
(2006) 09 UK CK 0043

In the Uttarakhand High Court

Case No : Writ Petition No. 745 (MS) of 2005

Smt. Bharti Bisht

APPELLANT

Vs

District Judge, Nainital and Others

RESPONDENT

Date of Decision : 22-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) 2 UC 839

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Sri B.P. Nautiyal and Sri Hari Mohan Bhatia, for the Appellant; Sri Sharad Sharma for Respondent No. 3 and Learned Standing Counsel for Respondents No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Rajesh Tandon, J.—Heard Sri B.P. Nautiyal & Sri Hari Mohan Bhatia, Advocate for the Petitioner, Sri Sharad Sharma, Advocate for the Respondent No. 3 and Standing Counsel for the Respondents No. 1 and 2.

FACTUAL MATRIX of THE CASE

2. By the present writ petition the Petitioner has prayed for a writ of certiorari quashing the order passed by the Respondent No. 1 District Judge Nainital in Rent Control Appeal No. 3 of 2004.

3. Briefly stated, an application was filed u/s 21(1)(a) of the (U.P.) Act No. 13 of 1972 for the release of the accommodation in the tenancy of the Petitioner situate at the place known as Tula Cottage, Tallital, Nainital consisting of 2 rooms latrine and bathroom of the northern side of Tulla Cottage Tallital, Nainital. The prescribed authority has rejected the application for release. On appeal, the District Judge has allowed the appeal.

BONAFIDE NEED of THE LANDLORD/RESPONDENT

4. In paragraph 9 of the application u/s 21(1)(a) of the U.P. Act No. 13 of 1972, the Respondents have specifically pleaded that they are having a joint family and are in possession of only two rooms. The applicants No. 2 and 3 are married. The Family of Rajendra Lal Shah/applicant No. 2 consists of himself, his wife and two children and the family of Vijay Lal Shah consists of himself, his wife and two children and mother is also residing alongwith them.

5. The landlords/Respondents have stated in their application that the elder son of Rajendra Lal Shah is studying in Class VIII. The application for release was filed in the year, 1997 and nine years have already passed.

6. Similarly, children of Vijay Lal Shah are also studying in Nursery School at the relevant time and now they have grown up. All the landlords are having a good status as Rajendra Lal Shah is having a kirana shop in Nainital and has to reside permanently at Nainital and Vijay Lal Sah is also working as Clerk in the Government Inter College, Patwa Danger and his family is permanently residing at Nainital. In the suit, two rooms are available with the landlord and as such they require a separate and comfortable living.

7. The Petitioner is working in Balika Vidya Mandir, Nainital and is getting a handsome salary and house rent and can easily afford some other accommodation in the town, but No. effort has been taken.

8. A written statement has been filed, where it has been stated that the landlord/ Respondents have available with him, the house at Ganesh Kuti, Tallital, Nainital, where they are residing comfortably and they are also in possession of 3rd storey and loft over it of Tula Cottage, which is above the premises in question.

9. During the proceedings of the case, the affidavit was filed by Smt. Parwati Devi, the mother of the Respondents, who has stated that the Respondent No. 2 and 3 are living together as a joint family and due to lack of accommodation, they are compelled to live in two rooms although they are married and their sons and daughters have now grown up and they require separate rooms for their study and living also.

10. In paragraph 14, it has been stated that Ganesh Kuti is the two storied building and Respondents are only the owner of the first floor and the ground floor is under the ownership of one Sri Rakesh Shah. Further it has been stated that so far as the Tula Cottage is concerned, there is three storied and a loft which is an old and three storied structure of wood and by lapse of time, the same has become uninhabitable and they are not in a position to make construction over the second storey of the Tula Cottage.

11. The Petitioner has also filed her own affidavit where she has stated in paragraph 8 that in Ganesh Kuti, which is two storeyed house, there are four rooms, which are sufficient for the Respondents and No. additional accommodation is required.

12. During the proceedings of the Rent Control and Eviction Officer, the

inspection had taken place and it has been found that so far as Ganesh Kuti is concerned on the first floor there are two rooms. The same is in possession of Sri Rajendra Lal Shah and two other rooms are in possession of Sri Rakesh Lal Shah, who is cousin brother of the Respondents and similarly the ground floor is also in possession of Sri Rakesh Lal Shah, so far as Tula Cottage is concerned, the articles of general merchant are lying in one room and in another room also the house hold articles are lying and the building has been found to be in dilapidated condition. The report dated 4th March, 2005 is quoted below:

13. The Prescribed Authority has rejected the application on the ground that four rooms are available with the Respondents and as such the need has not been found to be bonafide. The Respondents filed an appeal and in appeal, it was specifically pleaded that they are compelled to accommodate themselves in two rooms when in point of fact they require at least three more rooms and accommodation of two rooms is not sufficient to fulfill the requirement of the Respondent for living comfortably.

14. Further it has been mentioned in the grounds of appeal that the Respondents have clearly pointed out that there are only two rooms available in Ganesh Kuti and the report of the Inspector has also not been considered. Paragraph 12 to that effect is quoted below:

12. That the observation in regard to the accommodation in possession of the Appellant in Ganesh Kuti is itself contrary to the report of R.I. filed by the Appellants in the lower court so the learned lower court did not care to look the evidence in record and can be said that ignored the evidence of the Appellants.

15. The Respondents have also filed the affidavit before the District Judge, where it has been mentioned that the entire ground floor portion consists of two rooms each measuring about 10'6" x 10" and two very small kothries each measuring about 9' x 9".

16. In paragraph 5 of the affidavit before the District Judge, it has further been specifically stated that there are two separate electric metres belonging to the family of the landlord namely Sri Ganesh Lal Shah. The ground floor electricity supply meter has the electricity-connection No. 002857 in the name of the deponent's uncle late Sri Ganesh Lal Shah and the first floor portion has a separate electricity connection No. 002858 in the name of the deponent's uncle late Sri Ganesh Lal Shah. Paragraph No. 5, 6, 7 and 8 to that effect are quoted below:

5. That it may further be specified here that there are two separate electricity meters which belong to the family of the deponent's uncle late Sri Ganesh Lal Shah. The ground floor electricity supply meter has the electricity-connection No. 002857 in the name of the deponent's uncle late Sri Ganesh (sic)Shah and the first floor portion has (sic)arate electricity connection No. (sic)858 in the name of the deponent's uncle late Sri Ganesh Lal Shah. A copy of the latest electricity bill of the above electricity connections of the ground floor portion and part of the

first floor portion in possession of the family of late Sri Ganesh Lal Sah are being filed herewith so to conclusively prove the above facts and these electricity bills are marked as Annexure No. 1 and 2 respectively to the present affidavit. It may further be specified here that the deponent's Chachi Smt. Saroj Sah holds a ration card from the same building in her name. A copy of the recent changed ration card in the name of the deponent's aunt Smt. Saroj Sah is being filed herewith which contains her photograph and this copy of her ration-card is marked as Annexure No. 3 to this affidavit. It may also be stated here that the said portion has separate water connection from Uttaranchal Jal Sansthan since life time of late Sri Ganesh Lal Sah. A copy of the bill of water charges in the name of the deponent's uncle late Sri Ganesh Lal Sah bearing the No. A 0109347 is being filed herewith which is marked as Annexure No. 4 to this affidavit. It may further be specified here that separate scavenging charges are paid for the said portion in the name of the Deponents' uncle late Sri Ganesh Lal Sah for his above portion. A latest bill No. 51 of the scavenging charges issued from the Nagar Palika Parishad Nainital is being filed herewith and is marked as Annexure No. 5 to this affidavit.

6. That the Appellants' family has a separate electricity connection No. 002859 for the said two rooms portion of Ganesh Kuti in the name of the deponent's father. A copy of the said electricity bill of the deponent's portion in the name of the deponent's father is being filed herewith which is marked as Annexure No. 6 to this affidavit. The Appellants are paying separate scavenging tax to the Nagar Palika Parishad Nainital for the said two room portion in occupation of the Appellants. A Bill No. 183 of the Nagar Palika Parishad, Nainital issued under the name of the deponent for the said portion in possession of the Appellants is being filed herewith and the same is marked as Annexure No. 7 to this Affidavit.

7. That it may further be stated here that the portion in possession of the Appellants' family of Ganesh Kuti is separately registered for the purpose of house tax and water tax. A copy of the house tax and water tax bill No. 65 issued by the Nagar Palika Parishad Nainital in respect of the said portion through the deponent is being filed herewith which is marked as Annexure No. 8 to this affidavit.

8. That the Appellants have a separate ration card issued in the deponent's name on the changed form of ration card for 9 units. A copy of the deponent's ration card is being filed herewith and is marked as Annexure No. 9 to this Affidavit.

17. As will appear from the aforesaid that apart from the separate electricity for the two portions, there is separate assessment of water and house taxes and separate ration cards and as such the findings recorded by the trial Court, therefore, while clubbing the two portions are wholly illegal. The appellate Court after considering the entire evidence has allowed the appeal and set aside the findings of the trial Court.

18. The appellate Court has relied upon the inspection report and has recorded the findings to the following effect:

19. It is well known that the landlord is the best Judge for his choice. So far as comfortable living is concerned, it has been held in *Smt. Sarla Ahuja v. United India Insurance Company Ltd.* AIR 1999 SC 103, 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 facie 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.

20. Admittedly, the landlord has only available accommodation comprising two rooms at Ganesh Kuti and so far as Tula Cottage is concerned, the same has been found to be in dilapidated condition and as such the same cannot be made available to the landlord.

21. In the writ petition, it has also come in the evidence that the portion which the Respondent No. 2 is occupying at Ganesh Kuti has come to the share of his brother Vijay Lal Shah and the assessment to that effect has been filed by the Petitioner in his writ petition. The description given to that effect is quoted below:

22. As will appear from the aforesaid description Dwitiya Manjil as well as the loft has come to the share of Sri Rajendra Lal Shah and there is No. place available with Vijay Lal Shah.

23. Admittedly Sri Vijay Lal Shah has his wife and two grown up children and all of them require separate living and study room apart from the guest room etc. The portion which is in dilapidated condition i.e. loft cannot be used for residential purposes even if it is assumed that the landlord is available with him only two room accommodation, is hardly sufficient for the landlord and as such they require independent living.

24. In *Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others*, , it has been held:

The connotation 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 in spite 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 out weight the prejudice or the inconvenience which may likely be caused to the tenants.

25. Following the decision of Bega Begum (supra), in the case of Joginder Pal v. Naval Kishore Behal, 2002 SC & FB, RC, 388, the Apex Court has held as under:

5. In Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another, this Court emphasized the need of social legislations like the Rent Control Act striking a balance between rival interests so as to be just to law. "The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society". While the shortage of accommodation makes it necessary to protect the tenants to save them from exploitation but at the same time the need to protect tenant is coupled with an obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed. Socially progressive legislation must have a holistic perception and not a shortsighted parochial approach. Power to legislate socially progressive legislation is coupled with a responsibility to avoid arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section, at the cost of constraints by placing shackles on the other section, not only entails miscarriage of justice but may also in constitutional invalidity.

8. The need for reasonable interpretation of rent control legislations was emphasized by this Court in Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, . Speaking in the context of reasonable requirement of landlord as a ground for eviction, the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that 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. In Kewal Singh v. Lajwanti this Court has observed, while the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance, one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. Recently in Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta the Court has held that the concept of bona fide need or genuine requirement needs a practical approach

instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

9. The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords-both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.

30. In providing key to the meaning of any word or expression the context in which it is set has significance. Colour and content emanating from context may permit sense being preferred to mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the expression. Requirement of landlord for his own use, is an expression capable for attributing an intention to the legislature that what was intended to be fulfilled is such requirement as would persuade the landlord to have the premises vacated by the tenant, to forego the rental income, and to put the premises to such use as the landlord would deem to be his own use and in the given facts and circumstances of a case the Court too would hold it to be so in contradistinction with a mere ruse to evict the tenant. The legislature intending to protect the tenant also intends to lift the protection when it is the requirement of landlord to put the accommodation to such use as he intends, away from leasing it out.

31. If we do not meaningfully construe the concept of requirement the provision may suffer from the risk of being branded as unreasonable, arbitrary or as placing uncalled for and unreasonable restrictions on the right of the owner to hold and use his property. We cannot place a construction on the expression "for his own use in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well in his life. We have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words, which the Legislature has not itself chosen to define. The Indian society, its customs and requirements and the context where the provision is set in the legislation are the guides leading to acceptance of the meaning which we have chosen to assign to the words "for his own use, in Section 13(3)(a)(ii) of the Act.

32. (v). In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord "for is own use" within the meaning of Section 13(3)(a)(ii).

26. The Apex Court in *G.C. Kapoor v. Nand Kumar Bhasin*, 2001 (2) ARC 603 has relied upon the judgment of *Datta Laxman* as well as *Raghunath Pale* and has come to the conclusion as under:

9. It is settled position of law that bona fide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In *Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and Another*, , this Court while considering the bona fide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is No. warrant for "presuming that his need is not bona fide". It was also held that while deciding this question, court would look into the broad aspects and if the Court feels any doubt about bona fide requirement, it is for the landlord to clear such doubt.

COMPARATIVE HARDSHIP

27. Rule 16(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 reads as under:

16. Application for release on the ground of personal requirement [Section 21(1) (a) and 34(8)].-

[(1) In considering the requirements of personal occupation for purposes of residence by the landlord or any member of his family, the prescribed authority shall, also have regard to such factors as the following

28. The Apex Court in *Shushila v. IInd Additional District Judge, Banda* and other reported in 2003 SCFBRC 109 after considering Rule 16 has observed as under:

As observed earlier it is clear that the length of period of tenancy as provided under Clause (a) of sub-rule 2 of Rule 16 of Rules, 1972 is 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 into 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 bonafide and has also been so accepted by the Respondent before us.

29. In the case of *Arvind Kumar v. IInd A.D.J., Etawah* reported in 1997 (1) ARC 304, has held as under:

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.....

CONCLUSION

30. As will appear from the record that application for release was filed in the year, 1997 since then the family of the landlord is residing in a two room accommodation only along with grown up children.

31. It has been observed by the Apex Court in Gaya Prasad Vs. Sh. Pradeep Srivastava, , as under:

15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the list. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.

18. We wish to add, as an epilogue, that this case can provide a catalytic agent for the High Courts to evolve some concrete scheme for winching to the fore similar long pending matters, lying in torpidity at the bottom of the crammed list of pending cases in the High Court after passing the initial orders, keeping the operative part of decrees in abeyance. It is worth considering whether a cell can be set up in each of such High Courts where the piles of backlog are a stirring problem, to pick out such cases to be brought to the notice of the Chief Justice of the High Court concerned so that he could take appropriate steps in the matter.

32. In Ansuyaben Kantilal Bhatt Vs. Rashiklal Manilal Shah and Another, , it has been stated in very beginning of the judgment:

This is one of the classic instances of the cases holding the law that "delay defeats justice", the landlord filed a suit in 1966 for eviction of the tenant for personal occupation and today after 31 years, we disposing of the matter at level of this Court.

INTERFERENCE UNDER ARTICLE 226/227 of THE CONSTIUTION of INDIA

33. Relying upon the judgment of Surya Dev Rai Vs. Ram Chander Rai and Others, , the Apex Court in Ranjeet Singh Vs. Ravi Prakash, , has held as under:

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.

34. In *Mrs. Rena Drego Vs. Lalchand Soni, Etc.,* , the apex court has held as under:

4. According to us, the High Court has traversed for beyond the limit of its supervisory jurisdiction under Article 227 of the Constitution when the learned single Judge reversed the decree of eviction which was based on findings of facts arrived at by the fact finding authority upon the evidence on record. It would have been well for the High Court to remind itself that it was not exercising certiorari jurisdiction under Article 226 of the Constitution but a supervisory jurisdiction under Article 227 which obliges the High Court to confine to the scrutiny of records and proceedings of the lower tribunal. By relying on fresh materials which were not before the tribunal, the High court should not have disturbed findings of fact in exercise of such supervisory jurisdiction. It is now well night settled that power under Article 227 is one of judicial superintendence which cannot be used to upset conclusions of facts, however erroneous those may be, unless such conclusions are so perverse so unreasonable that No. Court could ever have reached them. Way back in 1954, a Constitution Bench of this Court, in *Waryam Singh and Another Vs. Amarnath and Another,* , has pointed out that the power of superintendence conferred by Article 227 should be exercised "most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors.

5. The said decision was made in an appeal which considered an order passed by a Rent Control Court. Quoting the aforesaid dictum a three Judge Bench of this Court has in AIR 1975 1297 (SC) observed thus:

The power of superintendence of High Court under Article 227 being extraordinary is to be exercised most sparingly and only in appropriate cases. The power, as in the case of certiorari jurisdiction, cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as a Court of appeal. The high Court cannot, in guise of exercising its jurisdiction under Article 227, covert itself into a Court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or tribunal final on facts. The High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate Court or Tribunal. Its function is limited to seeing that the subordinate Court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it.

35. In view of the above, I do not find any infirmity in the order passed by the appellate court so as to interfere under Article 226/227 of the Constitution of India. However, the Petitioner prays for time to vacate the premises. The Petitioner is allowed to vacate the premises by 30th April, 2007 on the following conditions:

(a) he shall furnish the undertaking by or before 15th October, 2006 to vacate

the premises by or before 30th April, 2007.

(b) he shall pay entire arrears of rent or damages by or before 15th October, 2006.

(c) he shall pay month to month rent in the first week of every month at the rate of admitted rate of rent.

On failure of the aforesaid conditions, No. relief shall be available with the Petitioner and Respondents/ landlords shall be at liberty to initiate proceedings to evict the Petitioner from the premises in dispute.

36. In view of the above, writ petition is dismissed. No. order as to costs.