

(2011) 03 AHC CK 0401
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 30244 and 30249 of 1996

Smt. Shakuntala Devi

APPELLANT

Vs

Special Judge (E.C. ACT) Kanpur and Others

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Citation : (2011) 6 ADJ 64 : (2011) 4 AWC 4047

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. Petitioner claims himself to be the owner of house No. 105/551, Anand Bagh, Kanpur on the basis of its purchase in the year 1958. Respondent No. 3 is tenant of two rooms, one verandah and a Courtyard on the first floor in the said building. A application for release of the aforesaid portion in the tenancy of the Respondent (hereinafter referred as the accommodation in dispute) was filed by the Petitioner alleging that she was residing in small portion with her family as lessee of one room having dimensions of 12 ft x 1 ft, a box room 10 ft x 8 ft, a verandah including passage which is being used as kitchen and that thus accommodation was not sufficient for the requirement of her family.

3. The previous owner of the property had already sent a notice to the tenant for vacating accommodation in dispute on ground of bona fide need Another application for release was also moved for eviction of another tenant, namely, Sri Shiv Sahai and others in respect of another portion consisting of three rooms, two verandah and one Courtyard on the ground floor and one room and open roof on the first floor. The grounds of release in the other application were also the same as the grounds taken for release of portion under the tenancy of Respondent tenant in the present writ petition. It appears that Respondent filed a copy of award dated 2.2.1953 in the Court below in order to establish that the

property in dispute infact vested in Smt. Baikunthi Devi and Pramod Saran Garg and not the Petitioner or her husband as such they do not have any title and to prove that status is merely of a licensee. Documents were also filed to show that relations between the Petitioner with Baikunthi Devi and Pramod Saran Garg were very strained and they were insisting upon the Petitioner to vacate the portion in their possession in the house in dispute. The Prescribed Authority considered both the release applications and rejected them by a common order dated 28.2.1994 basically on the ground that need of the landlord was not bona fide as she was in possession of sufficient accommodation independently from the tenant in premises No. 86/303 Rai Purwa and did not require the accommodation of the tenants.

4. Aggrieved by the order dated 28.2.1994 the Petitioner preferred two separate appeals being Rent Appeal No. 27 of 1994 and Rent Appeal No. 28 of 1994 respectively which were also consolidated by the Court and were dismissed by a common judgment dated 11.7.1996.

5. It also appears from record that erstwhile Petitioner was not residing in house No. 86/303, Rai Purwa as a member of Hindu undivided family. The view taken by the Courts below is patently erroneous as there was a clear separation between the members of the family of the Petitioner referred to in the award dated 2.2.1953 by which the aforesaid property had fallen in the share of Smt. Baikunthi Devi and Pramod Saran Garg.

6. Case of the Respondent before the Court below was that Petitioner was comfortably residing in the house in dispute and had no requirement of the portion in dispute with the tenant as such the application for release was mala fide as the landlord also had in his possession other accommodation which he could easily utilise for the purpose of residence.

7. Assailing the order of the appellate Court it is submitted that in so far as the portion which was in possession of Krishna Lal Bajpai is concerned, landlord had also filed an application for the release of that portion in the year 1980. Subsequently a compromise was arrived at between the parties and ultimately by order dated 8.7.1991 the release application was allowed. The portion vacated by Krishna Lal Bajpai consisted of only one room, verandah and a Courtyard on the second floor of house No. 105/551, Anand Bagh, Kanpur and the aforesaid portion was not independently sufficient to meet the requirement of the members of the family of the Petitioner Moreover, the aforesaid portion has fallen vacant only in 1991 i.e. during the pendency of the proceedings before the Prescribed Authority which had initiated in 1979. Thus the aforesaid portion could not have been taken into consideration for any purposes by the appellate authority and the view to the contrary recorded by the Court below is patently erroneous.

8. It is stated that for the purposes of determining the bona fide need of the Petitioner, the Court below has unnecessarily taken into consideration the sale-

deed dated 26.12.1980 in respect of house No. 109/472, Darshan Purwa in as much as the aforesaid property had been transferred by the Petitioner for the purposes of arranging funds for the marriage of her daughter as such the aforesaid transaction could not have been taken into consideration by the Courts below for rejecting the claim of the Petitioner and holding that by virtue of the aforesaid transfer the need of the Petitioner for the release of the disputed premises was not established.

9. It is argued that the Petitioner has wrongly been non-suited by the Courts below on the ground that she and her sons are in possession of several other properties in the city of Kanpur, which can be used by her for residential purpose is wholly misconceived and irrelevant in as much as none of those properties are available to the Petitioner for the purposes of her residence and therefore cannot be a valid and cogent reason for the Courts below to non-suit application on the ground that his need is not bona fide. It is stated that house No. 119/472 had been sold by the Petitioner far back in the year 1980 as such this property is not available to the Petitioner for residential purpose; that premises No. 123/210 (new number 123/451) Saresb Bagh, Pratapganj is a factory and that premises No. 123/10 and 87/331 are also factories. Copies of the provisional S.S.I. Registration certificate (Annexure 8 to the writ petition) and perusal of evidences on affidavits before the Court below demonstrates that the aforesaid properties are not residential buildings. It is stated that Petitioner has been non-suited on the ground that he had not adduced any evidence with regard to the utility. According to the counsel for the Petitioner this finding is illegal being against the record as the evidence adduced by the Petitioner have been totally ignored by the Courts below. The Courts below have merely discarded the claim of the Petitioner solely on the ground that the sanctioned site plan has not been submitted by her and therefore the views taken by Courts below that burden of proof lies on the Petitioner to prove that the aforesaid property was available for residential purposes was on the tenant is incorrect as he had already discharged the burden of proof in this regard by leading evidence to the effect that aforesaid properties were in the nature of a factory and were not available to him for residential purposes; hence the findings by the Courts below on bona fide need and comparative hardship are without any basis and based on surmises and conjecture against the record and that the orders passed by the Courts below being erroneous are liable to be set aside.

10. Contention of learned Counsel for contesting Respondent is that he was a tenant of the Petitioner and aforesaid accommodations, in the city were available to the landlord for her residence and that during pendency of release proceedings, entire second floor of premises No. 105/551, Anand Bagh, Kanpur Nagar Nigam of the tenancy of Sri Krishan Lal Bajpai came to her possession on the basis of release based on compromise. The aforesaid accommodation consists of one big room just like a hall, a verandah, kitchen, bathroom. The said accommodation was also not occupied as per the case of the landlord, though not admitted by the tenant, she is occupying almost the same extent of

accommodation in premises No. 86/303 Raipurva, Kanpur Nagar Nigam.

11. Reliance has been placed upon the averments made in the counter-affidavit to the effect that during the pendency of the case, premises No. 119/472, Darshanpurva, Kanpur Nagar Nigam was sold by sons of the Petitioner; that there was a land admeasuring 23 Bighas, 4 Biswas 108 plots were carved out and on some of them buildings have been constructed on these plots. It is submitted that as the facts relating to the aforesaid plots were not revealed by the landlord commission for inspection could not be issued and the facts relating to premises No. 123/201 whose new number is 123/451 (New) Pratapganj, Gadarianpurva, Kanpur Nagar Nigam were also concealed by the Petitioner. According to the counsel for the Petitioner the said house is owned by the three sons of the landlord namely (1) Sri Shyam Saran Garg (2) Sri Mohan Saran Garg and (3) Sri Rakesh Saran Garg. The production of the map of the said building was withheld and not filed by the landlord which shows the measurement of the premises. The vacant accommodation in the said building was also concealed. It is submitted that husband of the Petitioner died on 2.6.1987 but she did not file any application before the Court below than that release application filed by her husband (since deceased) had become infructuous and that he had a portion in the premises No. 119/472 without any allotment order hence the writ petition is liable to be dismissed as the Petitioner has not come with clean hands before the Court.

12. After hearing learned Counsel for the parties and on perusal of records it appears that Prescribed Authority has concluded on the basis of cogent reason that the Petitioner is living in premises No. 86/303 Rai Purwa, Kanpur Nagar which consists of 31 rooms. The finding of fact was also recorded that Baikunthi Devi, mother of Sukumari Saran Garg is keeping her sons with her. It was further concluded that since 1954 to 1994 when the release case was decided, no proceeding of eviction of Sukumari Saran Garg was taken by his mother Smt. Baikunthi Devi Garg as such the alleged notice dated 16.10.1979 was found to have been procured by the Petitioner. The Courts below have considered the facts of concealment of various premises in possession of the landlord and her conduct in this regard. She did not produce the map of the buildings owned by her and her family to establish the extent of accommodations in their possession. Though the Courts below have also not gone into question of validity of award but have noticed the fact that premises No. 35 Krishna Nagar was allotted to husband of the Petitioner and this fact has been concealed by her. The Courts below decided the question of facts regarding bona fide need and comparative hardships in favour of the tenant, on the basis of accommodation in possession of the family members of each of the respective parties. In fact the Petitioner appears not to have discharged his burden of proof before the Courts below with regard to plastic factory being run in building No. 86/207 Acharya Nagar, Kanpur Nagar. The landlord had died on 24.3.2001 but his legal heirs and representatives were brought on record only on 6.3.2009 i.e. after a period of about 8 years.. They had not set up their independent need of accommodation in

dispute during all this period. The sons of the Petitioner not only sole residential properties during the period of pendency of litigation they failed to establish bona fide need for the accommodation in dispute. It appears that premises No. 119/47 Darshan Purwa consisting of 31 rooms is owned by the three sons of the landlord who owns factories, residential accommodation and landed properties in Kanpur. She is a woman of substance. Part of premises where factory is situated can always be used for residence if accommodation is available but the residence need not be a part of the factory. The Petitioner also appears to have concealed the fact of inducting tenants without allotment and this act is in violation of the provisions of Act No. XIII of 1973 and the spirit behind it. As such, it cannot be said that they had any bona fide need for the accommodation in dispute. Both the Courts below have recorded concurrent finding of fact against Petitioner landlord and no illegality or infirmity could be shown in the impugned orders in this writ petition.

13. However the legal heirs and representatives of deceased landlord are not precluded by this order from moving release application in accordance with law for the accommodation in the subsequent changed facts and circumstances.

14. The writ petitions are dismissed. No order as to costs.