
(2006) 09 AHC CK 0216
In the Allahabad High Court

Pema Singh (deceased) and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-09-2006

Acts Referred:

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

Citation : (2006) 4 AWC 4106

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Counsel for the petitioner.

2. This is tenant's petition.

3. Nand Singh-landlord, respondent No. 4 moved an application dated 28.2.2003 for release of shop No. 58 situated in Mohalla Quaziwari, Sikandarabad before the Prescribed Authority on the allegation that Sri Pema Singh was tenant of the disputed shop for the last about 40 years on a monthly rent of Rs. 27.50P. It was averred therein that as the landlord has three married sons, he was in dire need of the disputed shop for opening General Merchant's shop to establish his son Sri Trilochan Singh. The application was registered as Rent Control Case No. 31 of 2001.

4. The release application was contested by the petitioner-tenant by filing written statement denying the plaintiff's allegations. His case was that the eldest son of the landlord was employed in Canara Bank, Sikandrabad and his wife was a teacher in Primary School. Apart from that the landlord was in possession of three shops of which one was got released by him from the tenancy of Mohd. Ikhlq for the need of his second son Sri Charanjit Singh but even after several years of release of the said shop it has remained vacant. He alleged that except his eldest son, the other two sons were carrying on their business from separate shops and that

if the landlord was interested to settle his eldest son in business, he could use the shop vacated by Mohd. Ikhlāq which is already in his possession. He also pleaded that apart from the business of shoe making being carried on by him from the disputed shop, he did not have any other source of livelihood as he is in possession of only one big ha agricultural land.

5. The tenant also filed his additional written statement stating therein that despite his best efforts, he could not search out an alternate shop and that the need of the landlord is not genuine and bona fide.

6. Per contra, the landlord in his rejoinder-affidavit dated 4.12.2003 reiterated the pleas raised in the release application.

7. During the pendency of release application, tenant Sri Pema Singh died on 20.6.2004 and his seven heirs were substituted in his place. During pendency of the substitution application, wife of Sri Pema Singh also died on 2.10.2004.

8. Release application of the landlord was ultimately rejected by the Prescribed Authority vide judgment and order dated 2.3.2005 holding that:

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9. Aggrieved by the judgment dated 2.3.2005, the landlord-respondents preferred Rent Control Appeal No. 6 of 2005 In the Court of District Judge, Bulandshahr which was allowed by the III Additional District Judge, Bulandshahr vide judgment and decree dated 11.8.2006 setting aside the judgment and order

dated 2.3.2005 passed by the trial court and releasing the disputed shop in favour of the landlord-respondents.

10. Aggrieved by the impugned order dated 11.8.2006, the petitioner-tenant has come up in this writ petition.

11. Counsel for the petitioner has vehemently urged that the appellate court miserably failed to consider that the need of the landlord was sham and fictitious. It states that the need of the tenant is neither genuine nor bona fide and that apart from the shop in dispute, the landlord in his possession has three other shops whereas tenant-petitioner has no other place to shift his well established business.

12. The counsel for the petitioner has vehemently urged that the petitioner has been in occupation of the shop in dispute for the last 40 years and there was no default in payment of rent and that the judgment and order passed by the trial court is based on appraisal of record and needs no interference by the High Court as it has rightly been found that the need of the landlord was not genuine.

13. It is submitted that a finding of fact arrived at after appraisal of documentary and oral evidence, could not be disturbed by the appellate court and that apart, notice u/s 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act"), which is mandatory was not served upon the petitioner as such the release application of the landlord was liable to be rejected.

Conclusions:

14. Admitted facts of the case are that Pema Singh (since deceased) is the tenant of the disputed shop for the last 40 years on a monthly rent of Rs. 27.50P and in this shop he carries on business of shoe-making. Landlord has three sons all of whom are married.

15. The case set up by the landlord is that his youngest son Sri Trilochan Singh is interested in running the shop of general merchandise and so the disputed shop is required to settle him in the shop. There are two other shops of the landlord one is in the tenancy of tenant and in the other shop his second son Sri Charanjit Singh carries on his business. There is another shop in the tenancy of his son Sri Gur Bachan Singh which is situated in the mosque where goods of general merchandise are sold.

16. The case of the tenant is that the landlord has three sons one of whom is in service in Canara Bank. The second son runs a business of general merchandise in the shop of mosque. The third son Sri Trilochan Singh used to sit with his brother in the shop of mosque.

17. The appellate court had framed following two issues:

1. Whether the disputed shop is bona fide required by the appellant/applicant for the settlement in merchandise business of his son Trilochan Singh?

2. Whether comparative hardship tilts in favour of the appellant/applicant.

18. As regard first issue, the appellate court held that:

There is no evidence that Charanjit Singh carries on business in the shop, under the tenancy of Guru Bachan Singh which is situated in Mosque. There is also no evidence that Trilochan Singh has obtained a rented shop at Bazar Madho Dass from one Raju Garg.

19. It has further held that the finding of the prescribed authority that the landlord has a shop in the Mosque is also against the evidence on record. It is proved that the shop of the Mosque is in the tenancy of Guru Bachan Singh. The prescribed authority also fell in grave error by holding that in the shop under the tenancy of Guru Bachan Singh business is being carried on by Trilochan Singh. The finding of the prescribed authority to the effect that the landlord is quite aged and he cannot run the shop under the tenancy of Guru Bachan Singh is also erroneous. A person aged about 80 years can also run the shop for three hours without any difficulty. Thus, the finding recorded by the prescribed authority are against the weight of evidence on record. From the evidence it has overwhelmingly been proved that disputed shop is bona fide required to set up Trilochan Singh in the business and issue No. 1 was decided accordingly.

20. In so far as issue No. 2 is concerned, the appellate court held as under:

...When the release application was filed by Pema Singh, the co-sharer of a shop situated in Mohalla Khatriwara, G.T. Road, Sikandrabad which has been sold by his sons and other co-sharers just before the Judgment given by Prescribed authority. Apart from that there are two houses of Pema Singh in Sikandrabad town. As such, I find that the comparative hardship is in favour of the applicant, landlord. If the disputed accommodation is not released then his son Trilochan Singh will be without job. The learned prescribed authority has not considered all these aspects and thus the findings of learned prescribed authority cannot be sustained. Point No. 2 is decided accordingly.

21. A bare perusal of the impugned judgment and decree of the appellate court reveals that the appellate court rightly came to the conclusion that the need of the landlord was genuine and bona fide.

22. In *Ashok Kumar Jaiswal v. District Judge Mirzapur* (1981) 1 RCJ 576 and *Mulk Raj Kapoor v. A.D.J. Bareilly* 1979 ARC 227. it has been held that it is for the tenant to prove that in spite of best efforts, there was no accommodation available with him in the same town. It also referred the decision and that tenant is required to bring evidence to establish nonavailability of alternate accommodation and in case he fails, the finding of hardship is to go against him.

23. In *Lekh Raj Sindhi Vs. Ram Lakhan Gupta and others*, , it has been observed that it is not the responsibility of the landlord to suggest alternate accommodation to the tenant.

24. In Surendra Kumar Vs. Additional District Judge, Nainital and another, it has been held that application of landlord cannot be rejected simply on the ground that the tenant has no other alternate accommodation where he can shift his business.

25. In Saraswati Devi Vs. K.C. Yadav and Another, it was held that failure on the part of the tenant to search alternate accommodation after filing of release application is sufficient to tilt the balance of comparative hardship against him.

26. In Ramesh Chandra Gupta alias Ramesh Gupta Vs. Laxmi Narain, it has been held that where need to settle down son in business is bound to be bona fide and the tenant has alternate accommodation then comparative hardship tilts in favour of the landlord.

27. Rule 16(2) of the Rules framed under the Act clearly provides that where the release application is moved in respect of a building let out for purposes of any business, the prescribed authority shall also have regard to such facts that the tenant has with him suitable accommodation to which he can shift his business without substantial loss and In that event, there shall be greater justification for allowing the release application.

28. In the instant case, perusal of records shows that when release application was filed, the tenant? Pema Singh was co-sharer of a shop situated in Mohalla Khatriwara, G.T. Road, Sikanderabad which has been sold by him and his sons just before delivery of decision by the Prescribed authority. That apart, the tenant has two houses in Sikanderabad town.

29. In so far as finding of the trial court that father of the respondent was not sitting in the shop at Masjid and in fact, his son Sri Charanjit Singh was sitting with his brother, as such statement of landlord is not believable is concerned, the trial court has committed an error on the face of record inasmuch as admittedly Sri Trilochan Singh brother of Sri Charanjit Singh was doing business in the shop in the Masjid which was taken on rent by him and was not owned by the landlord, hence even in case Sri Charanjit Singh for whom need was set up by the landlord was sitting with his brother in the shop in Masjid, that shop is not available to the landlord to settle his son independently in business. It is settled law that landlord has right to settle his son(s) independently. Even if the other son Sri Trilochan Singh was doing business in the shop in the Mosque, the need to settle Sri Charanjeet Singh could not be said to have extinguished even though he may have been helping his brother by sometimes sitting at the aforesaid shop.

30. It is admitted fact that the petitioner had his own shop in which he was co-sharer and it was sold by him just before the judgment of the trial court.

31. In the circumstances, it cannot be said that the action of the tenant in selling his shop was bona fide. Per contra, it appears that his action was mala fide to frustrate the claim of the landlord.

32. For the reasons stated above, I find that there is no illegality, infirmity or perversity in the impugned judgment and decree passed by the appellate court.

33. The writ petition is dismissed. The tenant-petitioner is directed to handover peaceful possession of the disputed shop to the landlords within two months from today and make payment of arrears of rent, if any, within the same time. In case of failure on the part of the tenant-petitioner, he will be evicted from the disputed shop by Police force and the arrears of rent, if any, shall be recoverable as arrears of land revenue. No order as to costs.