
(2006) 05 AHC CK 0165
In the Allahabad High Court
Case No : Writ Petition No.570 (R/C) of 1989

Prakash Chandra Agarwal	Vs	APPELLANT
8Th Addl.District Judge, Lucknow and Otehrs		RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

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

Citation : (2006) 05 AHC CK 0165

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—This writ petition was filed in the year 1989.

Case called out. None is present for the petitioner.

The following counsel appear for the petitioner:

1. Sri Umesh Chandra, Sr. Advocate,
2. Sri Krishna Chandra, Advocate,
3. Sri S.Dixit, Advocate,
4. Sri B.C. Agarwal, Advocate, and
5. Sri P.Kumar, Advocate.

2. It was pointed out to the Court by Sri Prashant Kumar Singh holding brief for Sri B.C. Agarwal, learned counsel for the petitioner that Sri B.C. Agarwal is on sanctioned leave today and as such the case be adjourned. The other learned counsels mentioned in the list have not put in appearance; they have not been discharged by the petitioner and the case being an old one, the request for adjournment is declined.

3. Sri Prashant Kumar Singh, junior of Sri B.C. Agarwal, Advocate was requested

to argue the case. The file of the Court was also handed over to him to enable him to prepare the case. The matter was taken up after some time.

4. This writ petition was filed assailing the judgment and order passed by the VIII Additional District Judge, Lucknow on 26.11.1988 by which the Prescribed Authority's order dated 13.2.1987, rejecting the release application of the landlord has been set aside. The release application was submitted by the landlord for release of one shop situated House No.39/7577 Narhi Bazar, Ram Tirath Marg, Lucknow. The tenant was paying Rs.75/ per month as rent for the said shop situate at Narhi Bazar in the central area of Lucknow city, near Hazratganj, a famous shopping area.

5. The landlord had submitted that he was occupied in selling milk and wanted to settle his young son in business. He also wanted to augment his family income as he had a large family consisting of nine members. Details of the family at the relevant time were given in the release application. It was further submitted by the landlord in the release application that the opposite party is a rich and moneyed man. He had purchased a very spacious building Shanti Bhawan in Narhi Bazar, Lucknow in addition to his House No.41/25060, which is situate about 20 yards away from the shop in question. In the said house, there are four spacious shops, out of which two shops are already in possession of opposite party. One shop, occupied by the opposite party, was being used for running a flourmill, while the second shop is absolutely lying vacant and unused and the opposite party was keeping it under his locks and keys. Besides this, he is also living in the same building and earning Rental Income. Admittedly, the tenant's sons were comfortably engaged in business.

6. As per landlord, he did not own or occupy any other commercial accommodation in the city of Lucknow and comparing the respective needs of the parties, the need of the landlord was much genuine and bona fide. The tenant was enjoying large properties and rental income. His family was comfortably established in the same area.

7. The allegations of the landlord in regard to the tenant enjoying rental income etc. were denied by the petitioner-tenant and the release application was opposed on several grounds.

8. The Prescribed Authority turned down the release application which was filed on 13.2.1987. The Prescribe Authority was of the opinion that landlord's son Sushil Kumar Pal was doing business of selling milk and milk products in a shop in Luxmanpuri, near Ram Sagar Mishra Nagar colony, in the city of Lucknow and according to him, the landlord was not bonafidely requiring the shop. However, being aggrieved of this order, an appeal was filed before the District Judge, Lucknow.

9. The appellate Court has passed a detailed, reasoned order running in 10 pages. The appellate authority has dealt with all the points, which were raised by the landlord and tenant. On the basis of documentary and oral evidence, it has

formed the opinion that the tenant Prakash Chandra Agarwal was already having two houses, four shops and was running flour mills. He was having a building with shops in the name of his wife. The tenant was enjoying rental income also as owner of large properties in Narhi Bazar area. The tenant's son Anoop Kumar was already settled in a shop having his flourmill. The details of the two houses, four shops owned by the tenant Prakash Chandra Agarwal have been indicated in the judgment. The findings of facts were arrived at on the basis of oral and documentary evidence. The learned appellate Court has discussed the availability of sufficient accommodation with Prakash Chandra Agarwal in Narhi Bazar, Lucknow. He was running twothree flour mills in the area. In one big shop, his son Anoop Kumar was carrying on a Provision Store also. Third shop was vacant. The appellate authority has appreciated the fact that the landlord's son Sushil Kumar was not doing a permanent business nor had his own shop in Laxmanpuri area. He bonafidely needed the shop in dispute. The landlord like every father wanted his own shop for settling his son in life. He could run a Hotel or other business from the shop in dispute. Although the tenant had indicated before the appellate authority that landlord's son Sushil Kumar was doing business in Ram Sagar Mishra Nagar and was running a Tempo Taxi, the case of the landlord was that the shop was a rented one and the tempo plying was closed. One had to do something for earning his livelihood and not to sit idle waiting for the result of litigation.

10. The petitioner in the writ petition has challenged this appellate order on several grounds. Several points have been raised in the writ petition. Tenant has reiterated his earlier submission made before the appellate authority that the landlord's need was not bonafide and genuine. According to him, the finding of the appellate Court that Sushil Kumar, son of the landlord, who was having his shop at Ram Sagar Mishra Nagar area, was having bonafide need to do business at Narhi Bazar, was unjust and improper. The petitioner is already running his shop, business of flour mill in the shop at Narhi Bazar area and as such he will face immense difficulty. The tenant has tried to demonstrate in the petition that his need is genuine.

11. I have heard Sri Agendra Sinha, learned counsel for the respondent. Sri Prashant Kumar Singh, briefholder of Sri B.C. Agarwal, learned counsel for the petitioner despite time being allowed to him did not put forth his version. He declined to argue the case. The other four learned counsel, whose names are indicated in the first para of the judgment have also not come forward to assist the Court. The Court has given about one hour's time to the learned counsel for the petitioner to prepare the case, go through the Court's file or call other counsel who filed their Vakalatnamas. The learned counsel failed to avail the opportunity and prepare the case. Anyway the case is being disposed of on the basis of material on record. I have appreciated the documents and heard the learned counsel for the respondents. The case relates to the year 1989, it is about 17 years" old and is to be disposed of expeditiously.

12. The order passed by the appellate authority appears to be just and proper. The judgment satisfies the touch stone of the law laid down by the Apex Court in a string of recent decisions vide 2005 (2) ARC 899, B.C. Bhutada v. G.R. Mundada, and this Court in various judgments, following the principles of law laid down in the said case, has held that in respect of comparative hardships, if the tenants did not show what efforts they made to search an alternative accommodation after filing of the release applications, this fact was sufficient to tilt the balance of hardship against him. The landlord had bonafide need to settle his son in business in his own shops situate in Narhi Bazar, Lucknow. The Hon"ble Supreme Court has held in a judgment, reported in AIR 2005 SC 252 that it is not the tenant who can dictate terms to the landlord and advise him what he should do and what he should not. It is always the privilege of landlord to choose the nature and place of business. The father had rightly wanted his son to establish business in his own shop at Narhi Bazar. The landlord was carrying on business in a small shop.

13. The appellate Court had found, on the basis of documentary and oral evidence which was available on record, that the tenant was already having two big buildings, four shops in Narhi Bazar area in the same locality. He was comfortably placed in business. His son Anoop Kumar was carrying on the flourmill and business of selling general merchandise in his own shops. The appellate authority has appreciated that the tenant was having a regular monthly income also by renting out a portion of his house at 39/7577 Narhi Bazar, Ram Tirah Marg, Lucknow and Shanti Bhawan. He had two tenants and four shops in his possession. It was proved before the appellate Court and this Court that the landlord was having one shop in Ram Tirath Marg, Lucknow and he wanted to settle his son Sri Sushil Kumar in business in his own shop in Narhi Bazar area. The learned appellate Court has rightly appreciated that the shop in Ram Sagar Mishra Nagar was a rented shop. The appellate Court came to the conclusion that the landlord and his son were not engaged in running of tempo. However, this fact is irrelevant as far as release of the shop in question is concerned.

14. Interestingly, the tenant's son is enjoying comforts of a rented shop while the landlord's son was at one time driving a tempo to sustain himself. The landlord was running business from a small shop while the tenant is having his own large properties, shops in the same area. The tenant was sticking to the shop on a low rent. The opinion of the learned appellate Court is just and proper. The judgment is a detailed, wellconsidered and reasoned judgment.

15. It is noteworthy that appellate Court has also appreciated the fact that after filing of the release application in the year 1980, the tenant had not made sincere efforts to find out alternative accommodation. It is now settled law that when the release application is given before the Prescribe Authority, the tenant must find out suitable accommodation. He cannot force the landlord to allow him to run his business from the same shop rented out to him on a meager rent long ago. Moreover, it has not been shown before the Court below that under Rule 10

of the Rules framed under the Act XIII of 1972, the tenant made any application to the appropriate authority for allotting some other accommodation. Such an effort must have been made by the tenant. Several commercial complexes, shops were built in the area after 1980 and soft loans are also being provided by the banks to aspirants.

16. I find no illegality or irregularity in the judgment and order passed by the appellate Court. The writ petition is dismissed. The petitioner shall vacate the shop in question within one month from today. The order has been passed in presence of learned counsel for the parties. They shall inform the Registrar of this Court by filing an affidavit after one month that the shop in question has been vacated and peaceful possession of the same has been handed over to the landlord.

17. This Court has noted that the petitioner is enjoying interim order for the last 17 years and is paying a meager rent of Rs.135/ per month for the premises, which is no rent in eye of law considering the location of the shop. This Court is of that the landlord should get Rs.500/ per month as rent for the shop rented out to the tenant petitioner calculating the rent for a period of 16 years. However, this Court is of the view that the tenant Prakash Chandra Agarwal shall pay Rs. 50,000/ to the landlord within three months from today as arrears of rent and expenses of litigation.

(Petition dismissed)