
(2009) 09 AHC CK 0072
In the Allahabad High Court

Smt. Savita Vishnoi

APPELLANT

Vs

Dr. Rajiv Kumar Tewatiya and Others

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (2010) 1 AWC 86

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Judgement

Poonam Srivastav, J.—Heard Sri Anil Sharma, learned Counsel for the petitioner-tenant and Sri Sumit Daga, advocate for the respondents-landlord.

2. The judgment and order dated 27.8.2009, passed by Upper District Judge, Court No. 4, Meerut in Rent Appeal No. 13 of 2009 as well as judgment and order dated 27.1.2009. passed by the Prescribed Authority in P.A. Case No. 54 of 2006 are impugned in the instant writ petition.

3. The landlord-respondents preferred an application u/s 21(1)(a) of U.P. Act No. 13 of 1972 (hereinafter referred to as the Act) seeking release of an accommodation which is residential and in occupation of the petitioner-tenant since last 10-15 years. Affidavits were exchanged between the parties. The petitioner-tenant contended that need of the landlord is neither bona fide nor hardship suffered will be more than that of the tenant, for the reason that Smt. Geeta Garg was in occupation of another accommodation A-41, Geetanjali Ganga Sagar Colony, Mawana Road, Meerut. She had constructed another house within municipal limit and, therefore, a deemed vacancy is created. The accommodation of Geetanjali Ganga Sagar Colony Mawana Road, Meerut is therefore at the disposal of the landlord. The release application is liable to be dismissed on this ground alone. The Prescribed Authority allowed the release application and his judgment is also confirmed in appeal.

4. Sri Anil Sharma appearing on behalf of the petitioner-tenant has very emphatically argued that the courts below erred in law while holding need of the landlord bona fide and also question of comparative hardship in favour of the landlord as they have failed to take into account the accommodation suggested by tenant which is now in the category of being "vacant". The landlord can very well avail the said accommodation. Learned Counsel has placed a number of decisions. The first decision is Rakesh Kumar Joshi v. Narendra Kumar and Ors. 2008 (1) ARC 539 : 2008 (1) AWC 1019 (SC). It is submitted that legal fiction is created in regard to the vacancy and it is applied to the residential accommodation applying provisions of the Act. The Apex Court ruled that while considering an application for release u/s 21(1)(a) of the Act, the High Court was in error for invoking the said provision. Reliance is placed on paragraph 9 where it was held that the High Court should have taken into consideration the factual aspect of the matter, particularly with regard to the findings of fact arrived at by the learned appellate court. The next decision relied upon is Shiv Sunder Lal Dwivedi v. Rent Control and Eviction Officer/Additional City Magistrate (2nd), District Kanpur Nagar and Ors. 2008 (3) ARC 722. This is again a decision on the provisions of Section 12(3) of the Act where interpretation of the word "acquires" was given. This Court was of the view that word "acquires" has a wide meaning and vacancy contemplated u/s 12 (3) of the Act comes into existence immediately after taking possession of an accommodation in vacant state of the building, by the person so contemplated.

5. I have gone through the entire judgment cited and after giving a careful consideration. I am of the view that this has no applicability to the facts of the present case.

6. Sri Anil Sharma has also cited a decision in the case of Ragavendra Kumar v. Firm Prem Machinery & Co. 2000 (38) ALR 458 (SC). This again does not help the petitioner but on the contrary it helps the landlord. In the said case the Apex Court was of the view that landlord is best judge of his requirement for residential or business purpose and he has complete freedom in the matter. Sri Anil Sharma has also relied upon a decision of the Apex Court in the case of Sarla Ahuja Vs. United India Insurance Company Limited, . This also does not help the petitioner and is of no consequence.

7. On the basis of the aforesaid argument, I have scrutinized two judgments closely and it is apparent that no doubt Smt. Geeta Garg has acquired another house but before the said accommodation is made available to the respondent-landlord, long drawn procedure has to be gone into. Firstly. vacancy has to be declared and thereafter without an order of release u/s 16 of the Act, possession of the landlord will not be legal. It is besides the question that whether the said accommodation will suffice need of the landlord. The finding of the appellate court is specific that Smt. Geeta Garg who is residing in the said alternative accommodation suggested by the tenant as being deemed vacant, is in occupation of landlord's mother-in-law. Thus, it is not at the disposal of the

landlord as suggested by the tenant. So far the contention regarding legal fiction is created u/s 12(3) of the Act. it is correct and in the event the tenant acquires vacant building after the advent of the Act within municipal limit, a deemed vacancy comes in existence. The occupant of the other house is mother of the landlord's wife and she cannot be thrown away. In the circumstances, if the courts below did not consider it to be an alternative accommodation at her disposal, the findings cannot be said to be perverse.

8. Sri Sumit Daga while refuting the argument of Sri Anil Sharma, has submitted that no doubt the appellate court has given a finding to the effect that Smt. Geeta Garg may be mother-in-law of the landlord but she is also a tenant at the rate of Rs. 400 per month. She had inherited vacancy of her husband. Receipts were adduced in evidence alongwith affidavit as 25 Ga, therefore, she is tenant within the meaning of the Act. This itself does not entitle the landlord to occupy till an order of vacancy is passed, the same is not challenged and the house is released in favour of the landlord. Prospective allottees may arrive at the scene is an additional factor which cannot be overlooked.

9. It is further argued that two courts below had arrived at and recorded findings of fact on the two questions of "bona fide need" and "comparative hardship". In a number of cases the Apex Court as well as this Court had despised reappraisal of evidence in exercise of jurisdiction under Article 226 of the Constitution of India. Similar view was expressed "in the case of Rishi Kumar Govil v. Maqsoodan and Ors. 2007 (2) ARC 1 : 2007 (2) AWC 1914 (SC). The next case relied upon by the counsel for the respondents is, Gur Bachan Lal v. IIIrd Additional District Judge, Mainpuri and Ors. 1984 (2) ARC 577. Paragraph 11 of the said judgment is quoted below:

No law has been shown to me that the landlord must be under a duty to seek release of the shop which may be termed as vacant under the provisions of Section 12 of U.P. Act No. 13 of 1972. In the present case shop No. B in Annexure-2 is in occupation of the landlord's brother and his occupation has been termed by the appellate authority as a licensee and by the Prescribed Authority as a tenant. The shop No. "B" has also fallen to the share of landlord in the partition decree. The contention of the learned Counsel for the petitioner that the landlord must seek eviction of his brother first otherwise his need cannot be termed as bona fide under law is not acceptable to me due to relationship between the landlord and his brother. No doubt there is a partition between the brothers, but that would not mean that the landlord must seek eviction of his brother from his adjoining shop before claiming release of the shop in possession of the petitioner. Had shop No. "B" been actually in vacant state the claim of the landlord may not be characterised as genuine or bona fide but when shop No. "B" is in actual possession of his brother either as a tenant or as a licensee and his brother may be in illegal occupation but that would not be a circumstance to characterise the need of the landlord as non-genuine against the petitioner. The lower appellate court has also observed as below:

This is the choice and discretion of the applicant to select the shop within his own ownership as he cannot be directed or dictated either by the Court of law or by the tenant to select the other shop which he had given to the own brother in licence.

The Prescribed Authority has observed as below about the landlord:

...Prarthi swayam alag rahta hai Usey niji karobar ke liye dukan ki awashyakta hai Khad ke vitran ke liye sarak ke nikat ho. Uske liye dukan upyukt hai.

Similar view was adopted in the case of Shahid Parvez v. XIth Additional District Judge, Kanpur Nagar and Anr. 1996 (1) ARC 148, paragraphs 4, 5 and 6.

10. After hearing the arguments of the respective counsels at length, I am not inclined to interfere in realm of reappraisal and come to a contrary conclusion. Admittedly the landlord is not in possession of vacant house as suggested by the tenant which is still in occupation of Smt. Geeta Garg. Vacancy has also not been declared and without a release order the petitioner cannot avail that residence for his use. It is besides the question that the landlord is best judge to choose which accommodation is best for him. The tenant cannot compel the landlord to accept a certain situation even which is not very congenial to his standard of living. I am also not inclined to accept the suggestion of the petitioner-tenant that the landlord has not informed the rent controller. Existence of vacancy is only because his mother-in-law is tenant of the said accommodation. The Act has taken care to take steps in contravention of any of the provisions and it does not lie for any tenant to make such a suggestion. The vacancy can also be declared on an allotment application of the tenant even if he has not tried to do so. The tenant cannot claim something which he himself has not availed. Besides he has also not made any attempt to look for an alternative accommodation.

11. No good ground for interference is made out. The writ petition is accordingly dismissed.

12. In the end, learned Counsel for the petitioner has made a request for granting some time to the tenant to vacate the accommodation in question. However, the request of the learned Counsel for the petitioner that some time may be allowed to vacate the accommodation in question appears to be reasonable and justified.

13. The petitioner-tenant is permitted six months" time from today to vacate the accommodation in question and handover vacant possession to the landlord till 20.3.2010 provided he files an undertaking within a period of four weeks before the Prescribed Authority that he will continue to pay rent at the rate of Rs. 500 per month till he hands over vacant possession and also he will not sublet or handover possession to any third person but for the landlord. In the event the tenant fails to file an undertaking in the shape of an affidavit within the aforesaid period, this liberty of six months shall automatically come to an end.