
(2011) 04 AHC CK 0185

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 19521 of 2011

Maresh Prasad Verma

APPELLANT

Vs

Hare Krishna

RESPONDENT

Date of Decision : 15-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 04 AHC CK 0185

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. The Petitioner claims himself to be tenant of a shop situated at Bharauli Bazar, near Brahmsthan, post and district Deoria for the last 24 years. The landlord Respondent filed P.A. case No. 10 of 2007 u/s 21(1)(a) of U.P. Act No. 13 of 1972 for release of the shop on the ground of personal need to establish his son in business who had completed graduation in 2005 and was unemployed though he has searched for the job. The Petitioner contested the aforesaid P.A. case by filing written statement alleging that need of the landlord was not bonafide.

3. After appreciation of the evidence and hearing the parties, the Prescribed Authority/Civil Judge(JD), court No. 10, Deoria allowed the release application vide judgment and order dated 4.10.2010. Appeal No. 6 of 2010 was preferred by the Petitioner u/s 22 of U.P. Act No. 13 of 1972. The appellate court/District Judge, Deoria vide judgment and order dated 14.1.2011 dismissed appeal of the Petitioner tenant and confirmed findings recorded by the Prescribed Authority in its order dated 4.10.2010.

4. The Petitioner has challenged concurrent findings recorded by the courts below on the ground that during his 24 years of tenancy, he has not defaulted in payment of rent and that though release application had been filed by the

landlord on alleged ground of bonafide need for his son, they have not disclosed what business is proposed to be carried out by the son of the landlord in the shop in question, area of which is 9 feet X 6 feet = 54 sq. feet.

5. Contention of the counsel for Petitioner is that there are seven shops in the premises of the landlord Respondent out of which one shop has already been sold during the pendency of litigation and this goes to show that if the landlord had any bonafide need of a shop to establish his son in business, there was no occasion for him to sell the said shop instead he should have established his son in business in that shop. It is also stated that map of the shops in possession of the landlord is not complete map and that the son for whose need release application has been filed, is running his business in his own shop No. 2 for the last four years, apart from the fact that he is also in possession of shop No. 3 since 9.4.2007.

6. It is stated that shop No. 3 was got vacated by the landlord Respondent from the then tenant of that shop; that shop No. 4 is under tenancy of Sri Dinesh Chandra; that shop No. 5 has been given on rent to another person during the pendency of the release application; that shop No. 6 is under tenancy of the Petitioner and shop No. 7 is in possession of Sri Krishna Dutt as tenant.

7. It is also stated that there are two godowns in possession of the landlord adjacent to the building wherein the aforesaid shops are situated and it is suggested by the tenant that the landlord's son could establish himself in business in the two godowns aforesaid but the courts below without considering these arguments of the tenant on basis of material on record, have illegally allowed the release application and the findings are perverse. Similar is the argument of the counsel for the Petitioner as regards the question of comparative hardships.

8. Per contra, learned Counsel for the Respondent landlord submits that need set up by the landlord was bonafide as son of the landlord was unemployed. It is also stated that shops which are said to be vacant or have been given on rent to other persons, are neither suitable for his business nor are available to the landlord except the shop under tenancy of the Petitioner which suits the business sought to be established by the son of the landlord. It is next submitted that the High Court would not be sitting in appeal for reappraisal of the facts and evidence for setting aside the concurrent findings recorded by the courts below until and unless it is established that the findings are not based on material on record or are not in accordance with law. According to the counsel for Respondent landlord, a tenant cannot suggest the landlord whether to use the godown as shop or at any other place or to get the shops of other tenants released for his purpose but not the shop of the Petitioner.

9. After hearing counsel for the parties and on perusal of judgments of the courts below, it appears that the Prescribed Authority had framed two issues regarding bonafide need and comparative hardships. After discussing the evidence and

contentions of the parties in detail, the Prescribed Authority held that landlord had proved his bonafide need for the shop in dispute. While deciding this issue, the Prescribed Authority has also considered the incidental question of alternative accommodation in the godown as suggested by the tenant. After recording finding that the tenant prepares golden and silver ornaments in the shop in dispute for other jewellers which the Petitioner can also do from his residence where he has prepared a place for this purpose and that it has been proved that Sri Vishnu Kumar, son of the landlord is an unemployed person and that it could not be proved by the tenant that godown would be an alternative of shop to establish himself in business whereas the landlord has proved his bonafide need as well as comparative hardship more than the tenant.

10. In so far as the question of comparative hardship is concerned, the courts below have recorded findings that business of the tenant is not such which requires a show room or shop and that he had already made provision in his residential house for making gold and silver ornaments. It has also been found by the courts below that there are 9-10 vacant shops in Katra of Gopalji Mishra as well as in the premises of Sitapur Hspatal where Zila Panchayat has constructed a number of shops. The courts below have also recorded that other vacant shops are also available at various places. The findings of the court in regard to bonafide need, comparative hardship as well as alternate accommodation and availability of vacant shops in the market are thus:

11. From perusal of the judgment, it also appears that courts below have recorded a finding that inspite of shops being available, no evidence has been brought on record by the tenant to show that any effort has been made by him during pendency of the release application to get any alternative shop for the purpose of his business. Thus, the courts below have concluded that in case shop in dispute is not released, the landlord would suffer comparatively more hardships than the tenant and that landlord has also proved his case so far as the question of bonafide need for the shop in question is concerned.

12. It may also be noted that according to the Petitioner, he had taken the shop on rent somewhere in the year 1988 from the landlord. Under what circumstances, the shop has come to his tenancy is not clear from the record but one thing is certain that he had not come into its possession by allotment after following procedure prescribed in U.P. Act No. 13 of 1972. It is not in dispute that provisions of Act No. 13 of 1972 are applicable and as the shop is an old one situated in Bharauli Bazar where business of Sarafa is dominant business. The occupation of the tenant, therefore, cannot be said to be in accordance with provisions of Act No. 13 of 1972. Law is settled that Courts will not permit any unlawful occupation by any tenant which is against the spirit and legislative intent of U.P. Act No. 13 of 1972.

13. Since it has come on record that business of the Petitioner is such that it can also be conducted from his residential house and that he has already made alternative arrangement in this regard in his house, this Court is not inclined to

interfere with the matter. Moreover, as held by the Apex Court in *Shamshad Ahmad and Ors. v. Tilak Raj Bajaj* (d) by L.Rs. and Ors. (2008 SC BRC 352) the High Court under Article 226 of the Constitution is not expected to decide rent petition as an appeal by reconsideration of the entire facts and evidence as sought to be argued by the Petitioner.

14. It is also settled law that landlord is the best judge of his need. Once bonafide need is established by the landlord, the tenant cannot suggest the landlord as to how and where conduct his business for his livelihood. All the members of family of the landlord have a right to establish themselves in business and they have a priority for this over the tenant provided it is established that their need is bonafide and they would suffer greater hardship than the tenant if the shop/accommodation under the tenancy is not released.

15. In the present case, it has been proved by the landlord before the courts below on basis of evidence that need of the landlord for establishing his son in business in the shop in dispute is bonafide and that they would suffer comparatively more hardship than the tenant if shop in dispute is not released. Hence considering the facts and circumstances of the case and the judgments impugned in totality, there appears to be no illegality or infirmity in the impugned orders.

16. For all the reasons stated above, the writ petition fails and is accordingly dismissed.

17. At this stage, counsel for the Petitioner has prayed for some time to vacate the shop.

18. As concurrent findings of fact have been recorded that Petitioner has made alternative arrangement in his own residence, a month's time appears to be sufficient and is granted to the tenant to shift from the shop in dispute by removing his goods from there and handing over peaceful possession of the shop in dispute to the landlord. No order as to costs.