
(2006) 05 AHC CK 0071
In the Allahabad High Court

Radhey Shyam Agarwal

APPELLANT

Vs

Addl. Distt. and Sessions Judge and Another

RESPONDENT

Date of Decision : 25-05-2006

Acts Referred:

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

Citation : (2006) 7 ADJ 87 : (2006) 4 AWC 4156

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard Sri S.M.K. Chaudhary, learned Counsel for the landlord, petitioner and Sri M.S. Kotwal appearing for the tenant, opposite party No. 2.

2. The petitioner has assailed the order dated 18.4.2002 passed by the appellate authority u/s 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, hereinafter referred to as the Act, setting aside the judgment and order passed by the prescribed authority on 28.9.1999 allowing the release application filed by the landlord and ordering eviction of the tenant.

3. In the present case, two kotharis, shops No. 8 and 9, situate at Gopinath Building No. 508/57, New Hyderabad, Lucknow were rented out to the tenant Sri Puttan Lai, opposite party No. 2. He was paying a meagre rent of Rs. 20 per month for the said two shops, which are presently being used for selling milk and running a tea-stall.

4. It emerges from record that an application for release of the premises was submitted by the landlord Radhey Shyam Agarwal etc. before the prescribed authority u/s 21 of the Act. It was indicated in the release application that in the tenement, the tenant was running a tea-stall besides doing the business of selling milk on retail basis. It was further indicated that the tenant had sufficient

accommodation in another portion of the building which was in his occupation. The tenant could live comfortably and sell milk from the above-said portion occupied by him. The landlord had submitted before the prescribed authority that he was running the kirana business in a portion of the building, where premises in question, i.e., kotharis No. 8 and 9 under the tenancy of opposite party No. 2 Puttan Lal situate. A plan of the building was placed before the Courts below and before this Court too. The petitioner had demonstrated the situation of two fcotharis/shops in question in the building and the existing kirana shop run by the landlord. As per landlord, the accommodation was too insufficient to run the kirana business. The landlord wanted to expand his business. From kirana shop, goods of daily consumption and household were sold. In view of expanded business, proper store of so many kind of goods was to be maintained, for which additional accommodation was needed. As per petitioner, the premises, kotharis No. 8 and 9, which in fact were being used as shops by the tenant opposite party No. 2 Puttan Lal for running a tea-stall and milk vending, were most suitable for expansion of his kirana business.

5. The tenant, opposite party No. 2, opposed the application for release. His main thrust before the prescribed authority was that the petitioner is a big landlord and is having large number of properties at his disposal in the city of Lucknow. It was denied that the landlord was intending to carry on the kirana business from the premises in question. The opposite party No. 2 was an old tenant of the premises for the last 36-37 years. He faced Suit No. 354 of 1988 filed by the erstwhile owner Sri Lal Chand Rastogi in the year 1988, which was dismissed on 23.1.1992 by the concerned Judge, Small Causes Court, Lucknow. The proceedings initiated by the landlord were u/s 21(1)(a) of the Act. An additional written statement was also filed to demonstrate that kotharis No. 8 and 9 in the tenancy of opposite party No. 2 were in use as a single unit for residential purpose and the same cannot be released for business purposes.

6. The prescribed authority allowed the release application vide order dated 28.9.1999 holding that the landlord's need was bonafide as he wanted to use these shops for his personal purposes, to run and expand his kirana business. The prescribed authority had also dealt with the proposal of the landlord in offering kothari No. 10 (Chhedawali kothari) to the tenant but Sri Puttan Lal , tenant refused to accept the said offer of alternative accommodation. This kothari No. 10 cannot be added to the present kirana shop run by the landlord. The prescribed authority had appreciated the material on record and found that the landlord would suffer greater hardships if the release application was not allowed. The tenant Puttan Lal was already having residential accommodation in the same building complex. He could manage his business of selling milk and tea etc. from the said accommodation. The landlord could not be deprived of his property, required for expansion of his business and for augmenting his income. The prescribed authority had also noted the fact that the tenant had not made any efforts to search alternative accommodation despite filing of the release application in the year 1988.

7. The tenant Puttan Lal preferred an appeal before the District Judge, Lucknow assailing the prescribed authority's order. This appeal was allowed on 18.4.2002 by the Additional District and Sessions Judge, Lucknow, who reversed the finding of the prescribed authority regarding bona fide need and comparative hardships. The learned appellate court has been persuaded to allow the appeal on another ground that the landlord was having property in Aminabad and New Hyderabad, in the city of Lucknow. The appellate authority had indicated that the landlord's nephews were sitting in other shops available in the same building in New Hyderabad, Lucknow. The learned appellate court was of the view that the landlord's need was not bona fide and genuine as he was having other shops and buildings in the city of Lucknow. The learned appellate court was not impressed by the statement made by the landlord in respect of comparative hardships. The learned appellate court held that Puttan Lal was carrying on business of selling milk and tea from the two shops/kotharis in dispute and as such he would suffer greater hardships in comparison to the landlord.

8. Sri S.M.K. Chaudhary, learned Counsel for the petitioner has assailed the order passed by the learned appellate court on several grounds. He has submitted that the petitioner landlord was running the business of general merchant in a tenanted shop at nearby Deen Dayal Gupta Road. His own shops, i.e., kotharis No. 8 and 9 were not available for running his business, as the same were occupied by the tenant Puttan Lal, who was paying meagre rent of Rs. 20 per month only for these two spacious kotharis on main road, which was no rent in the eye of law. The learned Counsel for the petitioner has laid much emphasis on the fact that the tenant Puttan Lal was already running the business of selling milk in another portion of the building occupied by him comfortably and he has not been evicted from the said portion of the building. He has retained the accommodation in question by opening a tea-stall. In fact, the tenant has no need to retain the premises, kotharis No. 8 and 9. He has led this Court through various paras of the release application and laid stress on the fact that the landlord's need was bona fide and genuine and it was more pressing in comparison to the need of the tenant. The landlord had purchased the property for his personal use and to carry on business in his own property. The tenant would not suffer greater hardships if the said kotharis under his tenancy were released in favour of the landlord. He could have carried on the business of selling milk and tea-stall in the premises in his present occupation, which is a portion of the same building situate at New Hyderabad. As per rejoinder affidavit, filed on 16.8.2004, the tenant Puttan Lal has acquired a double-storeyed residential house at 9, Gopi Nath Building, R.B.L. Road, Lucknow in the same locality, which is very near to the shop in dispute and he alongwith his family is residing in the above mentioned house and not in the kotharis in dispute. Despite filing of the release application in the year 1988, no serious efforts were made by the tenant to find out alternative accommodation and as such he cannot now say that his need was bona fide and genuine. Learned Counsel for the petitioner has drawn the attention of the Court to an authority of Apex Court as in *Badrinarayan*

Chunilal Bhutada Vs. Govindram Ramgopal Mundada, and a recent decision of this Court as in Kishan Narain Agarwal v. VIIIth A.D.J., Bareilly and Ors. 2006 (62) ALR 264 in which it was held that in respect of comparative hardships, 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 them. Sri Chaudhary has further submitted that the tenant Puttan Lal did not file any application for allotment of another house, as under Rule 23 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, hereinafter referred to as the Rules, a tenant against whom a release application has been filed is entitled to allotment of another house immediately. The opposite party No. 2 has failed to do so. Thus, the question of comparative hardship ought to have been decided against the tenant by the appellate authority. Learned Counsel for the petitioner has further submitted that the petitioner does not have sons. He has daughters only. He has yet to marry one daughter. He wants to increase his income to get her educated and married. He wants to do kirana business in his own shops in the same building owned by him. The petitioner needs the premises in question because it is best suited for expanding his kirana business and the landlord is the best person to judge his need. He has categorically stated that he has got no shop in his name at Aminabad nor is he doing any business at Aminabad. The petitioner has filed several documents before the Courts below to demonstrate that he was not the owner of any shop at Aminabad. The appellate authority ignoring these documents has held that he was owner of several shops and buildings. The other shops in the building are in the occupation of the nephews of the petitioner and the petitioner is not concerned with their business. The need of the petitioner is genuine and bona fide. On the other hand, the tenant Puttan Lal is not running his business regularly from kotharis No. 8 and 9, shops in dispute. His sons are already doing business elsewhere. He is having a portion of the same building for residential purpose and has now acquired a double-storeyed house No. 9, Gopi Nath Building, R.B.L. Road, Lucknow in the same locality. He cannot be permitted to continue to occupy rented accommodation for a meagre rent of Rs. 20 per month forever. Several shops were constructed in New Hyderabad and Nishatganj area. Several marketing complexes have come up after 1988 where the petitioner could have purchased a shop. Had the petitioner made genuine efforts since the year 1988 when the release application was filed, he could have easily got a desired accommodation. The appellate order is wholly erroneous, unjust and improper. The learned appellate court has misread the entire evidence and has taken into consideration the unamended application for release and excluded from consideration the subsequent facts while allowing the appeal. The appellate authority has ignored the fact that alternative accommodation was offered to the tenant which he refused. The tenant was illegally running a tea stall and selling milk from the premises, for which no licence was obtained. He had also not obtained any electric connection in the premises. Moreover, he had not paid any rent to the landlord since 24.9.1985. The appellate authority ought not to have upset the findings of facts on other issues recorded by the Rent

Control Officer. It was brought on record that another accommodation at the same place was not available with the petitioner.

9. Sri S.M.K. Chaudhary, learned Counsel for the petitioner has placed reliance on Ragavendra Kumar Vs. Firm Prem Machinery and Co., and Salim Khan v. IVth Additional District Judge, Jhansi and Ors. 2006 (1) ARC 588 and several other decisions of the Hon'ble Supreme Court of India and this Court in support of his submission that bona fide requirement of landlord for expansion of his existing business is to be given weightage. It is always the prerogative of the landlord to decide for what purpose he requires the premises in question.

10. Sri M.S. Kotwal, learned Counsel appearing for the tenant Puttan Lal has resisted the writ petition. He has submitted that Puttan Lal is an old tenant occupying kotharis No. 8 and 9 in question for the last more than 37 years. Sri Lal Chandra Rastogi, the erstwhile owner of the building had filed a Suit No. 354 of 1988 against him, which was dismissed on 23.1.1992 by Judge, Small Causes Court, Lucknow. These two kotharis are being used for residential cum business purposes. Their dominant use is of residence but for earning livelihood, the tenant is running a tea stall and is selling sweets and milk from this accommodation. He resides in the kotharis in the night. The tenant has also disputed the title of petitioner Radhey Shyam Agrawal saying that he is not the owner of the building in dispute. It is further submitted that the landlord is a rich business man. He is having several shops and buildings situate in Aminabad and other areas of the city of Lucknow. It has been denied that the landlord Radhey Shyam is running the business of kirana merchant or his business establishment is adjacent to the accommodation under the tenancy of opposite party No. 2. The petitioner can run his alleged business of kirana merchant from other buildings and shops situate in Aminabad, Gole Market and New Hyderabad, which are at his disposal. The tenant had contested the release application by giving detailed facts and submissions. However, his appeal was rightly allowed by the appellate authority. The order of the appellate authority was just and proper. The petitioner cannot use the shops/kotharis in question for the purposes of godown or store. Sri Kotwal has laid much stress on the submission that the present landlord is having several buildings and shops in the city of Lucknow, one of which can be used for carrying on the business of kirana/general merchant. In several paras of the written statement filed before the prescribed authority, counter-affidavit and supplementary-affidavit, this fact has been reiterated and read over before the Court. The petitioner has acquired at least two shops in the same building also. The prescribed authority's approach was highly unreasonable and uncalled for. The tenant had rightly made amendment in his written statement by filing an application on 20.12.2001, which was allowed. The shops in the same building are occupied by the nephews and other family members of the petitioner. As per opposite party No. 2, the landlord has made contrary statements in his pleadings regarding the use of kotharis No. 8 and 9 which are in possession of the tenant. The petitioner's need cannot be said to be bonafide and genuine. He had in fact tried to harass the tenant by offering shop No. 10 to him. The appellate court has

taken into account the entire material on record and appreciated the submissions of the tenant giving weightage to his hardships. Rs. 800 towards rent had been paid to the landlord through his counsel Sri R.C. Soni, Advocate, vide receipt issued on 16.9.2003. The release application was not maintainable u/s 13 of the Act. The case-laws cited by the petitioner's counsel are not attracted in the circumstances of the case. Sri Kotwal has further submitted that this Court cannot interfere in this matter as the appellate court has already appreciated the material on record and has dealt with all the issues raised by the tenant and the landlord. The writ petition itself is not maintainable. He has placed reliance on the following judgments in support of his submissions:

(1) Ashok Kumar and Ors v. Sita Ram 2001 ACJ 1141 (SC) : 2001 (3) AWC 1997 (SC)

(2) Shama Prashant Raje Vs. Ganpatrao and Others,

(3) Ashok Kumar Vs. VIIth Additional District Judge, Muzaffarnagar and others, and

(4) Hari Om Gupta Vs. IIInd Additional District Judge and Others,

11. As per learned Counsel for the opposite party No. 2, it is the duty of the landlord to satisfy the prescribed authority regarding his bonafide need as contemplated in the application for release. As per above decisions, the appellate authority has not committed any error in allowing the appeal of the tenant.

12. I have heard the learned Counsel for the parties and have gone through the material on record.

13. It is evident from record that the tenant Puttan Lal has been occupying two shops, measuring 8.6 ft. x 10 ft. and 4 ft. and 8.6 ft. for the last about 37 years. He is paying a meagre rent of Rs. 30 per month, which is no rent in the eye of law, in the trans-Gomti, Civil Lines area at tri-junction of R.B.L. Road and Deen Dayal Gupta Road. After appreciating the release application, written statement, oral and documentary evidence led by the parties, the prescribed authority had come to the conclusion that the landlord did not have any other shop in the city of Lucknow and he is running his kirana business, selling goods of general mercantile in an adjacent shop. The learned Court below has noted that Radhey Shyam Agrawal was running kirana business from a tenanted accommodation. The petitioner landlord is having daughters only. His nephews and other relatives are involved in business. It is always the prerogative of landlord to decide for what purpose he requires the premises in question. He may have bona fide need of expanding his business to augment his income. The Hon'ble Supreme Court has held in a judgment, 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.

14. In the present case, Radhey Shyam Agrawal is the owner of the building. It

has come on record that the petitioner was carrying on kirana business from a rented shop at Deen Dayal Gupta Road. He can use the shops in question for storing his goods and run his business the way he likes. I have seen the site-plan of the building and the shops in question. It is admitted to the parties that Puttan Lal was already occupying a substantial portion in the building for residential purposes. He has admitted that he is residing in this portion. It has further emerged from record, pleadings of the parties (vide para 18 of the counter-affidavit) that shop No. 10 was offered to the tenant by the landlord to shift his tea-stall there but he refused to occupy the said shop saying that it was smaller in size and by accepting this shop, he would be sandwiched between the two shops of the landlord. He imagined that this would cause harassment to him and due to this reason he voluntarily refused to accept the offer of the landlord to occupy shop No. 10 in the same building, adjacent to the kotharis/shops No. 8 and 9. The prescribed authority has appreciated this fact that kothari No. 10 (Chhedawali kothari) was offered to the tenant. This material fact has been ignored by the appellate authority in forming its opinion-. This Court has held in several judgments that if an alternative accommodation is offered to a tenant and he refuses to accept the same, in the circumstances it cannot be said that the tenant was going to suffer serious hardships. The tenant, in the present case, is not only having a portion for the purposes of residence in the same building, but in addition to this, he has tried to occupy shops/kotharis No. 8 and 9 without any justification. This has come on record, vide para 9 of" the rejoinder-affidavit (uncontroverted by the tenant, opposite party No. 2) that he had acquired a double-storeyed House at 9, Gopi Nath Building. R.B.L. Road, Lucknow, i.e. in the same locality. This house is very near to the shops in question. In the said para 9 of the rejoinder-affidavit, it has been indicated that the tenant and his family are residing in the aforesaid house and not in the kotharis in question.

15. It is also noteworthy that the tenant Puttan Lal has admitted that initially kotharis No. 8 and 9 were taken for residential purposes. Later on, he changed the use of the tenement and now he is running a tea stall and selling milk etc. from there. Admittedly he has changed the nature of the tenancy from residential to commercial purpose without obtaining permission of the landlord or appropriate authority as prescribed in the relevant rent control laws.

16. The tenant Puttan Lal was required to demonstrate before this Court by passing a specific order as to what efforts he had made to find out alternative accommodation for his residential or commercial purpose since November, 1988 when the release application was filed. He has filed an affidavit dated 5.4.2006 indicating that he cannot afford to pay more than Rs. 100 as against Rs. 20 per month presently being paid as rent for any other shop in the nearby locality and that he failed to get a shop at this rent. He has reiterated in the affidavit that the landlord is having sufficient residential accommodation and shops in the city of Lucknow, which fact has been denied by the petitioner. As per Sri S.M.K. Chaudhary, learned Counsel for the petitioner, several shopping and residential complexes have come up in New Hyderabad. Nishatganj and adjoining areas.

Besides, several residential colonies of U.P. Housing and Development Board, Lucknow Development Authority and other cooperative societies have come up in the nearby areas. Land for housing and commercial use is available to the public and can be purchased through loans on lower rate of interest offered by the nationalized and co-operative banks. These facilities ought to have been availed by the tenant, opposite party No. 2. There is no force in the submission of Sri M.S. Kotwal, learned Counsel for opposite party No. 2 that no accommodation was available to the tenant and that he cannot afford to pay more than Rs. 20 per month. The Hon''ble Supreme Court of India and this Court in recent decisions, as in *Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada*, and *Salim Khan v. IVth Additional District Judge. Jhansi* 2006 (1) ARC 588 have held that where the tenants did not show what efforts they made to search alternative premises, it is sufficient to tilt the balance of hardship against them. Even under Rule 10(3) of the Rules the tenant has failed to demonstrate whether he had filed any application to the appropriate authority for allotment of another accommodation. Thus, despite an opportunity being given by this Court, the respondent No. 2 has failed to demonstrate his serious efforts, if any, made for finding out alternative accommodation or submission of any such allotment application as provided under Rule 10(3) of the Rules. Thus, the question of comparative hardship ought to have been decided by the appellate authority against the tenant. The judgment and order passed by the appellate court is, therefore, wholly erroneous and unsustainable in law. I find support in my view from the Judgments of the Hon''ble Supreme Court of India as in 2005 (2) ARC 793.

17. The appellate authority has also ignored the finding of the learned prescribed authority that the landlord has a right to use the premises for expanding his business and augment his income vide *Gaya Prasad v. Pradeep Srivastava* (2001) 2 SCC 604 . The Hon''ble Supreme Court in another Judgment in *Ragavendra Kumar Vs. Firm Prem Machinery and Co.,* , has held that it is a settled position of law that the landlord is the best Judge of his requirement for residential or business purpose and he has got complete freedom in the matter. In the said case, the plaintiff landlord wanted the eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted. Similar views have been expressed in *G.C. Kapoor Vs. Nand Kumar Bhasin and Others,* . This Court in *Smt. Nirmala Tandon and Ors. v. Xth Additional District Judge, Kanpur Nagar and Ors.* 1996 (2) ARC 409 : 1997 (1) AWC 259 and *Shree Chand Gupta Vs. XVIII Additional District Judge, Meerut and others,* has also dealt with the issue that a finding of fact may be interfered with when it is based on account of wrong application of principle of law relevant thereto or relevant material has not been taken into consideration, or a finding is otherwise arbitrary or perverse. These elements are present in this case. I find force in the submissions made by Sri S.M.K. Chaudhary, learned Counsel for the petitioner which are squarely covered by the case-laws cited by him. as referred to above. On the other hand, the decisions cited by Sri M. Section Kotwal, learned Counsel

for the opposite party No. 2, as referred to above, cannot be applied in the present set of circumstances.

18. In the opinion of this Court, the view taken by the appellate authority is highly erroneous in law. The tenant is already having in his possession a portion of the building for residential purpose. It is an uncontroverted fact that he has purchased a double-storied House No. 9. Gopi Nath Building, R.B.L. Road, Lucknow where he and his family are residing or if not residing, he can continue in the portion of the building which is still under his occupation. He has not searched alternative accommodation. These facts by itself are sufficient to decide the question of comparative hardships against the tenant. The Hon"ble Supreme Court of India in the case of Siddalingama v. M. Shenoy 2002 (46) ALR 18 (SC) has held that the entire Rent Control Act is basically meant for the benefit of the tenant and provision of release on the ground of bona fide need is the only provision which treats the landlords with some sympathy.

19. In view of above, the writ petition is allowed. The Judgment and order of the lower appellate court dated 18.4.2002 is set aside. The Judgment and order of the prescribed authority dated 28.9.1999 allowing the release application filed by the landlord and ordering eviction of the tenant is upheld.

20. Taking into account the special circumstances of the case, the opposite party No. 2 Puttan Lal is directed to hand over vacant and peaceful possession of shops/kotharis No. 8 and 9 situate at Gopinath Building No. 508/57. New Hyderabad, Lucknow to the petitioner-landlord within one month from today. Since the rent of Rs. 20 per month, which the opposite party No. 2 was paying for the above-said premises, is too meagre and is virtually no rent in the eye of law, this Court directs that the tenant Puttan Lal shall pay the rent at the rate of Rs. 200 per month to the landlord with effect from 28.9.1999, the date of judgment and order passed by the prescribed authority under the Act. The arrears of rent upto date shall be paid after deducting the amount of rent already paid by the tenant to the petitioner landlord within three months from today.