
(2006) 08 AHC CK 0170
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47740 of 2002

Mohd. Yusuf and Anr.

APPELLANT

Vs

Addl. District Judge, Etah & Ors.

RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

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

Citation : (2006) 08 AHC CK 0170

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

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

2. This petition has been filed challenging the validity and correctness of the judgments and orders dated 1892002 and 299 1999 passed by the Additional District Judge, Court No. 10, District Etah and the Prescribed Authority/Civil Judge (Junior Division), Etah, respondent Nos. 1 and 2 respectively in proceedings under Section 21(1)(a) of U.P. Act No. 13 of 1972 (hereinafter referred to as the Act).

3. The facts in brief are that respondent No. 3 landlord filed a release application under Section 21(1)(a) of the Act with respect to two shops under the tenancy of the petitioners situate in Mohalla Gandhi Nagar, Railway Road, Etah. The aforesaid application was registered as P.A. Case No. 15 of 1987 which was challenged on the ground that petitioners are tenant of the aforesaid shops on monthly rent of Rs. 125/ per month. Respondent No. 3 requires the aforesaid two shops to establish her sons namely, Rajesh Kumar and Awadhesh Kumar who are unemployed.

4. The petitioners contested the release application on the ground that two shops were let out to them separately and that son of petitioner No. 1 is doing his own independent business in the shop situate in Mohalla Moolchand, hence petitioner No. 1 cannot shift his business there. It is also their stand that the shops

constructed by petitioner No. 2 in Mohalla Moolchand are far away from the main market and therefore, could not be even let out to tenants as such petitioner No. 2 cannot shift his business in those shops for the reasons that no person would come to him there and his business would be ruined.

5. It is urged that the sons of respondent No. 3 are doing their respective businesses of Kapda, Press and Kolhu as described in the written statement and they can enlarge their business as they have sufficient space there. It was lastly submitted that respondent No. 3 did not accept rent from them, which is deposited under Section 30 of the Act in Misc. Case No. 123 of 1986 and Misc. Case No. 124 of 1986 respectively, hence no rent is due and they are entitled to benefit of Section 20(4) of the Act.

6. It appears from the record that respondent No. 3 on 2581988 filed replication (paper No. 31A/1) stating that it was correct that petitioner No. 1 was tenant of the southern shop from 1966 to 1976 but he vacated in 1976. The petitioners and the respondents gave their evidence on affidavit. During the pendency of the release application suit No. 906 of 1990 was filed by the landlordrespondent No. 3 on 18121990 against the petitioners for permanent injunction restraining them from interfering in the peaceful possession of respondent No. 3 over the shop in dispute and also restraining them from demolishing or causing damage to the shop in dispute.

7. It was stated in the plaint of the aforesaid suit that the landladyrespondent No. 3 had filed release application under Section 21(1)(a) of the Act against the petitioners but a compromise was entered into between them and the shops were vacated by the petitioners in terms of the compromise. Thereafter the petitionerstenants had handed over the possession of the vacant shop to her and had also executed an agreement dated 1121990, as such the petitioners have no concern with the shop in dispute which are not in their possession at present. It was also stated in the plaint that the petitioners have become dishonest and again want to take possession of the shop in dispute. For restraining them suit has been filed alongwith application for temporary injunction.

8. The Munsif vide order dated 18121990 granted an interim order directing the parties to maintain status quo over the shops in question. It appears that on 511991 respondent No. 3 landlady moved an application under Order XXXIX, Rule 2A C.P.C. against the petitioners for violating the order of temporary injunction dated 18121990 inter alia, that inspite of the aforesaid order the petitioners with the help of local police obtained possession of the shop in dispute illegally. The application was registered as Misc. Case No. 10 of 1991 and was later on rejected. Respondent No. 3 again moved an application on 2211991 in the aforesaid suit No. 906 of 1990 for mandatory injunction stating that on 23121990 the petitioners have obtained possession of the shop in dispute by force, as such the possession may be redelivered to her which was also rejected on 16101992.

9. The petitioners filed their written statements in the suit inter alia that they never vacated the shop in dispute and that the agreement dated 11/2/1990 is a forged document as it was never signed by them. It was also stated that the petitioners are still in possession over the shop in dispute and in fact respondent No. 3 has taken possession of the same illegally by taking advantage of some criminal riot and the possession was ultimately restored to them through police on a complaint made by them.

10. The Counsel for the petitioners contends that the release application was still pending which though had become infructuous and not maintainable on the allegations made by respondent No. 3 in view of the averments made in O.S. No. 906 of 1990, as such the petitioners had moved an application on 26/4/1991 in the Court of Prescribed Authority for amending the written statement inter alia that they had never vacated the shop in dispute nor had handed over possession to respondent No. 3 at any point of time. Amendment application was allowed on 5/7/1991 and replication to the amendment was filed by respondent No. 3 on 15/7/1991 reiterating that the petitioners had vacated the shop in dispute and the same are still vacant and they had relinquished their tenancy. It was also stated that the suit was filed on correct facts and the petitioners have obtained possession with the help of police.

11. It appears that an affidavit has been filed before the Prescribed Authority inter alia that the shops are still vacant. The Prescribed Authority vide order dated 17/3/1994 dismissed the release application of respondent No. 3 holding that in view of her own case of landlady respondent No. 3 there was no relationship of the landlord and tenant between the parties as such the release application was not maintainable. It is contended that the Prescribed Authority has specifically held that the petitioners had vacated the shop in dispute and thereafter took possession over the disputed shop with the help of the police as such they were no more tenants of the shop in dispute.

12. Aggrieved by the aforesaid order, the respondent No. 3 has challenged the judgment of the Prescribed Authority by filing Misc. Appeal No. 34 of 1994. The Vth Addl. District Judge, Etah vide judgment dated 25/4/1996 remanded the case directing the Prescribed Authority to give an opportunity to the parties to adduce their evidence afresh and thereafter record findings as to whether the tenants had vacated the shops prior to 11/2/1990 or handed over the possession to the landlady. It was also provided that the lower Court shall also record a finding as to whether the tenants had again possessed the shops or not and accordingly decide the application under Section 21 of the Act. After the judgment the landlady withdrew her O.S. No. 906 of 1990 on 9/9/1997.

13. After remand respondent No. 3 moved an application No. 167/A dated 8/12/1997 seeking two amendments in the plaint to the effect that (a) that the husband of the plaintiff has retired and (b) that Awadhesh Kumar son of respondent No. 3 had to vacate the premises of Smt. Shakuntala Devi as the same has been purchased by M.L.A. hence Awadhesh Kumar has also become

unemployed. The amendment application was allowed. The additional written statement was also filed by the petitioners denying the fact in the amendment application that Rajesh Kumar and Awadhesh Kumar are not employed. It was also stated that they are doing their respective business of Rice Floor and Kolhu etc. on their own land situate in Sudama Puri Road, Ganjdundwara, Etah. The petitioners sought amendment in the written statement inter alia that (a) Rajesh Kumar is doing his business of Rice Mill and Oil Mill on the plot situate in Sudamapuri and the electric connection No. 3201/001751 of Awadhesh Kumar has been transferred to this plot and (b) Awadhesh Kumar is also doing business of Atta Ghakki and explayier in Moha Kewal Teen Bazar Kasba Ganjdundwara and his electric connection is 3101/23809. The amendment application was allowed.

14. The Prescribed Authority vide judgment dated 2991999 allowed the release application filed by respondent No. 3 stating that her need was bona fide and with regard to the maintainability of the release application it was also observed that though during the pendency of the release application respondent No. 3 had stated that the petitioners had vacated the shops and had abandoned their tenancy and by police force obtained possession but now she does not deny the petitioners as her tenants and has also filed replication paper No. 173C2 treating the petitioners as her tenants, hence the relationship of landlord and tenant is established between the parties.

15. The aforesaid judgment was challenged by the petitioners by filing Appeal No. 14 of 1999. The appellate Court vide order dated 1892002 dismissed the appeal holding that the need of respondent No. 3 is bona fide and that she would suffer greater hardship. With regard to the maintainability of the release application it was observed that since at the time of filling of the release application respondent No. 3 had accepted the petitioners as tenants and suit No. 906 of 1990 having been withdrawn, the relationship of landlord and tenant exists between the parties as such release application is maintainable. The appellate Court has also given a finding of fact that the petitioners had earlier vacated the shops in dispute. The instant writ petition has been filed against the two judgments of the Prescribed Authority and the judgment of the Additional District Judge, Etah in appeal.

16. The Counsel for the petitioners submits that respondent No. 3 had filed release application and the tenants had vacated the shop later on in 1972. However, as they were trying to regain possession of the disputed shops suit was filed by respondent No. 3 for restraining them from taking possession of the disputed shops. During the pendency of the proceedings under U.P. Act No. 13 of 1972 the possession was taken by the petitioners with the help of police by making a false complaint. He also submits that this fact has also been affirmed by of the appellate Court, lie further submits that the possession was taken by the petitioners when the proceedings were still pending before the appellate Court and on remand thereafter before the Prescribed Authority and the release application was maintainable. He also submits that the petitioners had no

alternative accommodation to do their business.

17. It is urged by the Counsel for the respondents that the petitioners have their own vacant shops in which they have now shifted their sons for doing business.

18. No other point has been argued before this Court.

19. Having heard Counsel for the petitioners and the Counsel for the respondents a query was made by the Court to the learned Counsel for the petitioners whether it was correct that they had vacant shops in which they can shift their sons. The answer was in affirmative but it is stated that sons are doing their independent business. In view of the admitted facts, the petitioners had vacant accommodation where they have established their sons in business. It cannot be believed that the petitioners themselves could not have shifted their business in the same shops where their sons have shops. It appears that they only want to harass the landlord to get some premium to vacate the shops.

20. In this view of the matter the petition can be disposed of on short point that the petitioners have acquired their own shop in vacant portion. Admittedly the shops were acquired by the petitioners and are now in possession of their sons they have established their business. The need of the landlord is bona fide as she has also to establish his sons. The comparative hardship of the landlord is also greater to that of the petitionerstenants.

21. To establish his business in his own right in a premises owned by every member of the family of the landlord cannot be denied on the ground that one or the other of his family members is doing business else where. It is settled law that every adult member of the family of the landlord has a right to do his independent and separate business. The petitioners having their own shops in the Municipal limits of the city of Etah and having their separate business can shift their business tailoring from the shop in dispute. I find that the Court below has rightly determined the bona fide need and comparative hardship of the respondents is greater to that of the petitionertenants. The Courts below has given a finding of fact that the petitioners had earlier vacated the shop and had shifted to their own shop. It appears that the petitioners have for some reason been able to gain reentry in the shop vacated by him, but this would not give him any legal right to retain it particularly in view of the fact that he has acquired his own shop.

22. Finding of bona fide need and comparative hardship being finding of fact, reference in this regard may be made to the decision rendered by Hon''ble the Apex Court in E. Parasuraman (deceased by L.Rs.) v. Doraiswamy, AIR 2006 SC 376 : 2006(8) S.C.C. 658, wherein it has been held by Hon''ble Supreme Court that Court should not interfere in any finding of fact unless patent illegality or perversity is established.

23. For the reasons stated above the writ petition is dismissed.