

(2011) 01 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 855 of 2011

Pradeep Kumar and Another

APPELLANT

Vs

Shri Krishna Ram Nagar and Others

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2011) 2 ADJ 765

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : O.P. Singh and S.K. Rao, for the Appellant; Vishal Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri O.P. Singh, senior counsel assisted by Sri S.K. Rao, counsel for petitioner, Sri Vishal Agrawal appearing for the landlord respondent and perused the record. This petition is filed against judgment and order dated 10.12.2010 passed by Additional District Judge, Court No. 12, Meerut as well as judgment and order dated 6.11.2007 passed by the Prescribed Authority/Judge Small Causes Court, Meerut.

2. It appears that Sri Babu Lal, father of the petitioners was the tenant of shop No. 44 (new shop No. 43) having area 12" X 25", Kaisarganj, G.T. Road, Meerut. Tenant Babu Lal settled one of his sons i.e. petitioner No. 2 - Sudhir Kumar, in another shop situated at 13, Purva Deen Dayal, Railway Road, Meerut. As regards petitioner No. 1 Pradeep Kumar is concerned, case of the petitioners is that their father the original tenant of the shop in dispute, by a family settlement had permitted him to look after his business alongwith him in the aforesaid shop No. 44, Kaisarganj, G.T. Road, Meerut.

3. Sri Babu Lal expired on 10.2.1999, leaving behind his widow Smt. Santosh Kumari, sons - Pradeep Kumar (petitioner No. 1), Sudhir Kumar (petitioner No.

2), Sandeep Kumar and married daughter Smt. Manju. As regards Sandeep Kumar is concerned, it is stated that he is an engineer and is in service, hence does not require any settlement in business. Smt. Manju, the married daughter of tenant Babu Lal is said to be settled at her in laws house at Faridabad, Hariyana, as such the only two petitioners namely Pradeep Kumar and Sudhir Kumar were settled in family settlement in two shops as stated above.

4. After death of their father Babu Lal, petitioner No. 1 Pradeep Kumar continued business of Hardware of his father in the shop in dispute in the name and style "M/s. Garg & Co. Hardware Store".

5. Contention of the counsel for petitioners is that petitioner Nos. 1 and 2, the two sons of tenant late Babu Lal, were doing separate business since long and they have no concern with each other. Second son - Sudhir Kumar (petitioner No. 2) had been settled by tenant Babu Lal in another shop during his life time, that is to say that tenant had acquired a shop of his own in which he had settled his son Sudhir Kumar in business.

6. According to senior counsel Sri O.P. Singh, the proceedings against petitioner No. 1 is mala fide as it has come on record that landlord respondent No. 1-Sri Krishna Ram Nagar is living with his son and daughter in law at Bombay. He has neither ration card nor his name is recorded in the voter list at Meerut. The purpose of moving application for eviction of the petitioners was for augmenting his income by trading in fertilizer commodity with ulterior motive. He had been issued a licence on 19.1.2006 by the District Agriculture Officer, Meerut which was cancelled on the ground that he had concealed the fact that he had no shop for trading in fertilizer. The appeal filed against cancellation of the licence, is said to be pending before the State Government, hence the Prescribed Authority has not considered the subsequent facts in the impugned order and thus has committed an illegality as these facts had been brought before the authority by means of an application under Order 41 Rule 27, C.P.C.

7. As regards Smt. Santosh Kumari, wife of the deceased tenant is concerned, it has been averred in paragraph No. 14 of the writ petition that at present she is 70 years" old and passing her life with their sons and she has got no concern with the shop in question, It is stated that neither before nor after retirement from military service, the landlord respondent No. 1 ever lived in the city of Meerut and in fact he is living in a flat at Mumbai with his sons and daughter in law, therefore he has no bona fide need of the shop in dispute.

8. It is also stated that prior to moving of the application by the landlord against the petitioners u/s 21(1)(a) of U.P. Act No. 13 of 1972, Sri Atul Kumar Nagar had filed a suit for ejectment in respect of the shop in question in the Court of Judge, Small Causes Court, Meerut against Babu Lal and Pradeep Kumar which was numbered as SCC case No. 111 of 2001, Atul Kumar Nagar v. Babu Lal and another, that the said suit was withdrawn on 4.8.2004 with liberty to file a fresh suit and thereafter the landlord filed this release application against the

petitioners and proforma respondent No. 2 to 5 before the Prescribed Authority for release of shop No. 44, Kaisarganj, G.T. Road, Meerut on the ground that he wants to establish business of fertilizer in the shop in dispute as he is not in a position to pass rest days of his life in paucity of funds. Thus, the release application which was registered at P.A. case No. 40 of 2005, Sri Krishna Nagar v. Sri Pradeep Kumar and others, was liable to be rejected.

9. In paragraph No. 33 of the writ petition, it has been averred that Smt. Devika Nagar-wife of the landlord respondent No. 1, had also moved an application u/s 21(1)(a) of the Act, for release of another shop in which Sri Gurbux was tenant. The said release application was registered as P.A. case No. 41 of 2005, Smt. Devika Nagar v. Gurbux and others, before the Prescribed Authority, Meerut. The aforesaid case against Gurbux and others, was dismissed in default on 4.10.2005 in which restoration application has been filed which is said to be still pending.

10. The Prescribed Authority vide impugned judgment and order dated 6.11.2007 has allowed the release application in P.A. case No. 40 of 2005 filed against the petitioners u/s 21(1)(a) of U.P. Act No. 13 of 1972, directing the petitioner to vacate the shop in question within 30 days and handover its possession to the landlord respondent No. 1 and has further passed orders for payment of damages by the landlord to petitioner for the last two years.

11. According to the counsel for the petitioner, this relief of damages was not even claimed nor there is any provision for payment of damages to the tenant in U.P. Act No. 13 of 1972.

12. Per contra, learned counsel for the respondent landlord has submitted that licence was in existence in favour of the landlord when he had applied for release of the shop in dispute for the purpose of doing business in fertilizer to augment his income. He has placed reliance upon annexure Nos. 7, 8 and 10 appended with the writ petition in support his averments that the landlord respondent has filed the application u/s 21(1)(a) of U.P. Act No. 13 of 1972, for release of both shops i.e. shop No. 44, Kaisarganj, G.T. Road, Meerut in which the petitioner was carrying on his business and the shop in which Gurbux was running his business. He submits that from paragraph No. 2 of the affidavit of Pradeep Kumar, it is apparent that the landlord respondent had applied for release of two shops aforesaid for running his fertilizer business. He submits that from the order which is part of the aforesaid annexure, it is clear that his licence was cancelled on the application moved by the petitioner on the ground that no shop is available with the landlord for running his business. In Annexure No. 10, emphasis has been laid upon conduct of the petitioner wherein also licence of the landlord was cancelled on the application of petitioner, assigning the reason that landlord does not have a shop for running fertilizer business. Relevant extract on which reliance has been placed by the learned counsel, is as follows:

13. According to counsel for respondent landlord, this was an act of malafide of the petitioner as this application was moved by them maliciously to deprive the

landlord from augmenting his income and delaying release of the shop in dispute.

14. As regards the question of comparative hardship is concerned, the counsel has placed reliance on the findings recorded by the Prescribed Authority/Judge, Small Causes Court, Meerut and has argued that the Courts below have considered not only the grounds of objection of the tenant but also the subsequent events and has on the basis of evidence concluded thus:

15. After hearing learned counsel for the parties and on perusal of the record, it is apparent that case of the landlord was that he wanted to augment his income as he was unable to live with his son and daughter in law at Bombay due to their cantankerous nature. It also appears from the array of parties as well as from the record that landlord has a residential flat house No. F-107, Shashtri Nagar, Meerut. It is not necessary for a person that his name should be recorded in the voter list and he should live permanently at a place where he wants to establish his business. Even otherwise, the landlord can live at Meerut away from his son and daughter in law. It is apparent from record that licence of the landlord respondent was cancelled on the application moved by the petitioner that the landlord respondent has no shop to run his business of fertilizer. This application appears to be mala fide.

16. In the admitted facts and circumstances that original tenant Sri Babu Lal had established his second son petitioner No. 2 - Sudhir in business during his life time, it cannot be said that family of the tenant had no place for business except the disputed shop. Once a tenant has acquired a vacant shop, he cannot restrain the landlord from release of the shop under his tenancy from augmenting his income. The need of a landlord in such circumstances would be bona fide particularly when the family settlement between the two petitioners was confined to them only. It appears that fertilizer licence was cancelled with condition that it can be granted again to the landlord respondent if he is able to have a vacant shop. The petitioners have already acquired a shop in vacant state in the same municipal limits where one of the petitioner is running his business, therefore, in view of section proviso to section 21, the Prescribed Authority has rightly awarded two years rent as compensation to the tenant payable by the landlord. Second proviso to section 21 of U.P. Act No. 13 of 1972, reads thus:

Provided further that if any application under clause (a) is made in respect of any building let out exclusively for non residential purposes, the Prescribed Authority while making the order of eviction shall after considering all relevant facts of the case, award against the landlord to the tenant an amount not exceeding two years" rent as compensation and may, subject to rules, impose such other conditions as he thinks fit.

17. In view of the aforesaid proviso, the contention of counsel for the petitioner that there is no provision for awarding compensation under the Act No. 13 of 1972, has no force.

18. The Prescribed Authority it appears has also considered the question of

comparative hardship. The landlord respondent is a retired military officer, therefore, for this reason also he has a right to settle himself in business. I find from the order that it is suffice that if the tenant has an alternative accommodation or shop acquired by him in vacant state during his life time. Any family settlement in these circumstances would not be a hurdle to deprive the landlord from filing a release application for settling himself in business to augment his income and lead peaceful quality life according to his choice. It is apparent that the authorities have considered the whole attending facts and circumstances as well as documents filed by the petitioner in the impugned orders. It is not at all relevant that second son of the tenant is living separately after a shop was acquired by tenant late Babu Lal. Residential accommodation has a different consideration from a business place or shop.

19. In the admitted facts and circumstances of the case, a shop had been acquired by tenant Babu Lal situated at 13, Purva Deen Dayal, Railway Road, Meerut during his life time. The tenancy of the shop in dispute had devolved on his both sons and they were living separately. The intention of framers of the Act is that once a vacant building has been acquired by any member of the family of the tenant, then bona fide need and comparative hardship of the landlord would be greater and the tenanted portion is liable to be released on the application moved by the landlord i.e. the spirit behind the provisions of section 21(1)(a) of U.P. Act No. 13 of 1972. For all the reasons stated above, there appears to be no illegality or infirmity in the orders impugned. The writ petition has no force and is accordingly dismissed. Since family of the petitioner has already a shop situated at 13, Purva Deen Dayal, Railway Road, Meerut, one month's time is granted to the tenant petitioners to vacate the shop in question and shift their goods to their own shop aforesaid acquired by tenant Babu Lal during his life time. No order as to costs.