

(2011) 01 UK CK 0006

In the Uttarakhand High Court

Case No : Writ Petition No. 4128 of 2001

P.R.Narang (deceased) by L.Rs. of late P.R. Narang

APPELLANT

Vs

IIIrd Addl. District

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

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

Citation : (2011) 01 UK CK 0006

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—An application was instituted in the year 1983 for the release of the ground floor at 9 Gandhi Road, Dehradun by the landlord Prem Singh u/s 21(1)(a) of the U.P. Act No. 13 of 1972 (hereinafter referred to as "Act"). The release application contended that Prem Singh was the owner and landlord of the premises No. 9, Gandhi Road, Dehradun and that the landlord and his family resided on the first floor and that the ground floor was being occupied by the tenant opposite party where he is carrying on his business. The landlord contended that initially, there were three shops on the ground floor, which was let out to three different tenants, namely, Dwarka Das, Mangat Ram and P. R. Narang opposite party, but, over a period of time, the opposite party managed in such a way that he became the tenant of the entire ground floor. The landlord contended that he has a wife Premvati and three sons, namely, Inder Singh Verma, Mahendra Singh Verma and Ashok Kumar Verma and, that all his three sons are required to be established independently in some business. It was stated that Inder Singh Verma is married and has a wife and a son and two daughters and that Mahendra Singh Verma has a wife and two sons and that his youngest son Ashok Kumar Verma has a wife and a son. The landlord contended that he is doing a jewellery business at 25, Dhamawala Bazaar, Dehradun from a tenanted shop measuring 12" x 14", which is under his tenancy and that

because of no available shop, his two sons are also doing the business alongwith him which is becoming insufficient and that the youngest son is doing business in furniture from a place in Ghosi Gali and, on account of his increase in the business, the said shop had become insufficient for his needs and, in any case, the premises at Ghosi Gali is in a side lane and is not on the main road. The landlord contended that Inder Singh Verma met with an accident and he had to be operated on his foot and now cannot walk long distances and therefore if the premises is released, Inder Singh Verma could start his business from this premise and he would not have to walk a long distance. The landlord also contended that his second son Mahendra Singh Verma also needed the premises to start a separate business in a different line in jewellery business and therefore needs to become independent. The landlord also contended that the tenant had acquired another premises at 10, Gandhi Road, Dehradun which is opposite to the premises in question and where the tenant could easily shift his business.

2. The tenant resisted the application and contended that the landlord had no bonafide need and that the tenant had earned a goodwill and that hardship would be more greater than that of the landlord in the event he is evicted from the premises in question.

3. The prescribed authority, after considering all aspects of the matter, held that the bonafide need of the landlord was established only to the extent for one of his sons, namely Inder Singh Verma and, consequently, partly allowed the application and released half portion of the premises in question. The landlord and the tenant filed an appeal before the appellate court, which were dismissed.

4. The tenant and the landlord, being aggrieved, have filed separate writ petitions which have been clubbed together and are being decided by this common judgment.

5. Heard Sri Ravi Kant, the learned senior counsel duly assisted by Mr. D. Barthwal, the learned Counsel for the tenant and Mr. Arvind Vashisht, the learned Counsel duly assisted by Mrs. Monika Pant, the learned Counsel for the landlord.

6. During the pendency of the writ petition, the landlord Prem Singh died and one son, Mahendra Singh Verma also died. In the light of the aforesaid, the learned senior counsel for the tenant has only raised one point, namely, that in view of the subsequent events which has taken place during the pendency of the writ petition, the landlord's need has dissipated and in fact has come to an end and, consequently, since no bonafide need exists, the orders of the prescribed authority as affirmed by the appellate court releasing half portion of the premises in question was liable to be set aside. The learned senior counsel for the tenant submitted that during the pendency of the writ petition, the widow of the landlord applied for the release of premises No. 4, Gandhi Road, Dehradun which was allowed by a judgment dated 01.07.1997 and the building was released in favour of the widow of the landlord. Subsequent to the release of the said building, two shops were constructed and, in one shop, Inder Singh Verma

started his business of jewellery in the name and style of" "M/s Krishna Jewellers", and in another shop, Mahendra Singh Verma started his business of jewellery in the name and style of "M/s New Verma Jewellers". It was also stated that upon the death of Mahendra Singh Verma, his widow was looking after the business. It was also stated that the third son was doing business of steel and furniture at 77, Ghosi Gali in the name and style of "Ashok Steel and Furnitures". In the light of all these subsequent events, the tenant contended that the bonafide need of the original landlord for the release of the premises in order to set up the business for his three sons has now dissipated and no longer exists, and therefore, the impugned orders releasing half portion of the premises should be set aside. The tenant further filed a supplementary affidavit alleging that the widow of Mahendra Singh Verma had let out the eastern portion of the shop, where she was carrying her jewellery, to M/s Amba Telecom and that upon, the death of the widow of the landlord, she left a registered will by which the disputed property was left jointly to the two sons and widow of the third son.

7. On the other hand, Mr. Arvind Vashist, the learned Counsel for the landlord submitted that the need of the landlord has not come to an end upon the death of the landlord and that the need still subsists. The release application clearly indicated that the premises was required to set up the business for his sons and not for the original landlord and that the need to do the business for the three sons still existed. The learned Counsel for the landlord submitted that since the litigation was going on and the premises was not released, the sons could not sit idle and, consequently, another release application was moved and, upon the release of the said premises, two sons have started their business. The learned Counsel for the landlord submitted that by starting the business, the need has not come to an end since over a period of time the family of the three sons of the original landlord had also grown and, consequently, the need still subsisted to expand and settle the family of the sons of the original landlord. It was stated that Inder Singh Verma has one son Ashok, who is unemployed and that the second son Mahendra Singh Verma, who has died during the pendency of the writ petition, had left behind his wife and three sons and that the third son of the original landlord Ashok Kumar Verma also has a wife and a son. It was also stated that the tenant acquired another property No. 18, Patel Nagar, Dehradun.

8. In support of their submissions, the learned Counsel placed reliance upon various decisions on the issue of subsequent events, which would be dealt with hereinafter.

9. Subsequent event is an important factor and is required to be taken into consideration in our legal system. This Court will not spell out much on our legal system and will only quote what the Supreme Court has said. In *Gaya prasad v. Pradeep Srivastava* 2001 (2) SCC 604, the Supreme Court observed on the judicial system:

15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years form the

start to the ultimate termni, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.

10. In *Om Prakash Gupta v. Ranbir B. Goyal* 2002 (1) SC 254, the Supreme Court declared that although the ordinary rule of civil law is that the rights of the parties stand crystallized on the date of the institution of the suit yet the court has power to mould the relief in case the following three conditions are satisfied:

11. ...(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.

11. In *Hasmat Rai and Another Vs. Raghunath Prasad*, , the Supreme Court observed:

14. ... If the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him to point out such events and the court including the appellate court has to examine, evaluate and adjudicate [upon] the same.

12. In *Baba Kashinath Bhinge case*, 1994 Supp. 3 SCC 698 , the Supreme Court relying upon the decision in *Hasmat Rai's case* (supra) held that in a case of bonafide requirement it is necessary to establish that the landlord needs the premises and the need subsists till a decree is passed in his favour.

13. In the light of the aforesaid, the Court is of the opinion that subsequent events is only required to be considered in a limited extent, namely, to see whether the need of the landlord still subsists or not, and beyond that nothing else is required to be considered.

14. In *Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji Devi (Dead) by LRs. and Another*, , the Supreme Court held that the basic rule is that the rights of the parties should be determined on the basis of the date of the institution of the suit or proceedings and that the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. The Supreme Court held that it did not mean that the subsequent events could not be considered and further held it is the power and duty of the court to consider the changed circumstances and that the court would take into account subsequent events.

15. In *Ramesh Kumar Vs. Kesho Ram*, , the Supreme Court observed that a court could mould the relief taking "cautious cognizance" of subsequent events. The Supreme Court also observed that all these depend on factual and situational differences and that there could be no hard-and-fast rule governing the matter.

16. In *P. Sriramamurthy Vs. Mrs. Vasantha Raman*, , an order of eviction was passed in favour of the landlord and against the tenant on the ground of non-payment of rent. During the pendency of appeal before the Supreme Court, the husband of the landlady retired from service and they needed the premises for personal occupation also. Though, the ground was not set up earlier, taking note of subsequent event, the Supreme Court allowed the ground to be raised and granted the relief.

17. In *Lekh Raj v. Muni Lal* 2001 (2) SCC 762, the Supreme Court held that the court should not shut its door on noticing subsequent events and that all laws and procedures including functioning of courts are all in aid to confer justice on those who knock its door. The courts are required to interpret the law not in dereliction of justice but though cautiously and it should not be permitted in a routine matter.

18. In *Prabha Arora and Anr. v. Brij Mohan Anand and Ors.* 2007 (3) ARC 875, the principles adopted in the case of *Kedar Nath* (supra) and the decision in *Hasmat Rai* (supra) was reiterated, namely, that where possession was sought for personal requirement, the said requirement must not only exist on the date of the filing of the petition but should also subsist till the final decree for an order for eviction was made.

19. In *Ram Kumar Barnwal Vs. Ram Lakhan (dead)*, , the Supreme Court reiterated that it is basic to our processual jurisprudence that the right to relief must be judged to exist as on date a suitor institutes the legal proceeding. The Supreme Court, after considering the Full Bench decision of the Nagpur High Court in *Chhote Khan v. Mohd. Obedalla Khan* AIR 1953 Nag 361 (Full Bench) held that the court has the power to take note of the subsequent events and mould the relief especially, if it is initiated to shorten the litigation, but subsequent events are not required to give the Defendant an advantage. The Supreme Court held that the doctrine of subsequent events is of an exceptional character only to be used in very exceptional circumstances and has to be strictly applied in such cases where the judgment is under appeal.

20. In *Jai Prakash Gupta (D) thr. LRs. Vs. Riyaz Ahamad and Another*, , the Supreme Court held in para 17 & 18 that subsequent events can be considered after pleadings are amended and in para 31 it was held that the effect on the subsequent developments on the bonafide need as well as comparative hardship of the parties could not be considered by the writ court without proper evidence on record and that the High Court should have remitted the matter to the appellate court for the limited purpose of considering the subsequent events and for giving a finding on it.

21. In the light of the aforesaid, the court finds that the present release application was filed u/s 21(1)(a) of the Act on the ground that the building was required bonafidely for occupation for his sons. For facility, the provision of Section 21(1)(a) of the Act is quoted hereunder:

21. Proceedings for release of building under occupation of tenant.-(1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists namely-

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any of profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;

22. During the pendency of the litigation, the landlord died. It does not mean that in view of the subsequent event, the need of the landlord gets dissipated or comes to an end in view of Sub-clause (7) of Section 21 of the Act. For facility, the said provision is also quoted hereunder:

(7) Where during the pendency of an application under Clause (a) of Sub-section (1), the landlord dies, his legal representatives shall be entitled to prosecute such application further on the basis of their own need in substitution of the need of the deceased.

23. A perusal of the provision of Section 21(1)(a) of the Act read with Sub-clause (7) would make it clear that where possession is sought by the landlord on the ground of bonafide requirement and during the pendency of the litigation, the landlord dies, his legal representatives could prosecute such application on the basis of their own need in substitution of the need of the deceased.

24. In the light of the aforesaid provisions, the court has to consider the matter and record a finding. The Supreme Court in *Gaya Prasad (supra)* further held as under:

10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a

stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred *pendente lite*, because the opposite party succeeded in prolonging the matter for such unduly long period.

25. In the light of the aforesaid, the court finds that the landlord instituted an application for the release of the premises in the year 1983, i.e. 27 years ago for the need of his three sons. The prescribed authority found that the need for one of his sons was genuine and, consequently, released half of the portion, but on account of the litigation, the premises could not be released so far. The sons were not expected to remain idle without doing any work. The fact that another premises was released in which they started business would not mean that they had forfeited their requirement to occupy the building which was sought to be released in the first place. In fact, the setting up a new business by the two sons indicate the genuineness of the need for the two sons. It proves that the original landlord had a genuine need to get the premises released so that he could establish independent business for his sons. It is a stark reality that if a litigation is prolonged, the number of developments is bound to crop up during the interim period.

26. The need for the son Inder Singh Verma was found to be genuine and bonafine. That being a finding of fact, the same reaches finality since it has not been questioned or argued in the writ petition. The only thing, which is required to be considered is, that in view of the subsequent events, the need of the son Inder Singh Verma gets dissipated or not. The court finds that in this long period, the son of Inder Singh Verma has also grown up and it has been alleged that he is unemployed. Consequently, the need to settle the son of Inder Singh Verma has to be considered and, consequently, the need for the release of the shop still exists and subsists. The mere fact that during the interim period, Inder Singh Verma has started a business from another premises does not mean that his need has dissipated. The tenant cannot take advantage of the subsequent developments during the lengthy longevity of the litigation. The Supreme Court held in *Gaya Prasad* (supra) that it is unjust to shut the door before the landlord just on the eve of his reaching the finale, after passing through all the previous levels of the litigation merely on the ground that certain developments occurred *pendente lite* because the tenant succeeded in prolonging the matter for such unduly long period.

27. This Court is of the opinion that the subsequent events cannot overshadow the genuineness of the need and that the subsequent events to overshadow such genuine need must be of such nature and of such a dimension that the need of the landlord is eclipsed by subsequent events. In the present case, the court is of the opinion that the need exists and the cause of action still survives and is not eclipsed by the subsequent events that has been brought on record. In the light of the aforesaid, the court finds that the writ petition filed by the tenant is devoid of merit and is dismissed accordingly.

28. The learned Counsel for the landlord made a feeble attempt to impress upon the court for the release of the remaining half portion in question. The court finds that the findings given by the court below were based on cogent reasons and, being findings of fact, the court is of the opinion that the same cannot be interfered with in a writ petition since the court is of the opinion that these findings are not perverse. Consequently, the writ petition of the landlord is also dismissed.

29. In the circumstances, the parties shall bear their own cost.