
(2006) 04 AHC CK 0162

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 30892 and 30898 of 1991

Laxman and Ors.

APPELLANT

Vs

First Addl. District Judge, Varanasi & Ors.

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Citation : (2006) 04 AHC CK 0162

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

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the petitioners. No one appeared on behalf of the respondents at the time of hearing even though the cases were taken up in the revised list.

2. Both these writ petitions have been filed by tenants of the same landlords. Tenanted accommodations in both the writ petitions are separate two parts of the same house i.e. House No. D6/30 Mohalla Tripura Bhairvi, Rani Bhawani Gali, Varanasi. Landlords respondents No. 3 and 4 in both the writ petitions, viz. Dr. Ram Rang Sharma and Sri Bhismapitamah Sharma, filed release applications on the ground of bona fide need under Section 21 of U.P. Act No. 13 of 1972. Release application filed against tenantpetitioner of the second writ petition was numbered as P.A. Case No. 43 of 1985. Release application filed against Jawahar and his son Laxman was numbered as P.A. Case No. 42 of 1985. Jawahar, the father died before filing of the first writ petition and was survived by Laxman, petitioner No. 1 and other legal representatives, who are petitioners 2 to 7 in the first writ petition. Jawahar and Laxman were tenants of two rooms either jointly or separately. Even if they were separate tenants, it will not make much difference as Jawahar has died and Laxman, his brothers and mother have inherited the tenancy of Jawahar. Similarly, Mahangi, the petitioner of second writ petition, was also tenant of one room. Rate of rent payable by Mahangi is Rs. 7 per month and total rent payable by Jawahar and Laxman was Rs. 15 per month (Rupees 5 per month for one room and Rs. 10 per month for the other

room).

3. In the release applications, which were identical in nature, it was stated that Bhismapitamah Sharma was owner landlord, who gifted 1/4th portion of the entire housing bearing No. D6/30 to Dr. R.R. Sharma the other colandlordapplicant in the release application; that Bhismapitamah Sharma was residing in two rooms on the second storey of the house in question and Dr. R.R. Sharma was residing in a tenanted house and both the landlords required the rooms in dispute for their personal need. It was also stated that there were in all 14 members in the families of both the landlords. Prescribed Authority/First Additional Civil Judge, Varanasi through judgments and orders dated 7/11/1985 allowed both the release applications. Against the said judgments and orders appeals were filed by the tenants. The appeal of Jawahar and Laxman was registered as R.C. Appeal No. 360 of 1985 and appeal of the Mahangi was registered as R.C. Appeal No. 361 of 1985. First A.D.J. Varanasi through judgments and orders dated 30/9/1991 dismissed both the appeals, hence these writ petitions.

4. There cannot be any doubt that if a landlord is residing in a tenanted house then his need for release of his own house in possession of another tenant is quite bona fide (vide G.K. Devi v. Ghanshyam Das, AIR 2000 SC 656). Tenants contended that Dr. R.R. Sharma was residing as a licensee in the house of his friend. Even possession of a licensee is immaterial for considering bona fide need of the landlord for his own house (vide M. E. Kshirsagar v. M/s. Traders and Agencies, AIR 1987 SC 59). The plea of want of six month's notice in terms of first proviso to Section 21 (1) of the Act was rightly turned down by both the Courts below as the said proviso is applicable only to the case of purchase and not of gift.

5. However before the Appellate Court an affidavit was filed by the tenants asserting therein that during the pendency of the case four rooms of the house in question had been vacated by their tenants and let out again to new tenants by the landlords. An application was also filed for verification of the said fact through Advocate Commissioner. Appellate Court on 11/5/1987 passed an order on the said application to the effect that calling for the report of the Advocate Commissioner would amount to taking on record additional evidence and whether any additional evidence was required or not would be decided at the time of hearing of the appeal and if at the time of hearing of appeal; it was found that it was necessary to issue Commission then it would be done. The said order is quoted in para 20 of the writ petition. Unfortunately while deciding the appeal after more than four years from the said order, the Appellate Court did not say anything in its judgment regarding the necessity or otherwise of issuing the Commission. Similarly Appellate Court also did not say anything in its judgment regarding allegation of the tenants that during pendency of the cases four rooms had been vacated by the old tenants and they were again let out by the landlords to the new tenants. If this allegation was correct then it could have material

bearing on the decision of the appeal.

6. Appellate Court also did not say anything regarding comparative hardship.

7. Accordingly I do not have any option except to remand the matter to the Appellate Court even though remand in old cases is not desirable.

"8. Accordingly both the writ petitions are allowed. Judgments and orders passed in both the appeals dated 30/9/1991 are set aside and the matters are remanded to the Appellate Court to decide both the appeals afresh on merits keeping in view the observations made above. However, the finding that notice under the first proviso to Section 21 of the Act was not necessary shall not be reopened. The said finding is confirmed.

9. As no one has appeared on behalf of the landlords, hence before proceeding further Appellate Court shall issue notice to the landlords.

10. I have held in *Khursheeda v. A.D.J. Allahabad*, 2004(2) JCLR 452 (Ail): 2004, (13) AIC 42, that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act, Writ Court is empowered to enhance the rent to a reasonable extent. Similar principle may be applied while remanding the matter. Rent of Rs. 5, 7 or 10 per month for a room in Varanasi is ridiculous. This is virtually as well actually no rent. Accordingly, it is directed that with effect from May 2006 onward tenant/petitioner Mahangi shall pay rent to the landlord at the rate of Rs. 300 per month and Laxman and others petitioners of first writ petition shall pay rent to the landlords at the rate of Rs. 500 per month.

11. During pendency of appeal eviction of the tenants in pursuance of the judgments and orders passed by the Prescribed Authority shall remain stayed provided that they deposit the rent before the Appellate Court at the aforesaid rate of Rs. 300 per month and Rs. 500 per month respectively by the 7th of each succeeding month for immediate payment to the landlords. This direction is being issued in view of the Supreme Court judgment in *Atma Ram Properties v. Federal Motors*, 2005 (1) JCLR 631 (SC): 2005 (26) AIC 84.