
(2009) 07 AHC CK 0025
In the Allahabad High Court

Rajendra Prakash Garg

APPELLANT

Vs

Bal Kishore Agarwal

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (2009) 4 AWC 4073

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Poonam Srivastav, J.—Heard Sri A. K. Goyal, learned Counsel for the petitioner.

2. The petitioner is owner and landlord of shop No. 299, Sarain Kham, Sunhari Masjid, Bareilly wherein the respondent is tenant at the rate of Rs. 100 per month. Petitioner filed an application u/s 21 (1)(a) of U.P. Act No. 13 of 1972 (hereinafter referred as the Act) for release of the shop which was registered as P.A. Case No. 21 of 2004. In support of the release application, the petitioner filed his own affidavit as P.W. 1 and that of son Rajat Garg PW-2 and Murlidhar Agarwal and Manish Chand Agarwal PW-3 and PW-4 respectively. The tenant contested the said application and filed a written statement.

3. It is brought to my notice that the tenant instead of concluding the arguments before the prescribed authority, sought frivolous adjournments which were granted on 2.8.2006 and 8.8.2006 subject to payment of cost. The tenant in order to further delay the proceedings filed a belated application dated 12.7.2007 alongwith an affidavit dated 13.7.2007 seeking time to deposit the cost. The petitioner filed counter-affidavit thereto stating that the tenant was not able to devote any time in the shop as he alongwith his wife has commenced Saree business under the name and style of Sharmile Sarees by opening a shop at his residence 261, Kalibari, Bareilly as such he is not to suffer any hardship by release of the shop. Two original receipts dated 22.7.2007 issued by the wife of

the tenant to the purchasers of the Saree were enclosed alongwith aforesaid counter-affidavit. The tenant took time to file affidavit of his wife in rebuttal of the receipts. However, instead of filing affidavit of his wife, the tenant filed an affidavit stating that on account of expenses of medical treatment he was under debt and would suffer great hardship if evicted from the shop.

4. The prescribed authority vide judgment and order dated 20.8.2007 allowed the release application directing two months' time to the tenant to vacate the shop. The prescribed authority recorded a categorical finding that the landlord has bona fide need for the shop in question for settling his unemployed son in an independent business. The factors of comparative hardship was also decided against the tenant. The prescribed authority observed that the landlord had bona fide need for the shop and would suffer greater hardship, if the shop was not released. The prescribed authority further observed that after Saree business of the tenant suffered a set back, shoe business was set up in the shop recently, as such the question of goodwill if any, of Saree business lost significance. The prescribed authority further placed reliance on the case *Ratan Sahgal v. 1st Additional District Judge, Kanpur Nagar*, 2004 (1) ARC 110 and held that comparative hardship cannot be held to be in favour of the tenant merely on the basis of long possession. The tenant's contention that he is an old man and has to repay the loan taken for his medical treatment as such would suffer greater hardship, was not accepted to be relevant for decision of the factor of comparative hardship.

5. Aggrieved from the impugned judgment of the prescribed authority, the tenant preferred Rent Control Appeal No. 18 of 2007. The appellate court vide its order dated 19.1.2008 allowed the appeal. Though the appellate court affirmed the finding about the bona fide need of the landlord recorded by the prescribed authority yet set aside the release order only on the ground that the prescribed authority, committed error in deciding "comparative hardship" in favour of the landlord under misapprehension as if provision of Rule 16 (2)(a) was mandatory. It is apparent from the foregoing circumstances that the tenant has all along adopted delaying tactics and it is probably for this reason he had not appeared in this Court despite service of notice.

6. The submission of the learned Counsel for the petitioner challenging the impugned order of the appellate court is that it is wholly arbitrary, illegal and against the well settled law that goodwill on account of long occupation of tenant cannot operate as an absolute bar to maintainability of the release application as it is only one of the considerations for deciding the comparative hardship. Further submission is that it has already been held by this Hon'ble Court in *Kaushal Kumar Gupta v. Bishun Prasad and Ors.* 2006 (1) ARC 73 paragraph 6 that mere long possession of tenant is no ground to reject the release application when bona fide need is clearly established as landlord and every adult member of his family is entitled to have separate business.

7. In the instant case obviously the appellate court has affirmed the finding of

bona fide need in favour of the landlord as such the rejection of the release application on the ground that the health of the tenant and his responsibility indicates that if evicted from the shop in dispute, he would suffer greater hardship as such release application deserves to be dismissed, is wholly arbitrary and illegal inasmuch as at the best loss of goodwill on account of long occupation can be compensated by awarding damages as contemplated by second proviso to Section 21 (1) of the Act, as held in the case of *Rajaram and Ors. v. IIInd A.D.J. and Ors.* 2006 (1) ARC 829.

8. It is apparent from a bare perusal of the impugned judgment that the appellate court completely ignored the law laid down by the Apex Court in the case of *Mst. Bega Begum and Ors. v. Abdul Ahad Khan (Dead) by L.Rs. and Ors.* (1979) SCC 273, that it is no doubt true that the tenant will have to be ousted from the house if a decree of eviction is passed but such an event would happen eventually whenever a decree for eviction is passed and merely because the tenant will be ousted from the premises where he was running his activity cannot by itself be considered to be a hardship and be a valid ground for refusing the landlord a decree for eviction. The owner of the property cannot be denied eviction and compelled to live poorly merely to enable the tenant to carry on his flourishing business activity at the cost of the landlord as held by this Court in the case of *Maharaj Bahadur Saxena v. IIIrd Additional District Judge and Anr.* 2007 (3) ARC 582.

9. The observation of the appellate court that the tenant has been carrying on business in the shop in dispute for the last 50 years is perverse being against the pleadings and any evidence on record. In the circumstances, I do not agree with the reasonings given by the court below.

10. In the instant case the tenant did not make any effort to search an alternative accommodation immediately after the filing of the release application and the said fact was sufficient to tilt the balance of comparative hardship against the tenant as held by the Apex Court in the case of *Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada*, as followed by this Court in *Salim Khan v. IVth Additional District Judge Jhansi and Ors.* 2006 (1) ARC 588 . Paragraph 10 of the said judgment is quoted below:

In respect of comparative hardship, tenants did not show what efforts they made to search alternative accommodation after filing of release application. This was sufficient to tilt the balance of hardship against them vide *Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada*, Moreover, rent of Rs. 6 per month which the tenants are paying is virtually as well as actually no rent. By paying such insignificant rent they must have saved a lot of money. Money saved is money earned. They must, therefore, be in a position to take another house on good rent. Further, they did not file any allotment application for allotment of another house. Under Rule 10 (3) of the Rules framed under the Act, a tenant, against whom release application has been filed, is entitled to apply for allotment of another house immediately, Naturally such person is to be given preference in

the matter of allotment. Respondents did not file any such allotment application. Thus, the question of comparative hardship has also to be decided against the tenants.

11. In the circumstances, it is evident that both the courts have recorded a categorical finding that the landlord requires the shop in dispute bonafidelu to establish his only son Rajat Garg in an independent business and the matter is kept pending since a very long time. I am of the considered view that the release application is liable to be allowed. The judgment of the appellate court is against all the reasonings and principles laid down by the Apex Court as well as discussions of this Court and therefore judgment of the prescribed authority be restored.

12. In view of what has been observed above, the submission of the learned Counsel for the petitioner appears to be justified and legal and thus the writ petition is liable to be allowed. The writ petition is allowed and the tenant is directed to handover vacant possession of the accommodation in dispute to the landlord forthwith after payment of two months rent as required by the Act.