

(1993) 08 AHC CK 0021

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 15520 of 1993

Om Kant Upadhyaya

APPELLANT

Vs

Xth Addl. District Judge and Others

RESPONDENT

Date of Decision : 30-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 11, 2(1), 21(1), 22

Citation : (1993) 3 AWC 1607

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Advocate : Prakash Gupta and Dilip Kumar Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

M.P. Singh, J.—While deciding an application u/s 21(1)(a) of the U.P. Act No. 13 of 1972 (for short the Act) the authorities are required to examine the element of, need of the landlord and not just the desire to get the accommodation released. The landlord has to show that he genuinely required the accommodation.

2. The Petitioner was a tenant in the ground floor of accommodation No. 27/50 Pathwari, Belanganj, Agra where he has been running an Oil Mill.

3. The Opposite Party No. 2, who is a practicing Advocate, is the landlord. He filed an application for release of the accommodation stating that the accommodation, which is in his possession is not sufficient to meet the requirement. His family consisted of his own self his wife (now dead), two major married sons namely: Mahendra Bansal and Rajesh Bansal and seven grand children. The accommodation in his possession consisted of one room, two Kothas one Varandah, one kitchen and a small open space in the first floor of the building. It was wholly insufficient for his requirement. The ground floor was occupied by the Petitioner, who was running his oil mill therein. The landlord

asserted his need as bona fide.

4. The Petitioner filed a written statement denying the bona fide need. It was further stated that the landlord was having an additional accommodation in house No. 6/326 Belanganj, in the same city. In view of the provisions of Section 2(1) (c) and (d) of the Act, Act No. 13 of 1972 became inapplicable. He was running an Oil Mill. In case the release order was passed, greater hardship would be caused, to him as his entire business will come to a stand-still. He does not have any other accommodation where he can shift his business. Only four Kothas on the ground floor are in his tenancy. The entire first floor of the accommodation is occupied by the landlord.

5. The Prescribed Authority allowed the release application holding that the need of the landlord was bona fide and in case the accommodation was not released then greater hardship would be caused to him.

6. The Petitioner filed an appeal u/s 22 of the Act against the said order. It was dismissed. This Writ Petition is directed against the said order.

7. The first contention raised by Sri Prakash Gupta, learned Counsel for the Petitioner was that since the Petitioner was running an Oil Mill in the accommodation, in view of the provisions of Section 2(1) (c) & (d) of the Act the entire Act became inapplicable. The said provision runs as follows:

2. Exemptions from operation of Act:(1) Nothing in this Act shall apply to:

(a)....

(b)....

(c) any building used or intended to be used as a factory within the meaning of the Factories Act, 1948 (Act No. LXIII of 1948) (where the plant of such factory is leased out alongwith the building); or

(d) any building used or intended to be used for any other industrial purpose (that is to say, for the purpose of manufacture, preservation or processing of any goods) or as a cinema or theatre, where the plant and apparatus installed for such purpose in the building is leased out alongwith the building;

Provided that nothing in this clause shall apply in relation to any shop or other building, situated within the precincts of the Cinema or theatre, the tenancy in respect of which has been created separately from the tenancy in respect of the cinema or theatre.

8. In order to exclude the application of the Act the first ingredient to be proved by the Petitioner is that the plant and machinery attached to the building were also leased out to him. There is no material on record to prove it.

9. Mr. Gupta after raising the contention has fairly conceded that the Petitioner has failed to place any material on record to show that the plant and machinery were also leased out alongwith the building, though half heartedly he made

reference to an agreement dated 23-5-1957 entered into between. M/s. Mahadeo Oil Mills and Daulat Ram. Subsequently M/s. Mahadeo Oil Mills transferred his tenancy rights in favour of Daulatram. The agreement dated 27-10-1965, which was entered into between Daulatram and Aidal Singh, shows that earlier the Mill was being run in the said premises. After the death of Aidal Singh tenancy was inherited by the Petitioner, but none of these documents shows that the opposite party No. 3 has leased out the plant and machinery alongwith the building. In view of the concession made by the learned Counsel, it is not necessary for me to decide this issue.

10. The next submission raised was that the finding on the question of bona fide-need is erroneous in as much as additional evidence: filed by the Petitioner before the appellate authority, have not been taken into consideration.

11. To give strength to his contention he has referred to the certificate issued from Krishi Utpadan Mandi Samiti, National Saving Certificate, the receipts of Agra Nagar Maha Palika, Registration Certificate issued from the Sales Tax Department and some receipts of the, electricity department to prove that the Mill was being run in the said premises. These documents were admitted as additional evidence. I have gone through them very carefully but none of them was relevant to decide the question of bona fide need of the landlord.

12. The learned Counsel further contended that the finding recorded by the appellate Authority that there was no evidence to prove that the Mill was still running is against the record. The documents, which have been filed as an additional evidence, have been examined by me but none of them shows that the Mill was being run on the date of application, so the finding recorded by the appellate Authority is perfectly in accordance with the evidence on record. No error has been committed by it.

13. The entire effort of the learned Counsel for the Petitioner was that the case may be remanded to the appellate Authority but I am of the view that no useful purpose would be served by sending the case to the appellate Authority only for re-writing another judgment. The discussions of the prescribed Authority as well as appellate Authority show that there has been full application of mind to the evidence while recording a categorical finding of fact that the need of the landlord was bona fide and greater hardship would be caused to him if the accommodation was not released.

14. Learned Counsel's next contention was that the orders of both the authorities are extremely sketchy as there is no separate discussion on the question of bona fide need and comparative hardship. The submission has got no force.

15. The findings on the question of bona fide need and comparative hardship are inter connected. Both the authorities have applied their mind on both these points. I am also of the view that both the orders are in accordance with the requirement of Section 21(1)(a) of the Act.

16. The contention of the learned Counsel that the impugned orders are not in consonance with the provision of Rule 16(1)(a) of the Rules framed under the Act, has no substance. According to this rule the prescribed Authority shall, also have regard to the fact that if the landlord already has adequate and reasonably suitable accommodation having regard to the number of members of his family and their respective ages and his means and social status, his claim for additional requirement shall be construed strictly.

17. According to the learned Counsel the social status has a reference to the status of the landlord only and not the status of his relatives.

18. The word "social status" has got a reference to the status of landlord this and this the persons with whom the landlord is connected. There is hardly any doubt that a lawyer has his own social status in the society. The authorities can not ignore the status of the persons with whom the landlord is connected and who visit his house. The social status of the landlord can not be considered in isolation.

19. Mr. Gupta further contended that while considering the application u/s 21(1) (a) of the Act in respect of the building let out for the purpose of any business the prescribed Authority should also have a regard to the greater period since when the tenant has been carrying on the business in that building. According to him the Petitioner has been carrying on the business since 1967 and there is no justification to evict him from the said premises. There is no substance in the contention.

20. The said provision does not create an absolute bar. It is a relative term which has to be looked into and decided by the Authority. If the contention of the learned Counsel is accepted then in that case no release application can be allowed even if need of the landlord is bona fide and the tenant has been carrying on the business in the premises. In the instant case both the authorities were alive to this situation while deciding the release application.

21. The expression "bona fide requirements" u/s 21(1)(a) of the Act has been interpreted in number of cases. The word "bona fide" has an element of genuine need. It has no reference to mere desire on the part of the landlord to get an accommodation but the need has not to be shown as absolute.

22. In the case *Bega Begum, v. Abdul Ahad Khan* 1979 (1) SCC 275, while interpreting the provision of Section 11(1) (h) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966, it was held that:

Moreover, Section 11(h) of the Act uses the words "reasonable requirement" which undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term "need" or "requirement" should not be artificially

extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts" prevalent, in other states in the country. This Court has considered the import of the word "requirement" and pointed out that it merely connotes that there should be an element of need.

23. This case has subsequently been followed in large number of cases. Reference may be made to N. S. Datt v. VIIth Addl. V. District Judge Allahabad 1984 (1) ARC 113, Smt. Kamla Ahuja v. VIth Addl. Distt. Judge, Meerut 1981 ARC 371. Though this Court while exercising its power under Article 226 of the Constitution of India is not sitting as a Court of appeal and normally does not reappraise the evidence, yet Mr. Gupta, the learned Counsel placed before me all the material documents to establish, that the need of the landlord was not bona fide, Even then he miserably failed to make out a case for interference.

24. The concurrent findings of fact recorded by both the authorities that the need of the landlord is bona fide and greater hardship would be caused to him in case the release application was not allowed, do not need any interference.

25. Accordingly I find no merit in this Writ Petition. It is hereby dismissed without any order as to costs.

26. After the judgment was delivered, Sri Prakash Gupta, learned Counsel for the Petitioner, filed an application alongwith an affidavit giving undertaking that the Petitioner would vacate the premises after one year as he is running an oil mill in the accommodation in dispute.

27. The Petitioner is permitted to stay in the accommodation till 31-7-1994. He is directed to hand over peaceful vacant possession of the accommodation in dispute to the opposite party No. 3 on or before 31-7-1994 without inducting any third person in the accommodation. The entire rent till 31-7-94 shall be paid by the Petitioner in advance within a period of one month from today.

28. A certified copy of this order may be issued" to the learned Counsel for the Petitioner within twenty four hours.