
(2007) 12 AHC CK 0127
In the Allahabad High Court

Smt. Shankuntala Devi Rathod

APPELLANT

Vs

Smt. Raj Kumari (widow), Pawan Lekhadhari (son) and
Manish Lekhadhari (son) of Late Kishen Chandra Lekhadhari

RESPONDENT

Date of Decision : 11-12-2007

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21

Citation : (2008) 1 AWC 931

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2.1 This is Landlady's writ petition arising out of eviction / release proceedings initiated by her against tenants-respondents on the ground of bonafide need u/s 21 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) act, 1972 (hereinafter referred to as the " Act"). The release application was registered as P.A. Case No. 47 of 203 on the file of Prescribed Authority / J.S.C.C. Jhansi. Property in dispute is a shop, rent of which is Rs. 90/- per month. Landlady pleaded that she had four sons, out of whom two were doing business of readymade garments and she required the shop in dispute for settling the other two sons i.e. Sri Sanjeev Singh and Sri Surjeet Singh. Initially late Sri Kishen Chandra Lekhadhari was the tenant of the shop in dispute. After his death the respondents inherited the tenancy. Release application was allowed on 01.12.2005. Against the said judgment and order tenants filed R.C. Appeal No. 13 of 2005. A.D.J. Court No. 1 Jhansi allowed the appeal through judgment and order dated 04.10.2006, set aside the judgment and order passed by the Prescribed Authority and remanded the matter to the Prescribed Authority. Landlady has challenged the said judgment of the appellate court through this writ petition.

2.2 The map of the shop in dispute along with other adjoining properties of the landlady is at pages 63-64 of the paper book, which was part of affidavit of Pawan Kumar, tenant-respondent No. 2, before the Courts below and has been annexed along with the copy of the said affidavit, which is Annexure "8" to the writ petition. The number of the shop in dispute is 172. Another shop almost of equal area is situate towards west of the shop in dispute and is numbered as 173. Initially both the shops were in the tenancy occupation of the original tenant. However, release application was earlier filed for the need of Shrimati Urmila Devi, sister of the deceased husband of the landlady and back portion numbered as 173 was released for the need of Shrimati Urmila Devi in the year 1980. In the map at page 63 it is shown that towards south and west of the property in dispute 8 or 10 shops are available to the landlady. However, in the said map itself it is shown that all the shops open in a very very narrow passage while shop No. 172 has got opening on the main road. Landlady pleaded that portions shown as shops in the said map filed by the tenant were not shops but were actually used as godowns. In any case landlady offered one of the said shops to the tenant, which was not accepted. Shrimati Urmila had also filed an affidavit in support of the case of the landlady before the Prescribed Authority. In para 5 of the said affidavit she stated that after getting the possession of the shop No. 173 she started doing the job of stitching and weaving. However, due to old age she had stopped doing that business and elder son of the landlady Shrimati Shakuntala Devi was assisting her (Shrimati Urmila) in her business from shop No. 173.

3. Prescribed Authority had held that tenants had ample commercial accommodation at their disposal. However, appellate court held that it was not sufficient or relevant while considering the bonafide need of the landlord. Appellate Court held that merely because landlady wanted to settle all her sons in business was not sufficient to prove the bonafide need. This view is utterly erroneous in law. Supreme Court in *Sushila Vs. IInd Addl. District Judge, Banda and Others*, and *R.K. Govil v. Maqsoodan* 2007(4) SCC 456 has held that every adult member of the landlord's family is entitled to have independent separate business and no family member of the landlord can be compelled to participate in the family business. The Appellate Court while remanding the matter completely misdirected itself. Appellate Court held that it was necessary for the Prescribed Authority to decide as to whether the business of selling ready-made garments carried out by the two elder sons of the landlady i.e. Sri Rajeev and Ranjeet Singh was of such a scale that she required additional accommodation for the said purpose and that annual turnover, sales tax, income tax documents in respect of the business of Rajeev Singh and Ranjeet Singh were not filed. The landlady had pleaded that her elder sons Rajeev Singh and Surjeet Singh were settled in business. Landlady did not seek release for expansion of business of Rajeev Singh and Ranjeet Singh. Release application was filed for settling other two sons of the landlady i.e. Sanjeev Singh and Surjeet Singh. In view of this it was wholly immaterial to ascertain the extent of business of Sri Rajeev and

Ranjeet Singh. As stated earlier, the Supreme Court in *Sushila Devi and R.K. Govil (Supra)* has held that each and every adult member of landlord's family is entitled to have separate independent business. Shri Sanjeev Singh and Surjeet Singh cannot be compelled to do business along with their brothers Sri Rajeev Singh and Ranjeet Singh howsoever big may be the business of Sri Rajeev and Ranjeet Singh.

4. As far as affidavit of Shrimati Urmila Devi is concerned, she categorically stated that in shop No. 173 she had stopped doing business due to old age and in that very shop the other two sons of her brother i.e. Rajeev Singh and Ranjeet Singh were doing business. Accordingly it was abundantly proved from the record that Sanjeev Singh and Surjeet Singh were not doing any independent business. This fact was clearly admitted to the tenants.

5. As far as the small shops situated in the gallery of 3-4 feet towards south and west of the shop in dispute are concerned, the tenant himself refused the offer of the landlady in respect of these shops. No proper business maybe run from a shop situate in 2.5 - 3 feet wide gallery. Availability of less suitable accommodation is no ground to reject the release application for more suitable accommodation vide *Chandrika Prasad (D) Thr. Lrs. and Another Vs. Umesh Kumar Verma and Others*,

In the following authorities the Supreme Court has held that landlord is completely free to choose the place where he wants to do business or reside.

1. *Sarla Ahuja Vs. United India Insurance Company Limited*,
2. *S.N. Kapoor (Dead) by his LRs. Vs. Basant Lal Khatri and ors*,
3. *Ragavendra Kumar v. Firm Prem Machinery & Co. AIR 2001 SC 534*
4. *Rishi Kumar Govil Vs. Maqsoodan and Others*,

Respondents No. 2 and 3 Pawan Lekhadhari and Manish Lekhadhari are sons of respondent No. 1 Shrimati Raj Kumari. Prescribed Authority found that Manish Lekhadhari was having a shop in a shopping complex and apart from that tenants were also doing business by the name of Mangal Glass and Crockery from House No. 144 near Jain Mandir.

6. In view of the above I find that the judgment and order passed by the Appellate Court is patently erroneous in law. There was absolutely no reason or occasion to remand the matter to decide the extent of business of Rajeev Singh and Ranjeet Singh, the other two sons of the landlady. The need was set up for Sanjeev Singh and Surjeet Singh and they were not having any independent business. Accordingly bonafide need was fully proved. As the tenants had more than one commercial accommodation available with them, hence their hardship was almost nil.

7. Accordingly writ petition is allowed. Judgment and order passed by the Appellate Court is set aside. Judgment and order passed by the Prescribed

Authority is restored.

Tenants-respondents are granted six months time to vacate provided that:

1. Within one month from today tenants file an undertaking before the Prescribed Authority to the effect that on or before the expiry of aforesaid period of six months they will willingly vacate and handover possession of the property in dispute to the landlord-petitioner.

2. For this period of six months, which has been granted to the tenants-respondents to vacate, they are required to pay Rs. 6000/-(at the rate of Rs. 1000/- per month) as rent/damages for use and occupation. This amount shall also be deposited within one month before the Prescribed Authority and shall immediately be paid to the landlords-petitioner.

In case of default in compliance of any of these conditions tenants-petitioners shall be evicted through process of Court after one month. It is further directed that in case undertaking is not filed or Rs. 6,000/- are not deposited within one month then tenants-respondents shall be liable to pay damages at the rate of Rs. 2000/- per month since after one month till the date of actual vacation.

Similarly, if after filing the aforesaid undertaking and depositing Rs. 6,000/- the accommodation in dispute is not vacated on the expiry of six months then damages for use and occupation shall be payable at the rate of Rs. 2000/- per month since after six months till actual vacation. It is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and execution application u/s 23 of the Act.