
(2011) 12 AHC CK 0328

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47213 of 2011

Nand Lal Keshari

APPELLANT

Vs

Shashi Bhushan Agrawal and Others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 22

Citation : (2011) 12 AHC CK 0328

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Dilip Gupta, J.—The tenant has filed this petition for setting aside the judgment and order dated 26th July, 2011 passed by the Appellate Court by which the appeal filed by the landlord has been allowed and the order dated 28th February, 2007 passed by the Prescribed Authority rejecting the application filed by the landlord u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act") has been set aside.

2. The landlord had filed an application on 9th May, 2001 u/s 21(1)(a) of the Act for release of the shop in occupation of the tenant with the averment that he bona fide needed the shop for establishing his son in the business. A reply was filed to the aforesaid application by the tenant alleging that the landlord had available with him certain other vacant shops in the same group of shops in the area and, therefore, the need of the landlord was not bona fide. The Prescribed Authority by the order dated 28th February, 2007 rejected the application filed by the landlord holding that that the alleged need set up by the landlord was neither genuine nor bona fide as he had available with him vacant shops in the same area. The Prescribed Authority also held that the tenant was likely to suffer

greater hardship than the landlord in case the order for release of the shop was passed. Feeling aggrieved, the landlord filed an appeal u/s 22 of the Act which was allowed by the judgment and order dated 24th February, 2010 and the matter was remanded to the Prescribed Authority to consider the documents filed by the parties regarding availability of alternative accommodation. The tenant filed Writ Petition No. 29170 of 2010 for setting aside the aforesaid judgment of the Appellate Court and this petition was allowed by the judgment and order dated 20th May, 2010 with the following observations:

Heard learned counsel for the petitioner and perused the record.

It appears that the respondent landlord filed an application u/s 21(1)(a) of U.P. Act No. 13 of 1972 for release of the disputed shop for his personal need. After contest the Prescribed Authority rejected the release application No. 3 of 2001 vide order dated 28.2.2007 against which the landlord filed Rent Appeal No. 34 of 2007.

At the appellate stage certain documents were filed to show that the petitioner tenant had other accommodation available to him. However, the appellate court instead of considering those documents, has remanded it to the Prescribed Authority for considering the effect of those documents.

In the opinion of the Court, the appellate court is also a court of fact and has the same jurisdiction as that of the trial court. The release application has been pending for the last more than nine years and therefore, the remand would amount to harassment to both the parties.

Accordingly, this petition is allowed to the aforesaid extent and the appellate authority is directed to decide the appeal afresh within a period of three months from the date of submission of a certified copy of this order after considering the effect of the documents brought on record at the appellate stage.

Since this order is being passed at the back of the landlord, he would be entitled to apply for its recall.

3. The Appellate Court by the judgment and order dated 26th July, 2011 has allowed the appeal filed by the landlord observing that the need of the landlord for setting up his son in the business was bona fide and the landlord was likely to suffer greater hardship than the tenant in case the shop was not released. It is this order dated 26th July, 2011 that has been impugned in the present petition.

4. Learned counsel for the petitioner-tenant has submitted that the Appellate Court committed an illegality in holding that the need of the landlord was bona fide. Elaborating this submission, he contended that this finding has been arrived at by the Appellate Court without any discussion and without even reversing the finding of the Prescribed Authority that in the same area, there were many other vacant shops available with the landlord from where he could establish his son in business.

5. Sri H.K. Asthana, learned counsel appearing for the respondent landlord has submitted that the order passed by the Appellate Court does not call for any interference by this Court under Article 226 of the Constitution of India. He has also pointed out that an alternative accommodation was offered by the landlord but the tenant has not accepted the offer of the landlord.

6. I have considered the submissions advanced by the learned counsel for the parties.

7. A perusal of the judgment of the Appellate Court shows that after referring to the various decisions cited by the landlord and the tenant, a conclusion has been arrived at, without considering the factual aspect and without giving any reason, that the need of the landlord was bona fide. The Appellate Court has also not even considered it appropriate to deal with the findings given by the Prescribed Authority that there were vacant shops in the same group of shops available with the landlord for setting up his son in business. The decisions have to be applied to the facts of each case and merely because in certain decisions the Courts have held that the need of the landlord for setting up his son in business is bona fide, does not mean that in every case where the landlord moves an application for release of the shop for the purpose of establishing his son in business, the Court has necessarily to hold that the need is bona fide. Such need of the landlord has to be examined in the light of the facts of each case.

8. In the present case the Prescribed Authority had found as a fact that the landlord had available with him certain other vacant shops in the same group of shops. It was, therefore, necessary for the Appellate Court to deal with this finding but without even reversing this finding and holding that shops were not vacant, the Appellate Court has come to the conclusion that the need of the landlord was bona fide. In such circumstances, it is not possible to sustain the judgment dated 26th July, 2011 passed by the Appellate Court.

9. The judgment and order dated 26th July, 2011 of the Appellate Court is, accordingly, set aside. The Appellate Court shall decide the appeal afresh expeditiously, preferably within a period of six months from the date a certified copy of this order is filed before the Court by either of the parties for the reason that the release application was filed by the landlord in 2004

10. The writ petition is allowed to the extent indicated above.