
(1998) 10 AHC CK 0026
In the Allahabad High Court
Case No : C.M.W.P. No. 31581 of 1998

Smt. Dharamwati and others

APPELLANT

Vs

Special Judge/Additional District Judge, Ghaziabad and others

RESPONDENT

Date of Decision : 07-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21

Citation : (1999) 1 AWC 28

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Prakash Krishna, for the Appellant; S.C. and M.K. Gupta, for the Respondent

Judgement

J.C. Gupta, J.—Heard Sri Prakash Krishna petitioner's counsel and Sri. M. K. Gupta appearing for the landlord-caveat or, respondent No, 3.

2. The dispute relates to a shop which is in occupation of the petitioner as tenant of respondent No. 3. The shop in question was asked for by the landlord for setting up a separate show room for his younger son Arun Kumar. The landlord came with the case that his elder son Aditya Kumar is carrying on business of sanitary goods in the premises which were previously numbered as shop Nos. 49 and 50. It may be mentioned here that the shop No. 50 was already in occupation of the landlord and shop No. 49 which was in occupation of a tenant was got released for the benefit of Aditya Kumar for carrying on the aforesaid business of sanitary goods and after the said shop was released, the partition wall in between the two shop Nos. 49 and 50 was removed and thereafter the business of sanitary goods by Aditya Kumar is being carried on in the entire premises. It was further the case of the landlord that his younger son Arun Kumar has also grown up and is carrying on his own independent business. However, in the absence of any other suitable accommodation, he was forced to do his business from the same premises in which his elder son Aditya Kumar is

carrying on his business. Therefore he required the shop in question for his younger son separately and he would remodel the shops in such way that a ten feet passage is left in between the two show rooms for his two abovenamed sons. The application was contested by the petitioner on a number of grounds, some of them being that the landlord has available with him other accommodations wherein he could settle his younger son if at all he wanted to do his business independently. Both the Courts below on appraisal of evidence have recorded a concurrent finding that the landlord has no other suitable accommodation wherein his younger son could be settled in business independently. On the material placed on record, the Prescribed Authority as well as the Appellate Authority came to the conclusion that the need of the landlord was genuine and bona fide. It was suggested on behalf of the petitioners that the landlord has available with him one shop in house No. 165 Mohalla Kanhlya Road. However, the Courts below have found that the said premises was being used as a chamber of the landlord who is a practising lawyer. It was also suggested on behalf of the petitioner that during the pendency of appeal, another shop came into occupation of the landlord which was in occupation of Indra Mohan Gupta but instead of occupying the same, the landlord has let it out on higher rent. The reply of the landlord to this assertion was that the said premises was not a shop but only consisted of an Almirah with an open Chabutara and it was not at all suitable to the landlord's son for the proposed show room. The bona fides of the landlord could only be doubted if he has available with him suitable accommodation for the proposed need but instead of occupying the same, he lets it out to some other person. However, where the accommodation which might have come in occupation of the landlord does not suit for his purpose, the fact that the landlord did not occupy the same, will not be enough to doubt the bona fides of the landlord. Learned counsel for the petitioner argued that the need set up by the landlord could not be said to be bona fide one but it was simply a desire of the landlord to have the accommodation in question. The question whether the need is bona fide or not or is a mere desire, is to be answered on the facts and circumstances of each case and no hard and fast formula can be laid down in this regard. In the present case, both the Courts below have evaluated the evidence on record for coming to the conclusion that the need set up by the landlord is genuine and bona fide. Interference is permissible only in those cases where the Court finds from the evidence on the record that there could possibly be no other view. This Court while sitting in its writ jurisdiction does not act as a court of appeal and its Jurisdiction under Articles 226 and 227 of the Constitution of India in rent control matters is of supervisory nature only, when called upon to Judge the finding of the Competent Authorities, viz., the bona fide need of the landlord and comparative hardship of the parties. The Court is not expected to embark upon reappraisal of evidence or substitute its own findings of fact in place of those recorded by the fact finding authority even where the findings may not necessarily be of the liking of the Court. The decision under review cannot be set aside only where it is manifestly erroneous and arbitrary or that the findings of fact recorded by the authorities below were

wholly unjustified or perverse. If finding is found to be rational and reasonable based on evidence, the decision cannot be interfered with. In the present case the findings recorded by the Courts below cannot be said to be unreasonable or irrational nor it can be said that the decision has been influenced by any irrelevant material. Therefore, this Court does not find any good reason to make interference in the finding of fact recorded by the authorities below on the question of bona fide need of the landlord .

3. On the other question of comparative hardship, both the Courts below have recorded a concurrent finding of fact that the landlord was likely to suffer a greater hardship than that of the tenant and while recording this finding, the authorities below have not only taken into consideration the fact of the petitioners not making any effort to obtain any other accommodation by allotment or otherwise though the application for release remained pending since 1996 but has also taken into account other factors such as that petitioner No. 1 is an old lady and that the petitioner Nos. 2 and 3 are already permanently employed in Ghaziabad Nagar Nigam. There has been due consideration of the hardships which each of the parties was likely to suffer and it has rightly been observed by the lower appellate authority that in each and every case where eviction is ordered, some sufferance by the tenant is inevitable but for that factor alone, the need of the landlord which is found to be bona fide cannot be sacrificed.

4. This writ petition which is concluded by findings of fact is, therefore, dismissed.

5. At this stage learned counsel for the petitioner made a request that the petitioner may be allowed a reasonable time to vacate the premises in question and make their own alternative arrangement. Respondent's counsel opposes this prayer stating that the release application has been pending for the last more than two years and the landlord's need is very pressing. On a consideration of facts and circumstances, the petitioners are allowed time up to 31.3.1999 to vacate the premises in question subject to the following conditions :

1. that each of the petitioners shall file an undertaking on affidavit before the Prescribed Authority within a period of four weeks from today to the effect that he shall vacate and hand over the vacant possession of the premises in question to the landlord on or before 31.3.1999 without inducting any third person therein, and

2. that the petitioners shall go on paying rent regularly to the landlords whenever the same becomes due.

6. For a period of four weeks from today the operation of the impugned order of release shall remain suspended and in case the required undertakings as aforesaid are filed and other conditions are respected, the eviction of the petitioners in pursuance of the release order shall remain suspended upto 31.3.1999. However, in the event of required undertakings being not filed within the time as aforesaid, it shall be open for the landlord to get the release order

enforced forthwith in accordance with law.

7. With the above concession given to the petitioners for vacating the premises in question, this writ petition is dismissed in limine.