

(2004) 12 AHC CK 0212

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33722 of 2003

M.K. Electronics Ltd. and Another

APPELLANT

Vs

Additional Prescribed Authority and Others

RESPONDENT

Date of Decision : 14-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)

Citation : (2005) 1 ARC 271

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Amit Saxena, for the Appellant; M.L. Maurya, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—This writ petition, under Article 226 of the Constitution of India by the petitioner-tenants, challenges the order passed by the appellate authority dated 24th May 2003 whereby the appellate authority allowed the appeal filed by the landlord and reversed the order passed by the prescribed authority dated 17th August 1998.

2. The respondent-landlord filed an application u/s 21 (1) (a) of U.P. Act No. 13 of 1972 (in short the Act) with the allegations that the landlord requires the shop in question bona fide for his own personal need and the need to settle down his son and widowed daughter. He is at present residing at Sambalpur and wants to shift to Kanpur where the shop in question is situate because of personal and security reasons. It is also stated that the petitioner-tenants, in fact, do not carry on any business in the shop in question and they just keep the shop closed. The prescribed authority after exchange of pleadings of the parties has found that the landlord does not have any bona fide requirement except to shift from Sambalpur to Kanpur. Therefore, the application was dismissed by the prescribed

authority. Aggrieved thereby the landlord preferred an appeal before the appellate authority. The appellate authority has reversed the finding arrived at by the prescribed authority with regard to bona fide requirement and held that the need of the landlord is bona fide, the appellate authority has recorded finding regarding comparative hardship in favour the landlord and directed release of the shop in question in favour of the landlord. It is this order which is challenges by the petitioner-tenants under Article 226 of the Constitution of India.

3. Learned Counsel for the petitioners has argued that the findings arrived at by the appellate authority to the effect that the tenants are not carrying on any business and the shop remains mostly closed is perverse. Learned Counsel has further submitted that there were three affidavits of persons residing or carrying on business in the neighbourhood to the effect that the tenants are carrying on business in the shop in question which have not been considered by the Appellate Authority while allowing the appeal filed by the landlord. This contention is not correct. The affidavits have been considered by the appellate authority but have not been believed for the reasons that the best evidence that could be in regard to carrying on business in the shop in question, namely, records regarding sale and purchase, has not been produced by the tenants. Thus in my opinion the appellate authority has not committed any error in not relying upon the evidence, namely, the affidavits of the persons doing business or residing in the neighbourhood, as the best evidence which was in possession of tenant as stated above has not been produced.

4. So far as bona fide requirement of the landlord is concerned the appellate authority reversed the finding arrived at by the prescribed authority that the landlord has come up with the categorical case that he is at present residing at Sambalaapur and wants to shift from Sambalpur to Kanpur and the prescribed authority has not believed this case that no material has been placed on record in order to demonstrate the bona fide requirement. The appellate authority has observed that the landlord has given best evidence regarding his requirement of shop in question that he is at present residing at Sambalpur but due to personal and security reasons wants to shift to Kanpur and settle in the shop in question. The appellate authority has further relied upon photographs wherein it has been shown that the sing-board of Ambika Tailors is also placed on the shop in dispute from which it is inferred that the shop is, in fact, sub-let to Ambika Tailors as admittedly the tenants are carrying on business of Electronic Goods. This fact is denied by the tenants but the appellate authority has given cogent reasons for its disagreement. I do not find that the findings arrived at by the appellate authority deserve to be interfered by this Court under Article 226 of the Constitution of India, particularly in view of the law laid down by the Apex Court in *Surya Dev Rai Vs. Ram Chander Rai and Others*, .

Thus I do not find this a fit case for interference under Article 226 of the Constitution of India. This writ petition has no force. It is accordingly dismissed.