
(1989) 07 AHC CK 0095

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3404 of 1983

Prem Prakash Dhawan and Others

APPELLANT

Vs

Special Judge (Addl. District Judge) and Others

RESPONDENT

Date of Decision : 31-07-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 22, 34

Citation : (1989) 2 AWC 1419

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : Ravi Kiran Jain, for the Appellant; Tarun Varma, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India arising out of proceedings u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, U.P. Act No. 13 of 1972 (hereinafter referred to as the Act).

2. The property in dispute is a shop bearing municipal No. 2/653/3 situate on Fort Road, Saharanpur. One Sri Mangal Sen was the original tenant of the said property. The Petitioners No. 2 to 6 are his heirs. Thereafter the property was taken on rent by the Petitioner No. 1 Prem Prakash Dhawan on a monthly rent of Rs. 125/- per mensem. The landlords of the said property are Mr. J.B. Dias, Mrs. M.P. Jackson, Mrs. S.M. Howard and Mr. P.R.D. Jackson. They moved an application u/s 21(1)(a) of the Act for release of the accommodation on the ground of personal need. Mr. J.B. Dias is the maternal uncle of Mrs. M.P. Jackson and Mrs. S.M. Howard. He will be referred to as the applicant No. 1 hereinafter. Mrs. M. P. Jackson is the wife of Mr. P.R.D. Jackson and sister of Mrs. S.M. Howard. She will be referred to hereinafter as applicant No. 2. Mrs. S.M. Howard is the sister of Mrs. M.P. Jackson and wife of Mr. B.A. Howard and will be

hereinafter referred to as applicant No. 3. Mr. P.R.D. Jackson, the husband of applicant No. 2 shall be hereinafter referred to as applicant No. 4.

3. Applicants 1 to 4 are Respondents 3 to 6 in the present petition.

4. The release application was filed by applicants 1 to 4 setting up the need of all the applicants. It was stated that applicant No. 1 is a retired person and was residing in Canada when the application was filed. It was stated that he was expected to come to Saharanpur and reside in the house there and that since he has no business of his own, he will join in the general merchandise business with applicant No. 4.

5. The applicant No. 2 set up a case that she is a trained beautician and she wants to establish a Beauty Parlour in a portion of the accommodation in dispute. In the other portion, it is alleged that her husband applicant No. 4 who was then serving in the Indian Air Force as Flying Officer was to retire shortly at the time of filing of the release application, and consequently, it was alleged that the accommodation will be needed to settle applicant No. 4 in some business after retirement from Air Force and that he intends to open a general merchandise shop in the disputed accommodation.

6. So far applicant No. 3 is concerned her case was that her husband is a Squadron Leader in the Indian Air Force. He was likely to retire and that the accommodation is required for opening a proposed business. In fact he was to join in the general merchandise business along with applicant No. 1 and 4.

7. In effect the need which was set up was to open two businesses in the shop in dispute one was general merchandise business jointly run with applicant No. 1, the husband of applicant No. 3 and applicant No. 4 and applicant No. 3 was to open a beautician shop in the premises.

8. The case set up in the release application was that the tenant Petitioner no 1 was carrying on shoe business at a very small scale and he can conveniently shift to any other place without any substantial loss of business as near the shop in dispute and in the nearby locality other shops are available in Trilok Chand Jain Market, Sofia Market and other adjoining places and that he can very well afford to take shop in those markets. It has also come on record that applicant landlords have got a residence on the first floor and consequently, it was alleged that the ground floor portion of the house which is a shop in dispute is the best accommodation for the applicants to carry on their respective business.

9. The release application was contested by the Petitioner No. 1 and the need set up by the applicant Respondents was denied, and it was specifically alleged that applicant No. 2 is already running a Beauty Parlour by the name of Jackson Beauty Parlour on the first floor of the accommodation and as such, the accommodation in dispute is not required. So far as applicant No. 4 was concerned, it was alleged that he will get pension after retirement and consequently, there was no need to open a general merchandise shop.

10. The Prescribed Authority after considering the evidence on record categorically recorded a finding that the need of the applicant Respondents was bonafide and genuine and that greater hardship would be caused to them in case the release application is not allowed. Hence by an order dated 15th April 1980, the release application filed u/s 21(1)(a) of the Act was allowed.

11. Aggrieved by the decision dated 15th April, 1980, a Rent Control Appeal No. 119 of 1980 was filed by the Petitioner tenants u/s 22 of the Act. The appeal came up for hearing before the Additional District Judge, Saharanpur, who by his judgment dated 29th January 1983, dismissed the appeal and directed that the Respondent landlords will deposit in the court or pay to the Petitioners two years' rent as compensation within three months as required by law.

12. The tenant Petitioners have now challenged the orders dated 15th April, 1980 and 29th January, 1983 by means of the present petition.

13. It is to be noted that both the Prescribed Authority as well as the Appellate Authority have concurrently found that the need of the applicant Respondents was bonafide and genuine and that greater hardship would be caused to them in case the release application is not allowed.

14 I have heard learned Counsel for the Petitioner tenants and learned Counsel for the applicant Respondents.

15. Learned Counsel for the Petitioner has challenged the concurrent findings recorded by both the authorities below on the following grounds.

16. It is urged firstly, that so far as applicant No. 1 is concerned, he had no need as he was living in Canada. He only wanted to sell the property and the appellate authority had acted illegally and with material irregularity in exercise of its jurisdiction in not considering the letters filed by the Petitioner in this regard. Secondly it was urged that the court below erred in holding that the need of applicant No. 1 and 3 was bonafide inasmuch as neither applicant No. 1 nor applicant no 3 had filed their own affidavits before the Prescribed Authority and in the absence of their personal affidavits, it should be taken that they have no need. Thirdly, it was urged that so far as applicant No. 2 is concerned she stated that she did not carry on business on the first floor. The finding recorded by the Appellate Authority taking it to be admitted that she was carrying on business on the first floor is a finding vitiated in law and it is based on wrong premise. Fourthly it was urged that so far as applicant No. 4 was concerned, the income from the business carried on by applicant No. 2 was sufficient for the purpose of applicant No. 4 and consequently, he did not have any need of the accommodation.

17. The finding in regard to need was further challenged on the ground of subsequent events. It is urged that applicant No. 1 has since died. The husband of applicant No. 3 is residing in Dehradun and further the landlords have got released a portion of shop in dispute which was vacated by A. Mayor and they

are carrying on the business of eggs in the said accommodation. Consequently now, the need if any has been wiped out and as such, the release application cannot be allowed.

18. The finding in regard to comparative hardships has also been challenged on the ground that since there is no finding that an alternative shop is available to the Petitioner No. 1 where he can shift his business as such this finding is also vitiated in law.

19. I will now consider the submissions made by the learned Counsel seriatim.

20. In so far as first submission is concerned, this submission, in my opinion, does not have any substance. I have examined the judgment of the Appellate Authority. The relevant portion of the judgment of the Appellate Authority is as follows:

The Appellant with an affidavit 81 C had filed letters of Mr. J.R. Dias Respondent No. 1 addressed to his friend Mr. Farnandis to the effect that he is interested in selling his property. An affidavit of Mr. Farnandis proving these letters has been submitted. The Respondent P.R.D. Jackson has filed a counter affidavit denying all the facts mentioned in the aforesaid two letters and has contended that these letters have been obtained with ulterior motive and due to the fact that Mr. Farnandis and Sri Dhawan are friends. A perusal of these letters will show that both the letters have been written in reply to the letter of Sri Farnandis who appears to have written to him that he is interested in purchasing this property. He had asked for more information and has thanked for his kind offer. Similarly in the other letter again Mr. Farnandis appears to have offered Rs. 60,000/- for purchase of the property and Mr. Dias has simply written that he is making a new power of attorney. These letters do not show in any way that Sri Farnandis is interested in this property or this application has been mala fide moved so that he can sell this property.

It is, therefore, clear that it cannot be said that the letters filed by the Petitioner to establish that the applicant No. 1 wanted to sell the property were not considered by the Appellate Authority. The Appellate Authority did consider the letters and then came to the conclusion that applicant No. 1 has not moved this application for release in order that he may be able to sell his property.

21. In regard to the second submission made by the learned Counsel for the Petitioner, it is not disputed that both applicant No. 1 as well as applicant No. 3 had executed a power of attorney in favour of applicants 2 and 4. Both applicants 2 and 4 are very close relative of applicants 1 and 3 and they are fully competent and had full knowledge of the fact about the need of applicants 1 and 3. In the circumstances, it cannot be said that merely because applicants 1 and 3 did not file their own affidavits, the authorities below erred in holding in their favour.

22. It is pertinent to mention here that Petitioner did not take any objection in regard to the non-filing of the affidavit by applicants 1 and 3 either before the

Prescribed Authority or before the Appellate Authority. In any case this question has now become purely academic as the applicant No. 1 has already died during the pendency of this petition and so far as applicant No. 3 is concerned, her husband for whom the property was required to be released has already filed a detailed affidavit in this Court dated 31st March, 1989 stating categorically his need for the accommodation in dispute.

23. Learned Counsel for the Petitioner in support of his contention has relied on a decision of the Bombay High Court in Nanalal Goverdhandas and Co. and Others Vs. Samratbai Lilachand Shah, . Learned Counsel has relied on the dictum laid down by the Bombay High Court that if the landlord does not step into the witness-box to bring before the court legal evidence for proving his requirement, then it cannot be said that he reasonably and bona fide required the premises. The law as laid down by the Bombay High Court is, however, not applicable to the U.P. Act. Under the present U.P. Act, Section 34 specifically empowers the Prescribed Authority to receive evidence on affidavits. It is not necessary for the landlords who move release application to appear in the witness-box and to be examined on oath. This procedure is not contemplated under the U.P. Act. No doubt power has been given to the court to summon and enforce attendance of any person and examine him on oath but unless the court exercises its power, the case has to be decided on the basis of evidence on affidavits. In the instant case as already observed above, affidavits were filed stating the needs of applicants 1 and 3 by their very close relatives and holders of power of attorney and both the authorities below have believed the said affidavits. In the circumstance, it cannot be said that merely because the affidavits of applicants 1 and 3 have not been filed, the concurrent findings recorded by both the authorities below in regard to bonafide need is in any manner vitiated in law. In my opinion this submission lacks substance.

24. The third submission raised by the learned Counsel is also in my opinion without substance. It was the Petitioner's own case that applicant No. 2 was carrying on business of Beautician shop on the first floor of the accommodation and it is on the basis of Petitioner's own case that the Appellate Authority has found that the need for opening a Beautician shop was pressing and genuine, as according to the case of the Petitioner himself, the said Beautician shop business was being carried on in the residential portion of applicant No. 2. In fact the shop is in a portion of the drawing room of applicant No. 2. If the landlord is forced to carry on business in the landlord's drawing room because of the shortage of space and he requires the accommodation for carrying on business other than residence, it cannot, possibly, be said that the need of such a landlord was not genuine. In my opinion, the finding recorded by the Appellate Authority is not vitiated merely because the Appellate Authority considered the question of bonafide need on the own case set up by the tenant. In fact the record shows that the applicant No. 2 had categorically stated that she was not carrying on any business, but the finding has been recorded accepting the own case set up by the tenant Petitioner.

25. The fourth submission is in regard to applicant No. 4. It is not disputed that applicant No. 4 retired many years back from the Indian Air Force. Applicant No. 2, the wife of applicant No. 4, is, according to the tenant, carrying on a Beautician shop In this shop applicant No. 4 cannot possibly work. In any case the applicant No. 4 has an independent right of carrying on his own business as he retired at a very young age from the Indian Air Force. If at all the applicant No. 4 is only getting retirement benefits and nothing more and no other evidence has been produced to establish any other income, in the circumstance in my opinion, so far as the fourth submission of the learned Counsel is concerned, this also does not have any force.

26. In regard to the question of subsequent events, it is now well-settled by the Hon"ble Supreme Court in the case of M/s. Variety Emporium v. R.M. Mohd. Ibrahim, AIR 1985 SC 207 that in suit for eviction on the ground of bonafide requirement of premises by landlord the subsequent events ought to be taken into account for the purpose of finding out whether the landlord still required the accommodation in possession of the tenant. In appropriate cases, the court must have regard to events as they present themselves at the time when it is hearing the proceedings before it and would (grant) the relief in the light of those events. In the light of the above, the submission made by learned Counsel for the Petitioner has to be examined.

27. Supplementary affidavits have been filed by the Petitioner in this Court which have been controverted by the landlord Respondents. It is in the light of these subsequent alleged events the question to be considered is as to whether the subsequent events will have an effect on the concurrent findings recorded by both the authorities below in regard to the bonafide need.

28. It is not disputed that applicant No. 1 has since died. He was in Canada. He was only one of the co-landlords who was wanting to join in the business to be carried on by applicants 3 and 4 In the circumstances even if applicant No. 1 has died, the need of the Other three landlords still continues and since the need of applicant No. 1 was not independent but joint with the other applicants, therefore, in my opinion, it does not effect ultimate finding given in regard to the bonafide need in favour of applicants 2, 3, and 4.

29. Learned Counsel for the Petitioner has urged that at present the husband of applicant No. 3 is residing in Dehradun and further that the landlords have got released a portion of the shop in dispute which was vacated by A. Mayor and they are carrying the business of eggs in the said accommodation. This question has to be examined.

30. The Petitioner filed a supplementary affidavit dated 27th March, 1989 stating therein that Sri B.A. Howard husband of applicant No. 3 has joined some service after his retirement. He further stated that he has been re-employed by the Government of India with effect from 19-12-1988 in Air Force Service Selection Board, Dehradun and consequently, his case was that he does not intend to come

back to Saharanpur for occupying the premises in dispute. Sri B.A. Howard filed a supplementary counter affidavit dated 31st March, 1989 denying the allegations made by the Petitioner in his supplementary counter affidavit dated 31st March, 1989. Sri B.A. Howard has categorically stated in paragraph 4 of his supplementary counter affidavit that he retired from the Indian Air Force on 30th October, 1988. Even before his retirement and in contemplation of retirement he shifted his belongings to Saharanpur in the back portion of the house in dispute, which was got vacated by the earlier tenant Mr. A. Mayor. This back portion is in the state of disrepair. There is no direct link to this accommodation from the main road. For reaching the ground floor accommodation he and his family members have to first get to the first floor accommodation occupied by applicant No. 4 and, thereafter, come down through the back stair case. It has been further stated that because of the fact that property in dispute was not released due to protracted litigation, Mr. Howard was constrained to take a temporary nature re-employment with the Indian Air Force to avoid total unemployment. It has been further stated that the nature of the re-employment is purely temporary and conditional inasmuch as he can be relieved from his re-employment at any moment. It has been further stated that though he is posted at Dehradun, the applicant No. 3 along with her family members stay at Saharanpur and only visit occasionally in Dehradun. He has further stated that the moment the accommodation in dispute is released, he would resign from the re-employment and start the business in the accommodation in dispute. There is no denial by the Petitioner of the allegations made in supplementary counter affidavit dated 31st March, 1989. In the circumstances, I am inclined to believe the averments made in the supplementary counter affidavit by Sri B.A. Howard. In view of the above by the mere fact that a temporary re-employment has been taken by Sri B.A. Howard, it cannot be said that the need of applicant No. 3 has been wiped out.

31. In regard to the allegations that applicant No. 4 is carrying on business of eggs in the accommodation which is behind the shop in dispute, this allegation has been made by the Petitioner in paragraph 10 of the supplementary affidavit dated 3rd August 1988. Paragraph 10 of this affidavit states that the ground floor portion which has been got vacated from Anil Mayor is being used by applicant No. 4 in which he is running poultry farm on a large scale. Applicant No. 4 has filed a supplementary counter affidavit dated 21st August, 1988. In paragraph 8 of the supplementary counter affidavit, it has been specifically denied by applicant No. 4 that he is running a poultry farm on a large scale in the alleged accommodation. Thereafter, applicant No. 4 again filed another supplementary counter affidavit dated 26th February, 1989. In paragraph 5 of this supplementary counter affidavit, it has been further stated that both applicant No. 3 and her husband have shifted to Saharanpur and are living in the accommodation in dispute with great difficulty. The accommodation which has fallen vacant is in the back portion and there is no direct link from the main road. The Petitioner has not filed any other evidence to establish that applicant No. 4 is

carrying on business of poultry farm in the portion behind the disputed accommodation. This portion of accommodation in fact, was released for residential purposes for the applicant No. 3 and her husband. It is on the back side and there is no direct link from the main road to this portion. The question of carrying on the business of poultry farm in the said accommodation, therefore, does not arise. This subsequent event which has been alleged by the Petitioner is, in my opinion, without any basis and has been made simply to prejudice the mind of the court.

32. In regard to the last contention by which the Petitioner has challenged the findings in regard to comparative hardship, it may be pointed out that both the Prescribed Authority as well as the Appellate Authority have considered this question in great detail and have come to the conclusion that greater hardship would be caused to the landlords if the release application is not allowed. The Prescribed Authority as well as the Appellate Authority has found that the tenant can easily shift his business to some other accommodation. The contention of the Petitioner is that since there is no finding that an alternative shop is available to the Petitioner, the finding in regard to the comparative hardship is vitiated in law. In my opinion, this contention has no substance. The Act or the Rules do not contemplate that a shop can only be released when an alternative accommodation is provided to the tenant.

33. In view of the above, I am of the opinion that both the findings in regard to the bonafide need as well as comparative hardship are valid in law and are not vitiated in any manner. There is no such subsequent event which has an effect on the findings recorded by both the authorities below.

34. From the facts established from record, it is clear that applicant No. 2 is carrying on a Beautician shop in a portion of her drawing room in the residential first floor. She, consequently, does require the accommodation in dispute for carrying on her business of Beautician. So far, as husband of applicant No. 3 is concerned, he has retired in 1988 and he requires the accommodation for running a business in a portion of the disputed accommodation. Similarly applicant No. 4 retired in 1979 from the Air Force at a young age and he has already been fighting his litigation for the last more than ten years. The needs of all the three applicants No. 2, 3 and 4 have been found to be genuine.

35. In the interest of justice, consequently, I do not find it a fit case to interfere under Article 226 of the Constitution of India. The petition is consequently dismissed. Parties are directed to bear their own costs.

36. In the interest of justice, however, I grant three months" time to the Petitioner to vacate the accommodation in dispute provided that he gives an undertaking before the Prescribed Authority within a month from today that immediately after the expiry of the period of three months, he will hand over vacant possession to the landlord Respondents. In case no undertaking is given the release order shall be enforced forthwith.