
(2010) 07 AHC CK 0361
In the Allahabad High Court

Rajan Lal @ Raj Kumar

APPELLANT

Vs

Additional District Judge, Court No. VI and Others

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 07 AHC CK 0361

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This petition has been filed against the judgment and decree dated 9th April, 2010 passed by the Additional District Judge, Court No. 6, Lakhimpur Kheri in Rent Appeal No. 9 of 2005.

2. The brief facts of the case are that the petitioner is a tenant in the shop in question. The original owner of the shop in dispute was Late Lala Dharamdutt, who had let out the above shop to Late Sri Kishori Lal, the father of the petitioner from whom the tenancy of the above shop has been inherited by the petitioner who is running and maintaining the above shop. The original owner and tenants have died and the second generation is in the litigation. After the death of Late Lala Dharamdutt, his wife Smt. Shakuntala Devi has inherited the ownership of the shop and after the death of Kishori Lal, the petitioner has become tenant. On 21.12.1993, release application u/s 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to the Act) was filed jointly by Sri Shankuntala Devi and her daughter Smt. Gyanwati for alleged need of Anand Kumar s/o Smt. Gyanwati. On 21.5.2005, the Civil Judge (J.D.) rejected the application for release of the shop in dispute and an appeal was filed against the said decision before the Additional District Judge, Court No. 6, Lakhimpur Kheri, who passed the impugned order and allowed the appeal. During pendency of the appeal, Smt. Shankuntala Devi died on 24.1.2002 and Naresh Chandra Gupta, husband of Smt. Gyanwati, was

substituted as legal representative of Late Shankuntala Devi. Being aggrieved, the petitioner has filed the writ petition challenging the judgment and order passed by the Additional District Judge, Lakhimpur Kheri.

3. With this background, learned Counsel Sri S.K. Mehrotra, submits that after the death of original owner Lala Dharamdutt, the ownership of the shop in question devolved upon his wife Smt. Shankuntala Devi and as such she was the land-lady of the shop in dispute. Smt. Gyanwati is the married daughter of Lala Dharamdutt and Smt. Shankuntala Devi. The original release application was filed for the alleged bona fide need of Anand Kumar s/o Smt. Gyanwati. In the above application, it was falsely stated that Smt. Shankuntala Devi and her daughter Smt. Gyanwati both are the owners of the shop and are co-landlords. It was further stated that both of them inherited the ownership of the shop in dispute. He submits that the daughter is not covered by the definition of "family" as defined in Section 3(g) of the Act. Smt. Gyanwati was already married when her father Lala Dharam Dutt died and she was living with her in-laws. So, Smt. Gyanwati Devi could not be considered to be a member of "family" of Smt. Shakuntala Devi, the landlady of the shop in question.

4. Learned Counsel further submits that the Prescribed Authority while dismissing the release application observed that landlady was not having any bona fide need of the shop in question. This observation was not reversed in appeal. The judgment and order passed by the Prescribed Authority was illegally reversed by the appellate court. According to him, the appeal u/s 22 of the Act legally is not maintainable, the finding of the court below in this regard is perverse and has vitiated the impugned judgment and order passed by it. The claim for release of the shop in question u/s 21(1)(a) of the Act has been well settled to be a personal right of the landlady in the accommodation in dispute and the application for release has to be prosecuted on the basis of the personal right of the landlady and cannot be substituted subsequently on the demise of the landlady and the finding recorded by the appellate court is manifestly perverse. The order passed by appellate court suffers with manifest defects and error in law. He also submitted that that the lower appellate court has not mentioned any finding pertaining to the bona fide need and comparative hardship. The shop in question is the only source of livelihood to the petitioner.

5. He also argued that the lower appellate court did not set aside the finding recorded by the Prescribed Authority as above to the effect that Smt. Gyanwati and her son were not the members of the family of Smt. Shakuntala and, therefore, Smt. Gyanwati Devi was not the landlady and consequently the application for release on the date when it was filed was not maintainable. As the above finding was not disturbed in the appellate judgment, it resulted into a concurrent finding of fact. (Page 31, para 12)

6. The appellate authority illegally held (at page 32 of the paper book) that since Smt. Shakuntala died during the pendency of the above appeal after bequeathing her property including the shop in dispute through her registered Will dated

6.7.2004, therefore, "now" the appellants have become the landlords of the shop in dispute and this subsequent event is being considered. From the above, it is evident that according to the appellate court also the applicant No. 2 was not the landlady on the date of filing the appeal.

7. The above approach is absolutely illegal.

8. The appellate authority below ignored that the Prescribed Authority decided the release application only on the question of maintainability and did not record finding about bona fide need for the reasons stated above. The appellate authority below acted as original authority as if the application for release was being dealt with for the first time before it which is not permissible as the release application can be considered only by the Prescribed Authority and not by the Appellate Authority who is empowered only to hear appeal. In appeal, the finding recorded by Prescribed Authority only can be challenged.

9. For the purpose, he relied on the ratio in the following cases:

- a. 2010 (28) LCD 911 (Para 22, 36 and 37) Manohar Lal v. Ugrasen
- b. 2005 (23) LCD 227 (para 8) Pratap Rai Tanwani and Anr v. Uttam Chand and Anr.
- c. 2001 (2) SCC 604 (Paras 10 and 11) Gaya Prasad v. Pradeep Srivastava
- d. 1982 (1) ARC 216 (Para 6) Mahila Shiksha Mandal, Kanpur v. The Prescribed Authority, Kanpur and Anr.
- e. Sudha Agrawal Vs. Xth Addl. District Judge and Others,

10. On the other hand, Sri Mohd. Arif Khan, Senior Advocate, assisted by Sri Mohinuddin Khan, Advocate relied on the impugned order. He submitted that after the death of original owner widow Smt. Shakuntala Devi, the mother of respondent No. 3 became the owner of the landlady. He further submits that the lower appellate court on considering the entire facts and the evidence on record had recorded a positive finding

As would appear from the facts stated hereinabove, the lower appellate court on a consideration of entire facts and the evidence on record had recorded a positive finding to the effect that the opposite-party No. 3 is landlady and the application was maintainable and further by taking subsequent events i.e. registered will dated 6.7.2004 executed by Smt. Shakuntala Devi in favour of the opposite-party No. 3 and Naresh Chandra Gupta, her husband, they became the landlord, thereby allowed the application for release. The findings thus recorded by the opposite-party No. 1 are findings of facts and no error has pointed out by the petitioners so as to call for any interference in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India as has been propounded by the apex court. The opposite-parties are relying upon the judgments Atma S. Berar Vs. Mukhtiar Singh,

In view of the findings recorded by the opposite-party No. 1 holding that Smt. Gyanwati, opposite-party No. 3 and her husband, Sri Naresh Chandra Gupta, opposite-party No. 2 became the landlord and there exists a relationship of landlord and tenant. Thus, the writ petition filed by the petitioner, who is already having a house in which he is storing the goods and would easily carry on his business from his own accommodation coupled with the fact that he had not made any efforts to search out alternative accommodation, the writ petition is thus liable to be dismissed.

11. He also submits that Smt. Gyanwati, daughter was living with her mother Smt. Shakuntala Devi. The married daughter has equal share in the property after the death of her father. Thus, Smt. Gyanwati was the co-owner with her mother and after the death of mother, she became absolute owner of property in question. Being old lady, mother during her life time and after the death of her husband was living with Smt. Gyanwati.

12. He also relied on the following cases

- a. Atma S. Berar Vs. Mukhtiar Singh,
- b. Commissioner of Wealth Tax, Gujarat Vs. Lov S. Kinariwala,
- c. Shankari Devi (Smt.) Vs. District Judge and Others,

13. I have heard learned Counsel for both the parties and gone through the material available on record.

14. In the instant case, it appears that after the death of Lala Dharamdutt, his widow Smt. Shakuntala Devi inherited the ownership of the above shop as mentioned earlier. The second generation is in the litigation. Smt. Shakuntala Devi executed a registered will in favour of only daughter Smt. Gyanwati. During pendency of the appeal, Smt. Shakuntala died and Smt. Gyanwati has become the absolute owner of the shop in question by virtue of registered will dated 6th July, 2004. Thus, Smt. Gyanwati has become the landlady of the said shop. The ownership of Gyanwati has become absolute and nobody has challenged it. The son of Gyanwati Mr. Anand Kumar is an unemployed youth who has stopped the study and wants to establish a business of hardware. For that purpose, the shop in question is required.

15. From the record, it also appears that the petitioner has a big house and about 100 bighas of agricultural land. The shop in question is a very big shop. The need of landlady appears greater in comparison to the need of the petitioner as she wants to establish a business for her son Anand Kumar, so the need of the respondent No. 3 is bona fide.

16. The Hon'ble Supreme Court in the case of Hasmat Rai and Another Vs. Raghunath Prasad, has taken care to emphasize that the subsequent events should have "wholly satisfied" the requirement of the party who petitioned for eviction on the ground of personal requirement. The relevant passage is

extracted below:

Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime, events have cropped up which would show that the landlord's requirement is wholly satisfied, then in that case, his action must fail and in such a situation, it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the Court to take into consideration subsequent events.

In *Gulabbai Vs. Nalin Narsi Vohra and others*, reiterating the view taken in *Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others*, it was held that the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubt-less be kept in mind but not so as to make even the genuine need as nothing but a desire.

Recently, in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*, this Court in a detailed judgment, dealing with his aspect, analysed the concept of bona fide requirement and said that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradiction with a mere pretense or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the Judge of facts by placing himself in the armchair of the landlord and then posing a question to himself whether in the given facts substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. We do not think that we can usefully add anything to the exposition of law of requirement for self-occupation than what has been already stated in the three precedents.

17. Apart from the above, in the impugned order, the learned A.D.J. has already discussed a number of case laws which need not be repeated. In the instant case, Smt. Gyanwati is the absolute owner of the shop in question by virtue of registered deed dated 6th July, 2004. Nobody has challenged her ownership now she is the owner of the shop in question. Her need is bona fide need as mentioned above. Considering the facts and circumstances of the case, I agree with the findings of the court below that there is a bona fide requirement of the accommodation to the landlord. Hence, there is no reason to interfere with the said finding as per the ratio laid down in the case of *Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased) through LRs. and Others*, Further, in the case of *Deep Chand Juneja v. Lajwanti Kathuria* 2008 (8) SCC 497 the Hon'ble Supreme Court held that the bona fide requirement of the landlords is a question of fact. No substantial question of law emerges from the impugned order. Hence, I find no reason to interfere with the impugned order passed by the Additional District Judge. The same shall be sustained along with the reasons mentioned therein.

18. The writ petition is devoid of merits and is hereby dismissed.