
(2001) 07 AHC CK 0073

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23906 of 2001

Shashi Gupta

APPELLANT

Vs

Vth Additional District Judge, Bulandshahr & Ors.

RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:

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

Citation : (2001) 07 AHC CK 0073

Hon'ble Judges : Yatindra Singh, J

Judgement

Yatindra Singh, J.—This is a writ petition against the orders dated 3152001 and 24111997 passed by respondent Nos. 1 and 2 in proceedings under Section 21 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (the Act) releasing the shop in question in favour of the landlord mentioned as opposite party II set namely respondent Nos. 3 to 11 (the landlords).

2. One Mukundi Lal was tenant of the shop in question. He died in the year 1970 and his heirs became tenant in the shop in dispute. The landlords filed a release application in the year 1979 under Section 21 (a) of the Act, in this application all the heirs of Mukundi Lal were made party. Petitioner is also daughter of Mukundi Lal and is his heir. She was also impleaded but no guardian was appointed. This should have been done as she was minor at that time. This application was partly allowed on 510 1997 and half of the shop was released in favour of the landlords and remaining half was to be left with the tenants. Both the sides filed appeal. These appeals were decided by the Appellate Court on 20111980. The appeal of the tenants was dismissed and appeal of the landlords was allowed.

3. Sri Ram Saran Dass and Sri Gopal Dass (two of the heirs of Mukundi Lal) filed a writ petition against the Appellate Order in this Court. This writ petition was numbered as W.P. No. 3532 of 1981 and was dismissed on 2531982. Subsequently the petitioner filed original suit No. 410 of 1982 for declaration that

the order passed by Prescribed Authority and Appellate Authority dated 5101979 and 20111980 are illegal as she was minor at the time of proceedings and no guardian was appointed. This suit was partly decreed on 1751983. It was declared that orders dated 5101979 and 20111980 are null and void against the petitioner and she is not liable for ejectment in pursuance of the same. There was no such declaration or injunction against others. The landlords' appeal was dismissed on 1741987. After decision in the aforesaid suit, the landlords filed another application on 1851987 under Section 21 (1) (a) of the Act. In this application alongwith petitioner other heirs of Mukundi Lal (against whose eviction orders dated 5101979 and 20111980 had become final) were also impleaded. This application was allowed on 3151990. Petitioner filed an appeal which was allowed on 31 71991 and the matter was remanded back for redcision on the ground that affidavits could not be taken into account unless the Court had granted permission to do so. After remand the landlord filed application No. 59Kha before the Prescribed Authority for taking the evidence by means of affidavit. This application was allowed on 20101997 and the affidavits were taken on record. Subsequently the Prescribed Authority after considering the evidence on record allowed the application of the landlord on 24 111997. Petitioner filed an appeal which was also dismissed on 3152001, hence the present writ petition.

4. I have heard Sri M.D. Shekhar, Counsel for the petitioner and Sri Rajesh Tandon Counsel for the landlords. Sri Shekhar has raised following points before me:

(i) There is no compliance of remand order dated 315 1999 and the affidavits could not be read in evidence.

(ii) Smt. Saraswati and Smt. Sudha who were also opposite parties in the application. They died during pendency of the application before the Prescribed Authority. The order is illegal as their heirs have not been substituted.

(iii) During the pendency of the case three rooms have been vacated on the first floor and the need of the landlord is fulfilled by occupying the same.

(iv) The second release application could not be allowed with due emphasis to the order passed in the first case, and the need of the landlord can be fulfilled in case part of the portion is released.

5. The Appellate Court had remanded the case on 3151991 on the ground that the affidavits could not be taken into account without there being order of the Court. After remand the landlord filed an application namely application No. 59Kha on which no objection has taken. This application was allowed on 20101997 taking the affidavits to be taken on record. This order is neither filed before this Court nor it is challenged. This point has no force in view of the fact that Court has already allowed the affidavits to be taken into account, and this order is not challenged. The petitioner had opportunity to file documents or evidence in rebuttal. She has done so. The reasonable procedure has been

adopted. The first point raised by the petitioner has no substance.

6. Smt. Saraswati and Smt. Sudha were parties in the first release application and the orders against them have become final. They were impleaded in the second application as proforma opposite party. Their heirs have not challenged the order. Their non substitution has not effected the merit of the case. In view of this impugned order cannot be set aside on the ground that heirs of Smt. Saraswati and Sudha were not brought on record.

7. It is true that three rooms have been vacated in the first floor and have been occupied by the landlord but these rooms were occupied by one Captain Harkesh who occupied the same for residential purpose. After these rooms were vacated they have been occupied for residential purpose by one of the landlord namely Dinesh Chand. This was stated by affidavit. There was no denial of this fact by the petitioner. In view of those three rooms could not be taken into account for considering bona fide need for the shop for commercial purposes. The lower Courts have considered it and have rightly excluded them for considering need for shop. The order is not vitiated on this ground.

8. It is also not correct to say that Courts below have allowed the application on the basis of previous order. They have considered the evidence and have held the need of the landlord for the entire shop to be bona fide. Petitioner is married and her husband is in service in Rajasthan. The Court below have also compared the hardship. There is greater hardship to the landlords in case their application is rejected. These are finding of fact. There is no illegality in the same. They cannot be interfered in the writ jurisdiction.

9. I have already decided question raised by the petitioner. Apart from it this is not a fit case for interference under Article 226 of the Constitution. The first release order was upheld by this Court. It was no doubt partly set aside by the Civil Court so far as the petitioner was concerned on the ground that she was minor and no guardian was appointed but other heirs of Mukundi Lal who were major, they had contested and lost the case. Petitioner is married in Rajasthan. The Court below has again recorded a fresh finding regarding bona fide need and comparative hardship. There is no illegality. Even if there is any illegality in the circumstances of the case it is not a fit case to interfere

10. There is no merit in the writ petition. It is dismissed. However, the petitioner is granted three months time to vacate the premises provided she files an undertaking in the form of an affidavit before the Prescribed Authority within fifteen days that she will vacate the premises within three months and pay the rent for the period of her occupation.

11. With these observations the writ petition is dismissed.