
(2006) 12 AHC CK 0198
In the Allahabad High Court
Case No : C.M.W.P. No. 34261 of 2001

Smt. Khursheed Begum

APPELLANT

Vs

Bashir Ahmad

RESPONDENT

Date of Decision : 18-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)

Citation : (2008) 5 AWC 5004

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Madhav Jain, for the Appellant; R.K. Sinha and A.K. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—List has been revised. Heard Sri Madhav Jain, learned Counsel for the Petitioner. Neither any counsel for the Respondent is present nor counter-affidavit has been filed till date.

2. This writ petition has been filed by the landlady-Petitioner against the judgment and order dated 31.5.2001 in Rent Control Appeal No. 290 of 1999 passed by X Vth Additional District Judge, Agra whereby he allowed the appeal of the Respondent-tenant setting aside the judgment and order dated 30.10.1999 in P.A. Case No. 1 of 1998, Khursheed Begum v. Bashir Ahmad passed by the Prescribed Authority/ I Vth Additional Civil Judge (Senior Division), Agra.

3. Brief facts of the case are that the dispute No. 48 is situate at Pratappura, P.S. Sadar Bazar District Agra in which Respondent is the tenant.

4. The Petitioner moved an application u/s 21(1)(a) of U. P. Act No. XIII of 1972 before the Prescribed Authority/I Vth Additional Civil Judge (Senior Division), Agra for release of the accommodation under the tenancy of the Respondent on

the ground of her personal need which was registered as P.A. Case No. 1 of 1998.

5. It was claimed in the release application that the Petitioner is the sole owner of the accommodation in dispute on the basis of last Will dated 27.8.1978 executed in her favour by Smt. Khusnidi Begum who died on 16.3.1980 ; that she has a large family including her husband eight sons, a daughter, daughter-in-law and grand children who are residing in two room accommodation in the property of her father situated at Katra Umar Khan, Agra being house No. 2/76 which were insufficient to meet the requirement of the members of her family.

6. Besides above, it was also stated that the father of the Petitioner was insisting on vacation of the accommodation, which was required by his family members. It was also stated that the Petitioner and her family members own no other property except the property in dispute to fall back upon and that the accommodation in question which was bona fide required by her.

7. The further case of the Petitioner was that the Respondent and his wife both were teachers and had constructed their own house in Shahid Nagar, Agra as such they will face any hardship if the house is released in her favour and in case the accommodation in dispute is not released she will face comparatively greater hardship as only one of her son has been married and the marriage of her other children sons has not yet been solemnized for want of accommodation.

8. The release application filed by the Petitioner was contested by the Respondent denying the allegations made in the release application and the title of the Petitioner, inter alia, that she is not the landlady and that one Smt. Khusnidi Begum was in fact the landlady of the house in dispute. It was also stated that after the death of Smt. Khusnidi Begum her husband Sri Amiruddin became the landlord of the accommodation in dispute. The Respondent also denied that he had any accommodation of his own in Shahid Nagar, Agra as alleged by the Petitioner and further that the need of the Petitioner is not pressing and genuine.

9. The prescribed authority vide judgment and order dated 30.10.1999 allowed the release application of the Petitioner holding that her bona fide need and comparative hardship was greater than the Respondent-tenant. The prescribed authority accordingly directed the Respondent to vacate and handover peaceful and vacant possession of the accommodation in dispute to the Petitioner within two months from the date of the order and that in case the Respondent fails to do so, the Petitioner could evict the Respondent through competent Court.

10. Aggrieved by the aforesaid judgment and order dated 30.10.1999 passed by the prescribed authority the Respondent-tenant filed Rent Control Appeal No. 290 of 1999 before the appellate court which was allowed vide order dated 31.5.2001 holding the bona fide need and comparative hardship of the Respondent-tenant was greater than that of the Petitioner-landlady. The operative portion of the judgment and order dated 31.5.2001 of the appellate court is as under:

11. Feeling aggrieved by the judgment and order dated 31.5.2001, passed by the appellate court the Petitioner has come up in this writ petition.

12. The learned Counsel for the Petitioner submits that the appellate authority has been unnecessarily influenced in its judgment on account of initiation of proceedings u/s 145, Cr. P.C. by Sri Abdul Qamar without considering that the said proceedings were not the substitute of the prayer for release and in the absence of any finding that the said proceedings were initiated at the instance of the Petitioner with enhancement of rent as motive.

13. He further submits that the appellate authority exceeded its jurisdiction while setting aside order of release without considering the findings recorded by the prescribed authority in support of the issue of bona fide need and comparative hardship.

14. He also submits that the appellate authority while considering the question of bona fide need for release of the accommodation in dispute has arrived at the conclusion that the need of the Petitioner is bona fide and genuine but has denied the prayer for release of the accommodation on the ground that none of the sons of the Petitioner have filed affidavit of their own to assert that they are living in two-room accommodation of their maternal grandfather at Agra with their mother. It is urged that the appellate authority has failed to consider that the Respondent has failed to prove that any member of the Petitioner's family had acquired property. He further submits that the prescribed authority after considering the evidence on record has recorded a categorical finding that the Respondent neither disputed the fact that all the sons of the Petitioner are living with her nor gave any evidence documentary or oral to prove that any of the members of the Petitioner's family had acquired or constructed any house, hence the allegation of the Respondent-tenant about acquisition of property by any of the members of the Petitioner's family was without any basis and could not be relied upon.

15. He also submits that in absence of any finding that the judgment of the prescribed authority is vitiated on account of non- consideration of material evidence submitted on behalf of the Petitioner in support of her case and as such has acted illegally and arbitrary while upsetting the finding regarding bona fide need on irrelevant consideration of non-filing of affidavit by sons of the Petitioner that they were living in a two room accommodation in their maternal grandfather's house.

16. It is urged that the finding of the appellate authority that the wife of the Respondent is not working is contrary to the finding recorded by the prescribed authority, which is based on record. It is stated that even assuming that wife of Respondent-tenant was not a working woman it does not demolish the bona fide need for release of the accommodation nor creates any adverse impact upon the issue of comparative hardship.

17. It is submitted that the Respondent has failed to lead any evidence to prove

that during pendency of the case before the authorities below and also before this Court he has made efforts to find out alternative accommodation. In such circumstances, the balance of comparative hardship is in favour of the Petitioner and against the Respondent.

18. The counsel for the Petitioner has placed reliance upon the decisions in Ramesh Narain v. VI Ith Additional District Judge, Ghaziabad and others, 2006 (2) ARC 331 Santosh Hazari v. Purshottam Tiwari, 2001 (1) AWC 824 and Direndra Mohan Saxena v. Prescribed Authority, 1990 (2) ARC 178, in this case in support of his case.

19. Neither counter-affidavit has been filed till date nor the counsel for the Respondent has put in appearance, hence the averments made in the writ petition are taken to be correct in view of the decisions in Choksi Tube Company Ltd. Vs. Union of India (UOI) and Others, and Smt. Naseem Bano Vs. State of U.P. and others, and the writ petition is liable to be allowed.

20. I am therefore, of the opinion that the Petitioner is living in a two-room accommodation with her family provided by her father. The Respondent has built his own house, which is available to him, hence in the circumstances they cannot be permitted to keep the accommodation in dispute under his tenancy. The bona fide need and comparative hardship of the Petitioner is greater than that of the Respondent who has not only denied the title of the Petitioner and has also not made any efforts to find any alternate accommodation during this period. The order of the appellate authority is based on irrelevant consideration that no affidavit has been filed by the sons of the Petitioner that they are living in two room accommodation provided by their maternal grandfather who is insisting to vacate the same.

21. A landlord cannot be expected to live in an accommodation of another person at his mercy, only because her own accommodation is not being vacated by the tenant who is unwilling to vacate it. The findings recorded by the appellate authority are not based on correct appreciation of facts and law.

22. For the reasons stated above, the writ petition is allowed. The impugned judgment and order dated 31.5.2001 is quashed. The Respondent is directed to handover vacant and peaceful possession of the accommodation in dispute to the Petitioner within a period of one month from today.