
(2004) 09 UK CK 0007

In the Uttarakhand High Court

Case No : Writ Petition No. 161 of 2004 (M/S)

Shamim Ahmad

APPELLANT

Vs

Prescribed Authority/Civil Judge (S.D.) and Others

RESPONDENT

Date of Decision : 13-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(4), 21, 21(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 16, 16(2)

Citation : (2005) 1 ARC 64

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—By the aforesaid writ petition, the petitioner has challenged the order passed by the Prescribed Authority as well as Appellate Authority, by which the release has been allowed u/s 21 (1) (a) of the U.P. Act No. XIII of 1972.

2. Briefly stated an application was filed by Sri Om Prakash, landlord of the premises praying for the release of the premises consisting of one room, one verandah, one bath-room, and kitchen situated at Badri Mohalla, Panditwari, Dehradun. According to the landlord, one Smt. Firoz Begum w/o Yasin Beg was tenant @ Rs. 46/- per month. Smt., Firoz Begum expired on 22.10.1995 and Sri Shamim is the tenant of the premises. The family of landlord-respondent No. 3 consists of the following members:

- (a) self
- (b) his wife Smt. Munni Devi
- (c) his son Vijay Gupta

- (d) another son Yogesh Gupta
- (e) his daughter Km. Vinita Gupta
- (f) his brother Ram Avtar Gupta
- (g) and another brother Radha Krishan
- (h) his sister Vimla Devi

3. The landlord has submitted that he has got only two small room kitchen, bath room, small verandah and due to paucity of the accommodation, the entire family is residing uncomfortably. There is place for kitchen and cooking is being done in verandah. During the pendency of the case, the family has grown up. Sri Vinay Gupta is student of B.A. 1st year at the relevant time when the application was filed and the other children are also grown up and are studying in higher classes. In these circumstances, it was prayed that the accommodation is required for the family members of the landlord.

4. Written statement was filed by the tenant/petitioner and it was denied that the landlord required the premises. In Paragraph 7, it has been stated that there are four rooms in the ground floor and two rooms are on the first floor where his brother Ram Avtar Gupta is residing.

5. On behalf of the landlord, Sri Om Prakash has filed his own affidavit stating that in accordance with the report of surveyer Manjit Sinha, who is an Advocate, he has inspected the spot and he has reported that the landlord has available with him only one room accommodation. The other room is in dilapidated condition, which is also being used by his son for keeping his Thela and there is no space available with the landlord. The relevant portion of the affidavit is quoted in Paras 4 and 5. The same is quoted below:

^^;g fd vk;qDr vf/koDrk dh fjiksVZ esa ,usDpj&1 esa n"kkZ;h xbZ IEifRr esa tks nf{k.k dh vksj dejk fn;k x;k gS og vR;Ur th.kZ "kh.kZ voLFkk esa gS o mlesa oknh vius O;kikj ds iz;ksx es vkus okyh lkeku bR;kfn dks gh j[krk gSA izkFkhZ o mlds iq= }kjk yxk;h tkus okyh lCth dh Bsyh Hkh mlh dejs esa j[kh tkrh gS okLro esa izkFkhZ ds ikl iz;ksx gsrq ,d gh dejk gS tks fd ,uSDtj&1 ds if"pe dh vksj nqdku ds ihNs fn[kyk;k x;k gSA

;g fd ,uSDtj&1 ds mRrj dh vksj fn[kyk;k x;k Vhuiks"k dejs nhokjsa feVVh o xkjs ls cuk;h gqbZ gS bldh Nr cgqr uhph gS vkSj NksVs dejs dk iz;ksx izkFkhZ ds cPps i<us ds fy, djrs gSA**

6. The first floor is in possession of his brother Ram Avtar Gupta. Similar affidavit was filed on behalf of the landlord by Sri Bhagirath Lal and in Para 4, it has been stated that one room is in dilapidated condition and is not being used by the landlord and in fact there is only one room accommodation available with the landlord. Paras 4 and 5 of the affidavit are quoted as under:

^^;g fd izkFkhZ dh IEifRr esa nf{k.k fn"kk dh vksj cuk gqvk ,d dejk o cjkenk

vR;Ur [kLrk gkyr esa gS tk yEcs vlsZ ls iz;ksx esa ugha vk jgk gS vkSj bl Hkkx esa Jh vkse izdk"k o muds ifjokj ds lnL; ?kj dk Vhu Viij vkSj nwljk xSj t:jh lkeku j[krs gSA ;s fd okLro esa bl le; izkFkhZ ds ikl vius jgus yk;d ,d dejk tks fd iwjc if"pe fn"kk dh vksj cus gq, Vhuiks"k dejs dh nhokjs xkjs dh cuh gq;h gS bldh Nr cgqr uhps gS vkSj ;s jgus yk;d ugha gS fQj Hkh bl dejs dks izkFkhZ vkseizdk"k ds cPps i<kbZ ds fy, bLrseky djrs gSaA**

7. Sri Bhagwan Das Maurya has also filed affidavit in support of the landlord stating therein that the landlord has available with him only one room accommodation and the other room is in dilapidated condition.

8. The report of the surveyer also shows that the landlord has available with him the accommodation of 9" X 10" and 12" X 10", out of which, one portion is in dilapidated condition. The Prescribed Authority has considered the requirement of the landlord by referring to the affidavits filed on behalf of the landlord paper No. 13 Ka) and the affidavits of Om Prakash, Bhagirath Lal, Bhagwan Das Maurya, Shakur Ahmad, and Ram Avtar Gupta. The finding was recorded that landlord has available with him only two small rooms and the two portions i.e. one belonging to the landlord and the other belonging to his brother, are separate. The first floor belonged to his brother Ram Avtar and the ground floor belonged to the landlord Om Prakash. The petitioner has raised dispute that the Act No. XIII of 1972 is not applicable when in point of fact the petitioner himself has availed the benefit u/s 20 (4) of the Act and according to the report of the Commissioner, two rooms are only available to the landlord.

9. So far as the comparative hardship is concerned, the same was also decided in favour of the landlord and it has also been held by the Prescribed Authority that no efforts were taken by the tenant for searching out any other accommodation during the pendency of the case. On appeal, the Appellate Court has also confirmed the finding. It has been held that the landlord has available with him only two-room accommodation, where he feels difficulty to cater the requirement of the family members. The comparative hardship was also decided in favour of the landlord.

10. On perusal of the judgments of both the Courts below, the Prescribed Authority as well as Appellate Authority, I find that both the Courts have considered the bona fide need and comparative hardship in favour of the landlord. Both the Courts below after taking into consideration the report of the Commissioner have recorded a finding that the landlord has only one room accommodation available with him. The other room being in dilapidated condition, the same cannot be made available to the landlord. In that view of the matter, considering the family members of the landlord, the need of the landlord is bona fide. The comparative hardship also lies in his favour.

11. Relying upon the judgment of Apex Court Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, , it has been observed in Prem Prakash Gupta and Ors. v. IInd Additional District Judge, Allahabad and Ors.

1993 (1)ARC 77, that no doubt true that the tenant will have to be ousted from a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of Prem Prakash Gupta (supra) is quoted as below:

"As observed by this Court in its decision in the case of Rajeshwari Prasad v. Fateh Bahadur Chaturvedi and Ors. reported in 1984 (1) A.R.C. 387, the bona fide need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word".....

In case of Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, , the Apex Court had observed that while it was no doubt true that the tenant will have to be ousted from a house if decree of eviction had been passed yet such an event by itself could not be a valid ground for refusing a decree for eviction. While considering the question of relative hardship the requirement of the landlord having regard to his profession or calling or even the status have to be taken into account. In the present case while the landlord had led sufficient evidence to show that no other alternative accommodation was available, the tenant had not let any such evidence which could show that he had ever attempted to search for an alternative accommodation or ever attempted to seek allotment of any accommodation which could be utilised for shifting his business which was dwindling day by day and as observed by the Appellate Authority itself, had been closing during the pendency of appeal.

In this case where there is inaction on the part of the tenant in searching for an alternative accommodation by seeking allotment or otherwise inspite of coming to know that the building in his tenancy is genuinely required by the landlord for satisfying his bona fide need, the question of relative hardships envisaged under the 4th proviso to Section 21 of the Act deserves to be considered liberally in favour of the landlord specially when the bona fide need for the grant of release sought for is established. While it is true that a proviso embraces the field which is covered by the main provision and the main part cannot be construed in such a manner so as to render a proviso redundant yet under the scheme of the Act, the 4th proviso to Section 21 does not appear to fall within those exceptional cases where this proviso may be said to be a part of the substantive provision itself. It should also not be lost sight of that a proviso cannot be permitted to defeat the basic intent expressed in the substantive provision which, as is apparent from the perusal of Section 21 of the Act is to enquire the availability of the demised premises to the landlord on his successfully establishing the bona fide requirement of the same for the purpose envisaged in that section.

The connotation of the term of the term "requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated u/s 21 of the Act. The provisions contained in the Act strike a just balance

between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since Section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that inspite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardship may be tilted in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for outweigh the prejudice or the inconvenience which may likely be caused to the tenants."

12. Rule 16 of Act No. XIII of 1972 has been interpreted in the case of Munni Lal Gupta v. VIIth Additional District and Sessions Judge, Aligarh reported in 1997 (1) ARC 301. After relying upon the judgment of Rajendra Kumar and others Vs. Gopal Krishna and others, , it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:

"A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar and others Vs. Gopal Krishna and others, , it has been held by Sudhir Narain, J. and I concur with the view taken therein in that "one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort". The fact that earlier application for release, met the fate of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure" to secure employment for himself, lends congency to his moving the present application."

13. In Sushila v. IInd Additional District Judge, Banda and Ors. reported in 2003 SC 109, the Apex Court has held that Rule 16 cannot be the sole criteria or deciding factor to order or not the eviction of a tenant. Therefore, the Apex Court has held that even after the consideration of Rule 16 of the rules framed under the Act, the balance tilts in favour of the unemployed son of the landlady, whose need has been bona fide and has also been so accepted by the respondents. The

observations of the Apex Court as quoted as under: -

"As observed earlier, it is clear that length of period of tenancy as provided under Clause (a) of Sub-rule 2 of Rule 16 of the Rules, 1972 is the only one of the factors to be taken into account in context with other facts and circumstances of the case. It cannot be a sole criterion or deciding factor to order or not the eviction of the tenant. Considering the facts in the light of Rule 16 pressed in to service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favour of the unemployed son of the landlady whose need is certainly bona fide and has also been so accepted by the respondent before us."

14. Similar view has been taken in the case of Smt. Sarala Ahuja v. United India Insurance Co. Ltd. AIR 1999 SC 103. It has been held by the Apex Court as under:-

"When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bonafide. When other conditions of the clause are satisfied and when the landlord shows a prima facts case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bonafide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bonafide of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

15. In view of the judgment of Apex Court reported in 2004 (1) ARC 613, Ranjeet Singh v. Ravi Prakash, the jurisdiction of the High Court under Article 226 is limited to the extent that the finding of fact recorded by the Court below cannot be interfered. The two Courts below have recorded a concurrent findings and High Court cannot act like an appellate Court under Article 226/227 of the Constitution of India. Relying upon the Surya Dev Rai Vs. Ram Chander Rai and Others, , the Apex Court in the case of Ranjeet Singh (supra) has held as under:

"In Surya Dev Rai v. Ram Chander Rai this Court has ruled that the jurisdiction was not available to be exercised for including reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that-" considering the evidence on the record carefully" it was inclined not to sustain the judgment of the appellate Court. On its own showing the High Court has acted like an appellate Court which was not permissible for it to do under Article 226 or Article 227 of the Constitution to correction in certiorari jurisdiction the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error which needs to be established by lengthy and complicated arguments or by indulging in a long drawn process of reasoning, cannot possible be an error form two option on the same material, the finding arrived at one way or the other, cannot be called a

patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution of India also, it has been held in *Surya Dev Rai* that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal."

16. Allahabad High Court has held in 2001 (1) ARC 642, *Radha Kant Dubey v. Vth Additional District Judge, Kanpur Nagar and Ors.* as under:

"It is well established proposition of law that finding with regard to the bona fide need of the landlord as well as that of the hardship is a finding of fact which cannot be disturbed in writ jurisdiction under Article 226 of the Constitution of India. In support of his submission he placed reliance on some decisions in the case of *Kamla Sarin v. Shyam Lal and Ors.* 1984 (2) ARC 344, in the case of *Muni Lal and Others Vs. Prescribed Authority and Others*, , in the case of *J.K. Kapur and Others Vs. State of Gujarat and Others*, , in the case of *Babhutmal Rai Chand v. Laxmibai* AIR 1975 SC 1296, in the case of *Mrs Labhkuwar Bhagwani Shaha and Others Vs. Janardhan Mahadeo Kalan and Another*, , in the case of *Ram Rakesh Pal and Anr. v. 1st Additional District Judge and Ors.* 1967 UPRC 376, in the case of *Jagan Prasad v. District Judge and Anr.* 1976 UPRCC 342, in the case of *Smt. Nirmala Tandon v. Xth Additional District Judge, Kanpur Nagar* 1996 (2) ARC 409 and in the case of *Kamleshwar Prasad v. Praduman Ja Agarwal* 1997 (1) ARC 627.

17. In view of the aforesaid, the writ petition is devoid of merit and is hereby dismissed. However, the petitioner is allowed time upto 31st of January, 2005 provided the petitioner gives an undertaking within three months to vacate the premises by 31st of January, 2005 and pays the entire amount of damages alongwith the undertaking. In case of default, the orders for eviction shall be executed forthwith.