the landlord nor the respondent is their tenant. It was further stated that the petitioner did not have cordial relationship amongst themselves and they were never entered as voters at Saharanpur and they have no residential place in the city of Saharanpur, therefore, they have no bona fide need for the shop in question. It was further stated that about 7 or 8 years ago, after the disputed accommodation was vacated by one Kishan Lal, it was let out to the respondent No. 3 after receiving, from him money as Pagri. On the point of hardship, it is stated by the petitioner in paragraph No. 8 of the writ petition, that the respondent No. 3 is a rich person having his big business in the city of Saharanpur and he does not need the accommodation in question. He is easily living, in a very big and spacious compound besides having several businesses in the city of Saharanpur. It is submitted by the petitioners that the respondent No. 3 has a big compound at Bamanji Road, Saharanpur, which is adjacent to the disputed premises and he could easily run his business therein.

3. It is stated that on 6/2/1982, the Prescribed Authority allowed the released application. Aggrieved by the order of the prescribed authority, the respondent No. 3 filed an appeal. During the pendency of the said appeal the respondent No. 3 filed an application seeking amendment of the written statement with mala fide intention to introduce a false and concocted story to the effect that there had been an agreement between the parties to the effect the respondent No. 3 will reconstruct the accommodation in question and on his doing so he will not be evicted from the accommodation in question during his lifetime on the ground the said accommodation was needed by the petitioners for their own use. Then application for amendment was opposed by the petitioner and lastly dismissed by the Court of District Judge, on 8/4/1982. The tenant preferred a writ petition being Civil Misc. Writ Petition No. 5171 of 1982 in order to linger the proceedings. It is stated in para 24 of the writ petition that during the pendency of the appeal the respondent No. 3 although acknowledged the petitioners bona fide and genuine need by filing their affidavit and purporting to offer an alternative accommodation to the petitioners for satisfying their need, but no note of this fact has been taken by the respondent No. 1 while deciding the release application. The petitioners have a copy of this application dated 10/4/1985, as Annexure 13 to the petition. The learned J. Ind. Addl. District Judge (respondent No. 1) on 23/4/1985 (Annexure 14) allowed the appeal of the respondent No. 3 and rejected the application of the landlord, therefore, the petitioners have

challenged the impugned order by this writ petition on a number of grounds.

4. The main ground of attack is that the prescribed authority has committed error in drawing adverse inference from the address of the petitioner Nos. 3 and 4, mentioned in the release application as Ambala. Further, there was no evidence on record to prove that the petitioners were permitted by an oblique motive to have the premises released. Farther that the bona fide need of the petitioners has not been properly decided by the appellate Court.

5. Sri Ravi Kant appearing for the petitioners has vehemently urged that the landlord had a genuine land bona fide need and the order of the appellate Court that as the landlord was executing the agreement of sale would not mean; that the landlord had intention to start business at Saharanpur.

6. Learned Counsel for the respondent Sri H.S.Nigam, has vehemently urged that the appellate Court has recorded finding of fact that the petitioners have no bona fide need, therefore, this is finding of fact which cannot be set aside in exercise of jurisdiction under Article 226 of the Constitution of India. He has further urged that the appellate Court considered the bona fide need as well as comparative hardship in details. There is no perversity in the judgment. He further submitted that it is admitted to the landlord that two sons for whom the premises in question is required are doing their business and residing in Punjab as the addresses given by the petitioner anti Execution Case No. 13 of 1979, it was Alleged by the landlord, Lal Chand that He was residing in Khanna, Ludhiana (Punjab) for last more than twenty years and from the plaint in the Suit No. 2 of 1969, it is clear that the sons of petitioner Lal Chand desired partition and alleged that his father was a drunker and a gambler, therefore, there is no cordial relation between the father and sons and further that there are affidavits on record to prove this fact that Surendra Kumar son of Lal Chand is employed in Punjab in an Insurance Company and another son, namely, Narehdra Kumar works at Arhat Shop in Subzi Mandi, Ambala Cantt. and third son, namely, Sushil Kumar works in Govindgarh Mandi as. Commission Agent in the business of from, therefore, these two sons who are doing their business in Ambala have no need of any shop at Saharanpur. It was also pointed out by Sri H.S. Nigam that from the record, it is apparent that the landlord has entered into various agreement to sell the property of Saharanpur. A copy of the agreement dated 5121981 has been filed to which and to Zaheer Ahmad and received the earnest money. This shows the intention of the landlord regarding His bona fide need.

7. I have heard the learned Counsel for the parties and have perused the judgment of the appellate Court, which is impugned in this case. The appellate Court has held that on the basis of agreement, mentioned in the judgment it can safely be said that actually the landlords are not at all interested in the business at Saharanpur. He has farther observed in the following terms that ?Not only this but there are other documents to show that the landlords have been agreeing in writing to sell other properties to other person and there has been exchange of notice and suit of specific performance of contract of sale are pending or are

going to be filed. No details of unemployment of the sons or employment of the nonemployed sons are given in the implication. One of the sons are alleged to be a labourer in Punjab and the other was alleged to be assisting in the business of her sister but in view of the affidavit of the real maternal uncle who has brought upon the sons of landlord in Punjab it is wrong. So, the case of the tenant in this respect has to be believed. The Judge has further observed as under:

Actually the agreement to sell in favour of Zaheer of a building which is in possession of the landlord admittedly in view of the agreement terms and conditions show that the landlord has not at all interest and in the business in Saharanpur and he has also got no residential accommodation. This was sufficient for the learned prescribed authority to reject the application for release. This all shows that the building is not bona fide and genuinely required by the landlord.

8. Learned Judge has further observed that in the application for release the landlord did not mention the nature of the items for which the business was to be carried on in the shop in question. It was simply alleged that iron business was to be done but the nature of item was not mentioned viz. it was to be Saria, or girders or nails, because for each type of items different types of accommodation or quantity of capital is required but no documentary proof thereof was filed. The appellate Court further observed that how a person working as Palledar would be able to carry on the business of iron is not known. Learned Judge held that Lal Chand in 1972 got the shop in question vacated from one Kashan Lal and he could have utilised in 1972. It is also observed by the appellate authority that the prescribed authority did not look into the matter from this angle. The finding has been recorded that his sons are established in Punjab and they have neither the capacity nor the experience nor capital to carry on business in Saharanpur where they have no connection. Learned Judge accordingly allowed the appeal and held that the question of comparative hardship doesn't arise.

9. In the present case, after hearing the learned Counsel for the parties, and going through the judgments and other material available on record, the question is as to whether the landlord has really a genuine and bona fide need and has he been able to establish this fact by evidence available on record. The relevant portion of Section 21 the U.P. Act No. XIII of 1972 is reproduced below:

21. Proceeding for release of building under occupation of tenant.(1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists namely

(a) that the building is bona fide 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 whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;

(b) that the building is in a dilapidated condition and is required for purposes of demolition and new construction.

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds, mentioned in clause (a), unless a period of three years has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years. "

Provided further that if any application under clause (a) is made in respect of (any building let out exclusively for nonresidential purposes, the prescribed authority while making the order of eviction, shall, after considering all relevant facts of the case, award against the landlord to the tenant (an amount not exceeding two years" rent as compensation and may, subject to rules, impose such other conditions as thinks fit:

Provided also that no application under clause (a) shall be entertained

(i) for the purposes of a charitable trust, the objects of which provide for discrimination in respect of its beneficiaries on the ground of religion, caste, or place of birth;

(ii) in the case of any residential building, for occupation for business purposes;

(iii) in the case of any residential building, against any tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925) has issued a certificate that he is serving under special conditions within the meaning of Section 3 of that Act, or where he has died by enemy action while so serving then against his heirs:

(Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship, to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.)

Explanation. In the case of a residential building:

(i) where the tenant or any member of his family (who has been normally residing with or is wholly dependent on him) has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this subsection shall be entertained.?

10. Bono, fide need is a question of fact, therefore, the landlord is to prove this fact by leading proper evidence. The tenant can only defend the case if he is in a position to contradict the evidence filed on behalf of the landlord to the effect

that the need expressed by the landlord in the application is not genuine, bona fide and pressing. The language of Section 21 (a) shows that building should be bonafidely required by the landlord himself or any member of his family or any person for whose benefit it is held by him either for residential purposes or for purposes of any profession, trade or calling. The application which was filed by the landlord, he with his three sons against Kartar Singh, Annexure1 to the writ petition in para 2 of the application it is mentioned that the applicant Nos. 1,3 and 4, meaning thereby father and this two sons/are not doing any permanent business rather they are doing the some miscellaneous business to earn their livelihood. In para 4, it is stated that the appellant No. 1 himself and his two sons are trying their best to install their Iron business in Saharanpur in the disputed accommodation and the respondent Nos. 3 and 4 have experience of such business, and they have sufficient means also to start the business. In para 7 of the application, it is stated that the tenant is a big businessman. He has number of shops in his name in the localities of Saharanpur and has a bi? compound also and also doing the business of Iron etc. and he has Got an alternative accommodation also.

11. The prescribed authority allowed the application and directed the tenant to vacate the premises within a month. The appellate authority allowed the appeal filed by the tenant and dismissed the application for Ejectment. The landlord has filed this writ petition.

12. From a perusal of the judgments, it is clear that the learned Judge took into consideration; that the landlord has not mentioned in this application the nature of the item for which the business was to be carried in the shop in question. He has also observed that it was specifically alleged that iron business was to be done but the nature of item was not mentioned as it was to be Saria, girders or nails etc. and further that a person) is working as Palledar how can he be expert in the Iron business. He has also taken into consideration the number of agreements of sale executed, by the landlord in favour of others and some suits for specific performance of those agreements and held that actually the landlord was not at all interest in the business in Saharanpur. He has further held that the learned prescribed authority did not look into the matter on these angles.

13. From the judgment of the appellate Court, it is clear that he has reversed the finding of the lower appellate Court and has dismissed the application filed by the landlord.

14. Section 22 of U.P. Act No. XIII of 1972 gives rig tit to the aggrieved person by order under Section 21 of the Act to file an appeal before the District Judge. The tenant had filed the appeal when was ordered to be evicted under Section 21. Sections 38 of the Act says that the provisions of this Act shall have effect not with standing anything inconsistent therewith contained in the Transfer of Property Act, 1882(Act No IV of 1882) or in the Code of Civil Procedure, 1908 (Act No. V of 1908). This means that the provisions of this Act will have overriding effect over the provisions of Transfer of Property Act and Code of Civil

Procedure. Rule 22 of the Act says that the District Magistrate, the Prescribed Authority or the appellate or revising authority shall, for the purposes of holding any inquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of matter namely the power to dismiss an application, appeal or revision for default and to restore it for sufficient cause, the power to proceed *ex parte* and to set aside, for sufficient cause, an order passed *ex parte*; the power to award costs and special costs to any successful party against an unsuccessful party; the power to allow amendment of an application, Memorandum of appeal or revision; the power to consolidate two or more cases of eviction by the same landlord against different tenants and power referred to in Sections 151 and 152 of the Code of Civil Procedure, 1908 to make any order for the ends of justice or prevent the abuse of the process of authority concerned.

15. It is true that when the appellate Court gives a judgment of affirmance, then it needs no discussion on every evidence considered by the trial Court while deciding the appeal if appellate, Court wants to reverse the finding of fact recorded by the trial Court based on evidence. I am of the view that it must discuss that evidence and may draw inference contrary to what have been drawn by the lower authority and it must set aside that finding of fact while deciding the appeal and if the appellate Court has only decided that appeal on the basis of presumption or speculation and has set aside the judgment of the trial Court in this case, of prescribed authority, the judgment cannot be said to be a judgment in the eye of law. From a perusal of the judgment of the District Judge, while exercising powers of appeal, it is crystal clear that he has set aside the findings on presumption. For example, he says in his judgment, Palledar cannot have any experience of iron business. He has mentioned that the applicant has only mentioned the iron business and he is not satisfied with the kind of iron business as to whether it would be Saria business or Girdar business. Law as stands that under Section 21 application even if the nature of the business is not mentioned, the application shall not be rejected. A perusal of the relevant provision would show that it only says that the landlord requires it for occupation by himself or any member of his family or any person in whose benefit it is, held by him either for residential purpose or for any other purpose, trade or calling or any person for whose benefit it is held by him either for residential purpose or for the purposes of any profession, trade or calling. The section itself not say that he must mention the nature of business profession, trade or calling. If the landlord has mentioned in his application that he want to start iron business, it may include any business connected with Iron. If he has not specified as to whether it would be Saria business or girdar business or nail business that does not mean that the provisions of Section 21 of the Act has not been complied with. The word 'iron' used by the applicant is sufficient to show that he wants to start iron business. There are a number of items prepared by metal, iron and there cannot be any exhaustive list in modern scientific age whether the iron business can be

confined to sale of Saria or Girdar only. There various other items of iron, which cannot be sold on the iron shop. Therefore, the observations of the learned Judge that the specific iron trade is not specified is not correct, I am of the view that even if the purpose is not specified, the application is maintainable.

16. As stated above, Rule 22 framed under the Act gives power to the appellate Court as given in the C.P.C. while trying a suit for certain purposes and one of the power is to proceed *ex parte* and set aside for sufficient cause, therefore, I am of the view that if in the date of hearing, one of the party is absent and the learned Judge hears the appeal on behalf of one of the parties only and decides the case only on the basis of *ex parte* argument and other side files an application that he was prevented from sufficient causes to appeal on the date fixed and satisfied the Court that there were evidence on record, which if could have been considered and shown to the Court, then the *ex parte* judgment would not have been as it has been delivered without hearing the other side, therefore, it is apparent that though the power to the appellate Court is restricted and is not so enlarge as given at the provisions of the CPC. Section 100 or Section 96 never the less the Court dealing with the appeal should exercise its power and it is expected that it will deliver the judgment in accordance with law. The word judgment has not been defined in the Rent Control Act. It is only defined under the C.P.C. in Section 2(9) which is defined as under:

?Judgment? means the statement given by the Judge of the grounds of a decree or order;?

17. Therefore, the judgment is a statement of facts given by a Judge on which he bases the decree or order passed by him. The word statement given by Judge means to my mind that the Judge while deciding the case must considered the facts and law which would be the basis of the order or decree and if he has not considered the evidence available on record and has set aside the finding only on the basis of presumption or speculation that judgment cannot be said to be a judgment in the eyes of law, therefore, I am of the view that the judgment delivered by the appellate Court is not a judgment of affirmance, therefore, he should have discussed the evidence available on record while setting aside the findings given by the appellate Court.

18. I am of the view that this judgment cannot be maintained and District Judge may be directed to decide the appeal afresh after restoring it on its original number in accordance with law. I, therefore, allow this writ petition and set aside the judgment passed by the IInd Addl. District Judge, Saharanpur dated 234 198 and The Appeal No. 36 of 1982 and remand the case to the appellate Court directing him to restore the appeal on its original number and decide it afresh. There is no order as to costs. Petition allowed.