
(2010) 12 UK CK 0013

In the Uttarakhand High Court

Case No : Writ Petition No. 3421 (M/S) of 2001

Maresh Chandra Joshi

APPELLANT

Vs

IIIrd A.D.J. Nainital and others

RESPONDENT

Date of Decision : 24-12-2010

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 21(1)(a)

Citation : (2011) 1 UD 368

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Tarun Agarwala, J.—This is a landlord"s petition having lost from both the courts below.

2. An application u/s 21 (1) (a) of the U.P. Act No. 13 of 1972 was instituted in the year 1983 for the release of the shop on the ground floor on Mall Road, Nainital, alleging that Narendra Kumar Tandon is the tenant and in possession of the premises in question. The Petitioner contended that he is the owner and landlord of the premises in question and that he has a family of six members i.e. his wife, two sons and two daughters. The Petitioner alleged that his children are growing up and on account of the rising prices, and in order to maintain his standard and provide a better education to his children, he requires the shop in question in order to augment his income. It was alleged that his entire income is through rent and it has become difficult to make both ends meet from the meager rental income which he is getting. The Petitioner contended that consequently, his need to do a business from the premises in question is hard-pressing. The Petitioner further contended that the opposite party has two huge shops numbering 88 and 89 where the tenant is carrying on the business under the name and style of "General Stores" at Bara Bazar, Mallital, Nainital, which is a shop measuring 35" x 30", whereas, the present shop is approximately of 8" x

12". It was contended that the opposite party-tenant is not doing his business from the premises in question under the name of "Variety Stores" and that he has sub-let it to someone else. On these allegations, the landlord prayed that the accommodation in question be released in his favour.

3. The said application was resisted by the opposite party-tenant, who appeared and contested the matter and filed his written statement. The Respondent No. 3 tenant, Narendra Kumar Tandon admitted that he was the tenant in question and was doing business under the name and style of "Variety Stores" and that various agreements were executed in this regard in which an annual rent was fixed. The opposite party submitted that he has been the tenant since 1971 and periodically the rent was being increased. The rent was last increased by an agreement in the year 1979 and upon the completion of the period, the opposite party did not agree for further enhancement of the rent, consequently, the present application has been filed for the sole purpose and intention to pressurize the opposite party to increase the rent. The tenant submitted that the landlord has no need for the shop in question and the application has been filed solely to increase the rent.

4. The opposite party came out with a specific case, namely, that the opposite party along with his three brothers, namely, R.B. Tandon, V.K. Tandon and S.K. Tandon, was doing partnership business and that opposite party's three brothers used to devote most of their time and look after the business carried out under the name and style of "General Stores" at Bara Bazar, Mallital and that the opposite party used to devote his time to the business of "Variety Stores" in the premises in question. The opposite party denied the allegation of subletting and submitted that between the four brothers the business is being carried out from the shop at Bara Bazar and from the shop on Mall Road i.e. the premises in dispute.

5. The opposite party further submitted that recently the landlord had let out the first floor of the premises in question to M/s Ahar Vihar for hotel and restaurant business which portion had never been rented out earlier and submitted that if the landlord had a bonafide need to augment his income and to start a new business, he could have easily started his business from the said portion instead of filing the application against the opposite party. In the light of the aforesaid assertions, the opposite party submitted that the release application was misconceived and should be rejected.

6. The Prescribed Authority, on the basis of the material evidence on record, rejected the application of the Petitioner-landlord holding that he had no bonafide need for the premises in question. The genesis for rejecting the bonafide need of the Petitioner was that if the Petitioner had a genuine need to start a new business in order to augment his income, he could have done so from the first floor of the premises in question, which was vacant and was in his possession and that the letting out of the first floor indicated that the landlord had no bonafide need to start a new business from the disputed premises in question.

The trial court also held that it appears that the purpose of moving the application u/s 21 (1)(a) of the U. P. Act was to pressurize to opposite party to enhance the rent. On the comparative hardship, the Prescribed Authority found that the tenant and his brothers were doing business from the two shops and that they would suffer more in the event the shop in question was to be released. The Prescribed Authority on the aforesaid findings rejected the release application.

7. Being aggrieved, the Petitioner filed an appeal. During the pendency of the appeal, it transpires that the Petitioner filed an amendment application to amend his application u/s 21 (1)(a) of the Act No. 13 of 1972, which was allowed and paragraph 9A to 9D was added. In paragraph 9A, it was averred that during the pendency, the Petitioner's two sons had grown up and that they are unemployed and therefore the shop in question is also required in order to set up a business for his two sons since the landlord had no other space available. In paragraph 9B, it was alleged that the Petitioner's eldest daughter had reached a marriageable age and that his younger daughter had reached the age of 16 years and therefore the Petitioner needs to augment his income so that he could acquire sufficient funds to meet the expenses of the marriage of his daughters. In paragraph 9C, the Petitioner contended that his financial condition had become worse which made him let out the first floor to M/s Ahar Vihar in the year 1978, and since then, his family expenses have risen which has led him to file the present application so that he could start his business and augment his income. It was also stated that on the stairs leading to the first floor, he used a portion of the space to put up a softy machine so that some money could be earned through it. In paragraph 9D, the Petitioner contended that he had a small plot of land at Haldwani which gets no income and is not cultivated and the small house constructed thereon is incomplete for the last several years for want of funds and that he and his family are residing at Nainital and not at Haldwani.

8. The appellate court rejected the appeal and held that the need put forward by the Petitioner was not bonafide and that he had no personal requirement for the shop in question. The appellate court also held that the fact that he had no personal need was indicative by the fact that he had let out the first floor to M/s Ahar Vihar Restaurant and that if he had any personal need he would not have let out that premises and could have carried out his new business from that premises. The appellate court further held that if the sons had grown up and were unemployed, they could start some agricultural business from the plot of land at Haldwani and therefore the need to set up the business for the sons also does not appear to be genuine. On the comparative hardship, though the lower appellate court found that since the tenant was doing business from the premises in question since long and had earned a goodwill, it would not be appropriate to dislocate him at that stage and held that the tenant would suffer more than the landlord.

9. The Petitioner, being aggrieved by the aforesaid orders, filed a writ petition

before the Allahabad High Court in the year 1989 and upon the creation of the State of Uttarakhand and formation of the High Court of Uttarakhand, the matter was transferred to this Court.

10. From 1989 to 2009 i.e. almost for 20 years, the Respondents, though served with the notice, did not choose to file a counter affidavit and eventually, a counter affidavit was filed on 25th March, 2010. In the counter affidavit, certain new facts by way of the subsequent events have been alleged, on the basis of which, a contention was made that the writ petition has been rendered infructuous and should be dismissed.

11. In the counter affidavit, the tenant admitted that the disputed premises was let out by the landlord to the opposite party in the year 1971. It was contended that prior to 1971, the opposite party and his three brothers were carrying on cloth business under the name and style of "General Stores" from a rented shop situated at Mallital, Nainital, and since that shop became insufficient for the four brothers, therefore, the disputed shop was taken on rent in year 1971 and a part of the cloth business of "General Stores" was shifted in the shop in question and started the cloth business under the name and style of "Variety Stores". In paragraph (vii), it has been alleged that the opposite party's brother VK. Tandon, with the consent of all the brothers as well as of the landlord, started looking after the business in the " premises in question. In paragraph (viii), it has been alleged that the landlord never objected to the business being carried out by the opposite party's brother V.K. Tandon and accordingly, VK. Tandon was carrying on the business from the shop in question from the very inception of the tenancy and was paying rent to the landlord through the opposite party, namely, Narendra Kumar Tandon. For facility, paragraphs (vii) and (viii) are quoted hereunder as it will have a bearing on the decision of this case:

vii. That Sri V.K. Tandon real brother of the deponent with the consent of all the brothers including the landlord carrying and looking after the said business under the name and style "The Variety Stores".

viii. That the landlord never objected regarding the said business by Sri V. K. Tandon, meaning thereby Sri V. K. Tandon was carrying this business in the shop in question from the inception of the tenancy continuously and paying rent to the landlord through deponent.

12. In the subsequent paragraphs, it has been alleged that during the pendency of the petition, one brother Surendra Kumar purchased another shop and started doing his exclusive business. The Petitioner (sic, opp. party) also purchased shop No. 89 at Mallital where the business of "General Stores" was being carried out and started doing his cloth business from that premises in the year 2002. In paragraph (xi) of the counter affidavit, it has been alleged that after purchasing shop No. 89, the opposite party withdrew himself from the business of "Variety Stores". In paragraph (xii), it has been stated that since he purchased his own property and his brother Surendra Kumar purchased another property, the

business of "Variety Stores" was given to V.K. Tandon by means of a mutual oral business arrangement. In paragraph (xv), it has been averred that in the first week of March, 2003, the opposite party surrendered his tenancy rights of the disputed shop in favour of the landlord, and since then, the opposite party is neither the tenant nor has any concern with the shop in question. In paragraph (xvi), it has been state thereafter the opposite party requested the Petitioner to issue rent receipts in favour of V.K. Tandon. In paragraph (xviii), it has been stated that since then the rent receipts have been issued in favour of opposite party's brother V.K. Tandon. For facility, paragraph (xv) and (xvi) are quoted hereunder:

xv. That after the said oral mutual arrangement, during the pendency of the aforesaid writ petition in the first week of March, 2003, the deponent had surrendered his tenancy right of the disputed shop in favour of the landlord, since then the deponent is neither the tenant nor has any concern of the shop in question.

xvi. That thereafter the deponent had requested to Sri Mahesh Chandra Joshi/ Petitioner to issue the recent receipts in the name of Virendra Kumar Tandon, after accepting the rent from him, who is exclusively doing his cloth business in the shop in question as tenant.

13. I have heard Sri V.B.S. Negi, the Learned Counsel for the Petitioner and Sri S.K. Jain, the Learned Counsel for the opposite party.

14. The Learned Counsel for the Petitioner submitted that the findings of bonafide need and comparative hardship given by the courts below are perverse and against the material evidence on record and that no prudent person could have come to this conclusion. The Learned Counsel submitted that the findings arrived at was patently against the material evidence on record and was liable to be set aside. The Learned Counsel submitted that 27 long years have elapsed and the Petitioner's sons are still unemployed and that the need still exist and subsists. The Learned Counsel submitted that the subsequent events would also indicate that the opposite party had surrendered his tenancy rights and was not doing business from the premises in question and therefore, contended that the premises should be released in his favour.

15. On the other hand, the Learned Counsel for the Respondent submitted that even though the Respondent tenant had no longer any interest in the premises in question since he had surrendered his tenancy rights in year 2003, nonetheless the opposite party has entered appearance in order to ensure that no unwarranted decree is passed against him qua the shop. The Learned Counsel submitted that in view of the subsequent events, it is clear that the opposite party was no longer the statutory tenant of the Petitioner and that his brother had become the tenant from whom the landlord was accepting the rent and was also issuing the rent receipts in his name and consequently the writ petition was liable to be dismissed as infructuous.

16. It was also contended by the Learned Counsel for the Petitioner that there is no allotment order in favour of the brother of the opposite party and consequently, he cannot be recognized as a statutory tenant nor is he the tenant of the Petitioner and the fact that the rent was issued in his name does not mean that he had become the statutory tenant of the Petitioner. It was contended that the rent was issued in good faith on behalf of the opposite party and the mentioning of his name in the rent receipts as a tenant does not mean that he had become the tenant of the Petitioner.

17. On the other hand, Sri S.K. Jain, the Learned Counsel for the opposite party submitted that the fact that the rent was being received by the Petitioner from V. K. Tandon and that the rent receipts were being issued indicate that he had become the tenant of the Petitioner, which was sufficient for the purpose of proving a relationship of landlord and tenant and that the question as to whether he was a statutory tenant pursuant to an order of allotment was a lis which was not required to be adjudicated in these proceedings and which is a matter which could be adjudicated before the Magistrate concerned in an appropriate allotment proceedings u/s 16 of the Act.

18. In support of his submission, the Learned Counsel for the Respondents placed reliance on Seshambal (dead) through L.Rs. Vs. Chelur Corporation Chelur Building and Others, , on the issue of subsequent events which the court will deal at a subsequent stage. The Learned Counsel submitted that in view of the subsequent events, it is clear that writ petition has been rendered infructuous and should be dismissed summarily.

19. On the other hand, the Learned Counsel for the Petitioner submitted that subsequent events can only be taken into consideration with regard to the fact that the opposite party had surrendered his tenancy rights and beyond that nothing more could be seen.

20. In the light of the aforesaid assertions, it becomes necessary to go into the question of the validity and legality of the orders passed by the two courts below and then consider the subsequent events. The application of the Petitioner is that he required the premises in question for his own need to set up the business in order to augment his income. The Petitioner had categorically stated that he has a large family and that his children are growing up, and in order to meet the educational expenses and to maintain a standard, he required the premises in order to augment his income by starting a new business. These assertions have been denied vaguely by the opposite party in his written statement and the allegation asserted by the tenant is, that this assertion is a facade and the reason is only to pressurize the tenant-opposite party to enhance the rent which the opposite party had refused to do so.

21. The Prescribed Authority rejected the claim of the Petitioner on the ground that he had no bonafide need since the Petitioner had recently let out the first floor of the building in the same premises to M/s Ahar Vihar Restaurant for

running a restaurant and concluded that if he had any intention to start a new business in order to augment his income, he could have started it from that premises instead of letting it out. this Court is of the opinion that there is no fault in the finding of the Prescribed Authority since the assertion of the opposite party in paragraph 19 of the written statement that the landlord had recently let out the first floor to M/s Ahar Vihar Restaurant, was not contradicted by any material evidence before the Prescribed Authority.

22. But, before the appellate court, the Petitioner filed an amendment application which was allowed and paragraph 9-C was inserted. For facility, paragraph 9-C is quoted hereunder:

9-C. Thar in the year 1978 the applicant was seriously ill and the financial condition of his family had become worst and the applicant was not able to do any job, and in these circumstances, the applicant let out the second story of his house to the proprietor of Ahar Vihar Restaurant to meet out the family expenses, while now the expenses of the family have raised up several times and the applicant is fit to do any business and due to financial hardship the applicant is compelled to put up a softy machine in the stairs by the side of the Mall, in front of his house to earn some money and it is necessary that the shop in dispute be released in favour of the applicant to enable him to do some business.

23. A perusal of the aforesaid paragraph indicates that the landlord had let out the first floor of the building in question to M/s Ahar Vihar Restaurant in the year 1978 in order to meet out the family expenses. The opposite party filed the additional written statement, a copy of which has been annexed as Annexure-5 to the writ petition, and the fact that the first floor was let out to M/s Ahar Vihar Restaurant in the year 1978, has not been specifically denied by the opposite party.

24. In the light of the aforesaid, it can safely be culled out that the first floor which had never been let out earlier, was let out for the first time in the year 1978 to M/s Ahar Vihar Restaurant in order to meet the family expenses. This letting out was made in the year 1978. The business arrangement with the opposite party vide an agreement was last carried out in the year 1979 for a period of three years which expired in the year 1982 and therefore, a fresh arrangement was required to be carried out. According to the opposite party, the landlord pressurized the opposite party to enhance the rent which was refused by the opposite party. This led to the filing of the application u/s 21(1)(a) of the Act No. 13 of 1972 in the year 1983.

25. Assuming that the contention of the tenant is correct that the application was for the purpose of increasing the rent, the landlord's application is also one for his personal need for the premises in question to augment his income. Consequently, the fact that the opposite party contends that the landlord required more money and the Petitioner also contends that he required the shop to augment his income, proves that there was a need to increase the income of

the landlord. The reason given by the Petitioner is that he required the shop to augment his income in order to meet the family expenses for the growing need of his children. In paragraph 9-A, the Petitioner further stated that his two sons have now grown up and are unemployed and, now he needs the shop for his two sons. In paragraph 9-B, the Petitioner contended that he needs the additional money to meet out the expenses which he might have to incur to get his two daughters married off. These facts as culled out from the application of the Petitioner u/s 21(1)(a) of the Act as amended before the appellate court and the written statement, give a clear indication of the genuine bonafide need of the Petitioner-landlord to require the premises in order to augment his income and to meet the family expenses for the growing need of his children.

26. We are living in a society where a person gets married and bears children. Children grow up and their educational expenses are to be met. The expenses increase when children grow up and consequently a need arises to also increase the income. This is a continuous process, which a person undergoes till he dies. In this kind of a society, a person tries his level best to meet the needs of his family.

27. The record indicates that the landlord was not doing any business and was surviving from the rental income. Consequently, when his need and expenses increased, the rental income was also required to be increased. Since the rental income remained static, the Petitioner had to augment his income from other resources. Admittedly, the opposite party refused to increase the rent, the landlord had no choice but to file an application for the release of the shop so that he could start his own business and augment his income. This was a genuine need and was not a pressure tactic as alleged by the opposite party.

28. In the light of the aforesaid, the Court finds that the Petitioner's financial need for the release of his shop for his own purpose was genuine and bonafide. Further, during the pendency of the litigation, his need became acute as he required the shop to set up his two sons. On this short ground, the Court is of the opinion that the courts below committed a manifest error in holding that the Petitioner's need was not genuine. The finding given by the courts below was perverse and consequently, this Court holds that the need of the Petitioner is genuine and bonafide.

29. In addition to the aforesaid, the Court finds that the finding of the lower appellate court that the Petitioner's need was not genuine because he could have carried out the business from the first floor instead of letting it out to M/s Ahar Vihar Restaurant, is perverse and, the reason is, that the landlord had let out the premises to M/s Ahar Vihar Restaurant in the year 1978 i.e. five years earlier to the institution of the application u/s 21(1)(a) of the Act which was filed in the year 1983. The lower appellate court has based its finding on surmises and conjectures.

30. Consequently, the Court has to interfere and give a finding and the reason

for giving this finding and interfering, in the impugned orders is that the finding is perverse. Further, no useful purpose would be served in remitting the matter to the court below to decide the matter afresh for the reason that the Court finds that the application was filed in the year 1983 i.e. 27 years ago and a finality must reach and the litigation must come to an end.

31. The finding of the lower appellate court that the need for the sons does not exist as they could do business in the plot of land at Haldwani, is patently perverse. It is settled law that it is the landlord's choice to settle his sons to do business from a particular place and that the Court cannot point out the place or the kind of business which the children could do. The Court cannot and could not suggest that the children should do agricultural business in the plot of land at Haldwani which is at another place and in another town from the disputed property.

32. In the light of the aforesaid, the Court is of the opinion that the finding given by the court below on bonafide need was perverse and cannot be sustained. In the light of what has been observed above, the Court is of the opinion that the need of the landlord was genuine and bonafide.

33. On the comparative hardship, the Court finds that before dwelling on this aspect, the subsequent events of the last 27 years should also be taken into consideration. Subsequent events is an important factor and is required to be taken into consideration in our legal system. this Court will not spell out much on the legal system and will only quote what the Supreme Court has said in *Gaya Prasad v. Pradeep Srivastava*, (2001) 2 SCC 608, namely,

15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.

34. Subsequent events overshadow the genuineness of the need and subsequent events must be of such a nature and of such dimension that the need propounded by the petitioning party gets eclipsed by subsequent events. Consequently, subsequent events have to be seen vis-a-vis the bonafide need of the petitioning party.

35. In *Om Prakash Gupta v. Ranbir B. Goyal*, 2002 (1) SCC 254, the Supreme Court declared that although the ordinary rule of civil law is that the rights of the parties stand crystallized on the date of the institution of the suit yet the court has power to mould the relief in case the following three conditions are satisfied:

11. ... (i) that the relief, as claimed originally has, by reason of subsequent

events, become inappropriate or cannot be granted;

(ii) That taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) That such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.

36. In *Hasmat Rai and Another Vs. Raghunath Prasad*, , the Supreme Court observed:

14. ... If the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him to point out such events and the court including the appellate court has to examine, evaluate and adjudicate (upon) the same.

37. In *Baba Kashinath Bhinge case*, 1994 Supp. 3 SCC 698 , the Supreme Court relying upon the decision in *Hasmat Rai case* (supra) held that in a case of bonafide requirement it is necessary to establish that the landlord needs the premises and the need subsists till a decree is passed in his favour.

38. In the light of the aforesaid, the Court is of the opinion that subsequent events is only required to be considered in a limited extent, namely, to see whether the need of the landlord still subsists or not, and beyond that nothing else is required to be considered.

39. In the light of the aforesaid, similar view has been held by the Supreme Court in the case of *Gaya Prasad* (supra). Similar view was also held by the Supreme Court in *Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji Devi (Dead)* by LR's. and *Another*, . In *Pratap Rai Tanwani and Another Vs. Uttam Chand and Another*, , similar view was again reiterated by the Supreme Court in the matter of *Sheshambal* (supra) to the effect that subsequent events can be considered in order to see that the need of the landlord to occupy the premises still exists or not.

40. In the light of the aforesaid, this Court has already held that the Petitioner's need is bonafide and still exists. On the other hand, the tenant-opposite party, who filed a counter affidavit after more than 20 years, has taken a somersault and has carved out a new case, which is contrary to the stand which he had taken in his written statement, but one glaring admission which he has made and which the Court has taken note of is the averment made in paragraph (xv) of the counter affidavit, namely, that he had surrendered his tenancy rights and was no longer doing any business from the premises in question since he had purchased another property in the same municipal limits and was carrying on his business from that premises. In the light of this admission, the question of comparing comparative hardship does not exist or is required to be considered any further. Once this fact has come on the record that the opposite party had surrendered his tenancy rights, he cannot object to the bonafide need of the Petitioner or

oppose the release application any further.

41. The contention of the Learned Counsel for the opposite party that the fact that his brother V. K. Tandon is now carrying on business and that he is paying the rent to the landlord who is accepting the rent without any protest, and that a new relationship of landlord and tenant had come into existence which has now rendered the writ petition infructuous cannot be accepted and has to be rejected outright and the reason is not far to see. The Court finds that contradictory stand has been taken. In paragraph 4 of the written statement, the opposite party contended that his three brothers including V. K. Tandon are devoting most of their time to look after the business of General Stores" at Mallital and that the opposite party devotes most of his time to the business of "variety Stores" in the disputed premises. Now, this admission in paragraph 4 of the written statement is being contradicted by the opposite party in paragraphs (vii) and (viii) of the counter affidavit which has already been quoted earlier and which states that after taking the premises in question, V.K. Tandon started looking after the business of "Variety Stores". It is quite apparent that a device has now been adopted by the opposite party knowing fully well that if he owns another premises in the same municipality, he would be liable for eviction and, hatched a plan to induct his brother V.K. Tandon alleging that from the very inception of the tenancy, V.K. Tandon was carrying on the business. The contention that the rent was being paid in the name of V.K Tandon and therefore he becomes the ostensible tenant vis-a-vis his landlord, namely, the Petitioner, is again belied by the statement which the opposite party has made in paragraph (viii) of the counter affidavit. The Court again quotes the relevant words of paragraph (viii):

Sri V. K. Tandon was carrying this business in the shop in question from the inception of the tenancy continuously and paying rent to the landlord through deponent.

42. The opposite party admits that he was the tenant and that V.K. Tandon was looking after his business and that he was paying the rent on behalf of the opposite party. Consequently, the rent issued by the landlord in good faith in favour of V.K. Tandon, brother of the opposite party, does not make V. K. Tandon his tenant. In the light of the aforesaid, the contention of the opposite party is patently erroneous and cannot be sustained.

43. In the result, the Court is of the opinion that the impugned orders cannot be sustained and are quashed. The writ petition is allowed. The release application is allowed. The Petitioner will pay to the tenant two years rent which will be deposited before the prescribed authority within six weeks from today. The rent so deposited can be withdrawn by the opposite party after he vacating the premises in question. The opposite party is directed to handover vacant arid peaceful possession to the Petitioner within three months from today, failing which, it would be open to the Petitioner to proceed with the eviction of the opposite party in accordance with law.