
(2010) 08 AHC CK 0221
In the Allahabad High Court

Radha Behari Tentiwala

APPELLANT

Vs

Radha Raman Attar

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Citation : (2010) 08 AHC CK 0221

Hon'ble Judges : Devendra Pratap Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devendra Pratap Singh, J.—Heard learned Counsel for the parties. This petition by the landlord is directed against an appellate order dated 2.3.2001 by which his release application has been dismissed after setting aside the order of the Prescribed Authority.

2. The petitioner landlord preferred a release application No. 23 of 1996 u/s 21 (1)(a) of U.P. Act No. 13 of 1972 inter alia with the allegation that the respondent is the petitioner's tenant of the disputed shop at Rs. 30/- per month but the petitioner having retired from the Indian Air Force on 30.9.1994 at the age of 40, therefore required the disputed shop to engage himself and run a general merchant shop from the disputed premises and also to enhance his income which was meagre for the needs of his family. It was further stated that the respondent tenant has another shop No. 523A adjoining the disputed shop and in case the application is allowed, he would not suffer.

3. The respondent tenant contested the said application on various grounds including that he was carrying on business from the disputed shop since last several years and the petitioner had sufficient income from his pension, rent and share in the Jajmani business and therefore did not require the shop. It was further asserted that from shop No. 523A his son Brij Mohan was running a medical store independently and it was not available for him.

4. After exchange of pleadings, the Prescribed Authority vide its order and

judgment dated 7th of April 2000 allowed the release for settling himself and for augmenting his income which need was found both genuine and bonafide and the respondent tenant had alternative accommodation available. Aggrieved, the tenant preferred an appeal which has been allowed by the impugned order dated 2.3.2001 holding that the landlord had sufficient income and the tenant did not have any alternative accommodation.

5. Learned Counsel for the petitioner has firstly urged that the appellate court has erred in law in holding that merely because the landlord had sufficient income from pension and rent, his need was not genuine or bonafide in the teeth of the fact that it was specifically mentioned in the release application that it was required to settle himself. In support of his contention, he has relied upon a judgment of this Court rendered in the case of *Moti Lal Sharma v. Addl. District Judge, Dehradun and Ors.* 1987 (2) ARC 75.

6. There is no dispute that the petitioner was an Airman in Indian Air Force and from there he retired in 1994 at the young age of 40 years. From the release application, specially from paras 4 and 8, it is apparent that the need set up was for engaging himself in some occupation and augmenting his income. The appellate court did not consider the need of the landlord with regard to engaging himself in some vocation, but went on to hold that in view of a family settlement of 1981, the petitioner is entitled to receive a portion of the earnings of the family from "jajmani" and the amount would be substantial, therefore, he had no need to engage himself in any vocation. The reasoning and the approach is not only erroneous but absurd. Every landlord has a right to engage himself in some vocation and it is not for the tenant or the court to say that it is not necessary to engage in any vocation or business of his choice. A young man of 40 years has every right to usefully engage himself in any business or vocation and merely because he may have substantial earning from rent etc. would not water down his genuine need. Assuming that the petitioner had a regular income, that by itself would not render the bonafide and genuine need inconsequential. Thus, the argument of the petitioner is bound to be accepted.

7. It is the case of the tenant himself that his father was a tenant of the disputed shop since very long, it is also admitted that the tenant had purchased the adjoining shop No. 523A from the family of the landlord in 1971, but it is said that the same is being utilised by his son, who admittedly is a member of the tenant's family, therefore it cannot be said that the tenant would suffer greater hardship. In fact in view of the Explanation to the proviso, the tenant cannot object to the bonafide need of the landlord. Apart from that, there is nothing on record to show that the tenant made any bonafide effort to search for an alternative shop though the release was filed in 1996 and even during the pendency of this petition since 2001. The landlord cannot be forced to sit idle or look for a tenanted accommodation for fulfilment of his need especially when the tenant has an alternative shop available. It is evident from the record that the tenant was about 73 years of age when the application was filed in 1996 and

now he would be more than 90 years, therefore, also the shop would not be required by him. For all these reasons, even the comparative hardship was in favour of the landlord as held by the trial court.

8. However, learned Counsel for the respondent tenant has filed a supplementary affidavit stating that the two sons of the petitioner landlord are gainfully employed and the pension of the landlord has also been increased to Rs. 12,000/-.

9. Be it so, the need, as noted above, was for engaging himself in some occupation, therefore, increase in pension, which is otherwise disputed would be immaterial.

10. For the reasons above, the writ petition succeeds and is allowed and the appellate order dated 2.3.2001 is quashed and that of the Prescribed Authority is restored.

11. In the circumstances of the case, no order as to costs.