

(2009) 04 AHC CK 0541
In the Allahabad High Court

Rajnish Kumar and others

APPELLANT

Vs

IIIrd Additional District Judge, Farrukhabad and others

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0541

Hon'ble Judges : Prakash Krishna, J

Final Decision : Dismissed

Judgement

Prakash Krishna, J.

Heard learned counsel for the parties and perused the record.

The present writ petition has been filed against the release order passed in favour of the contesting respondent No.3, concurrently by the two courts below. The matter has been pending in the Court for the last about 30 years, but on account of stay order passed by the courts, the respondent landlord could not obtain the possession of the shop in question. It was dismissed on 28.11.2003 for nonprosecution and was restored on 11.5.2007.

The facts of the case may be noticed in brief.

An application for release of the disputed shop was filed on the ground that the son of landlord, namely Mohd. Nafees is unemployed. He has become major and is capable of doing independent business, therefore, the landlord required the shop in dispute to settle him in business. The said release application was contested by the petitioners. But it was allowed in part by the Prescribed Authority by the judgment dated 24th October, 1981. The Prescribed Authority released the eastern portion of the shop in dispute and rejected the release application in respect of the western portion. Feeling aggrieved by the said order of the Prescribed Authority both the landlord and tenant preferred appeals before the court below under Section 22 of the U.P. Act No.13 of 1972. The Appellate Court by the impugned judgment has allowed the appeal preferred by the landlord and dismissed that of the tenant. Resultantly, the entire shop stands

released in favour of the contesting respondent landlord. Challenging the aforesaid two orders, the present writ petition is at the instance of the tenant.

Shri S.C. Verma, the learned counsel for the petitioner, submits that in view of subsequent events which have taken place during the pendency of the present writ petition, the need, if any, of the landlord has ceased to exist. He informed the Court that the landlord has died in the meantime on 19.12.1998. The other son of the landlord Mohd. Yunus has also died on 28.1.2004. He further submits that during the pendency of the present writ petition, the landlord acquired another shop. The learned counsel for the landlord, on the other hand, denied these allegations and submits that the tenant has also acquired another shop. Further, the subsequent events cannot be taken into account for the reason that the matter has been pending in the court for the last about 30 years and it is high time when the landlord, whose need has been found bonafide by the two courts, should get the possession of the disputed shop.

Considered the respective submissions of the learned counsel for the parties. The appellate court has found as a fact that the tenant besides the disputed shop has got another shop which is 3040 ft. away from the disputed shop. The said shop of the tenant is situated in the same Mohalla and near the vicinity of the shop in question. It may also be noticed that the Prescribed Authority (Munsif, Kannauj) inspected the premises in question. He also inspected his residential accommodation which is in the possession of the tenant. A copy of the said inspection report has been filed as Annexure 9 to the writ petition. The said inspection report shows that the tenant in his house has got three shops, out of them two shops were found vacant when they were got opened. In the third shop some miscellaneous items such as furnace (Bhatti) and wood were found to be lying there, practically the third shop was also found vacant. In view of these findings that the tenant has got another shop near the vicinity of the shop in question and that, indisputably, the tenant has got three shops in his occupation at his residence, there is no justification for interference in the present writ petition.

Apart from the above, the conduct of petitioners is such that it disentitles them for any relief in the present writ petition. The petition was filed in the year 1982 and the stay order was obtained. Thereafter, the landlord expired in the year 1998 but no substitution application was filed within the time. The writ petition was got dismissed in default but was restored subsequently. A perusal of the order sheet would show that the case was got adjourned on several occasions on the request made on behalf of the petitioners.

As regards the subsequent events are concerned, there is neither proper pleading nor evidence on record to show that the need of Mohd. Nafees which was set up in the release application stands satisfied. Assuming for the sake of argument, if the landlord has taken another shop for the other family members which, according to the landlord, is not suitable for business purposes, the fact remains that the need of Mohd. Nafees still exists. In addition to the above,

looking to the fact that the tenant has got number of shops in his occupation, it is not a fit case for interference by this Court under Article 226 of the Constitution of India. The writ petition has been pending before this Court for a considerable period of time on account of the fact that it was got dismissed in default and was restored subsequently.

In Kamleshwar Prasad Vs. Pradumanju Agrawal JT. 1997 (4) SC 425, a case under the U.P. Act No.13 of 1972, it was held by the Apex Court that the need of the landlord for premises in question must exist on the date of the application for eviction, which is the crucial date and it is on the said date³ the tenant incurred liability of being evicted therefrom. Even if the landlord died during the pendency of the writ petition in the High Court, the bonafide need cannot be said to have been lapsed as the business in question can be carried on by his widow or any other son. The same view has been reiterated in Gaya Prasad Vs. Pradeep Srivastava, JT. 2001 (2) SC 426 as also in G.C. Kapoor Vs. Nand Kumar Bhasin JT 2001 (9) SC 558. The above cases have been followed in Shakuntala Bai and others Vs. Narain Dass and others JT. 2004 (Suppl.) SC 538. However, in Pratap Rai Tanwani and another Vs. Uttam Chand and another 2004 AIR SCW 6858 the Apex Court has also noticed some other decisions taking a different view of the matter and has held that the court should take care that subsequent events should have "wholly satisfied" the requirement of the party who petitioned for eviction on the ground of personal requirement.

In view of the facts and circumstances of the case, I find no merit in the writ petition. The writ petition is dismissed with cost of Rs.5,000/.

Time up to 31st of July, 2009, as prayed, to vacate the disputed shop, is granted provided that the petitioners deposit the entire arrears of rent and damages for the period up to 31st of July, 2009 within a period of one month from today at the rate as ordered by this Court and also file an undertaking on affidavit before the Prescribed Authority that they will vacate and hand over the peaceful vacant possession of the disputed shop to the heirs of the deceased landlord on or before 31st of July, 2009. The petitioner shall also deposit the cost of Rs.5,000/ within the aforesaid period as ordered above. If the petitioners fail to hand over the possession on or before 31st of July, 2009, they shall be liable to pay damages at the rate of Rs.4,000/ per month for the period subsequent to 31st of July, 2009 till the date of actual delivery of possession to the landlord.

In case of default in compliance of either of the conditions stipulated above within the stipulated time, the time granted by this Court shall stand vacated and it shall be open for the landlord to apply for the execution of the release order.

With the aforesaid observations, the writ petition is dismissed with cost of Rs.5,000/.