

(2014) 01 AHC CK 0131
In the Allahabad High Court
Case No : Rent Control No. 110 of 2013

Smt. Shushila Devi and Others	Vs	APPELLANT
Special Judge, E.C. Act/Addl. Session Judge and Others		RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Citation : (2014) 2 ALJ 299 : (2014) 103 ALR 144

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : R.S. Gupta and Dileep Kumar Pathak, Advocate for the Appellant;
Manish Kumar and Rama Shanker Singh, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Heard Shri R.S. Gupta, learned Counsel for the landlords petitioners and Shri Rama Shanker Singh learned Counsel for the tenant contesting respondent No. 3, Zafar. This is landlords' writ petition arising out of proceedings for eviction/release initiated by Chandra Bhan since deceased and survived by the petitioners against the tenant respondent No. 3 Zafar u/s 21 of the U.P. Act No. 13 of 1972 on the ground of bona fide need in the form of P.A. Case No. 14 of 1986, Chandra Bhan Singh v. Zafar. The property in dispute is a shop. Release application was rejected by the prescribed authority/Civil Judge Senior Division, Mohanlalganj, District-Lucknow on 19.3.2010. Against the said order landlords filed Rent Appeal No. 22 of 2010 which was dismissed by A.D.J./ Special Judge E.C. Act, Lucknow on 5.4.2013 hence this writ petition.

2. The release application was filed for the need of petitioner No. 3 Yashpal Singh.

3. Rate of rent is Rs. 31.25/- per month. The Court is unable to decide whether to laugh or lament at such rent. The tenancy is continuing since before independence. Landlords had asserted that the rent was Rs. 200/- per month however Courts below found that the rate of rent was Rs. 31.25/- per month as asserted by the tenant. The tenant is carrying on the tailoring business from the

shop in dispute. The tenant mainly contended that the landlord intended to enhance the rent and on the refusal of the tenant release application was filed.

4. At that time it was considered almost indecent to suggest that the landlord entertained the intention of increasing the rent.

5. Release application has been rejected by both the Courts below mainly on two grounds firstly petitioner No. 3 Yashpal is employed with a private employer and is getting about Rs. 7,000/- per month as salary. The second ground is that landlords have got another accommodation available to them in a vacant state from which landlord petitioner No. 3 Yashpal can carry out his business. Tenant's son had purchased a shop and was carrying on tailoring business from there. This fact was conveniently brushed aside by both the Courts below.

6. On the application filed by the tenant, Yashpal appeared as witness and he was cross-examined.

7. The precise allegation of the tenant was that Yashpal had started working with M/s. Awadh Distributors, 6-A, Wazeer Hasan Road, Hazratganj, on the monthly salary of Rs. 7500/- per month. Some letter of Labour Enforcement Officer, Lucknow dated 12.9.2007 had been filed showing that the petitioner No. 3 was working for 8 years, i.e., since 1999 with M/s. Awadh Distributors. However petitioner No. 3 denied the said fact. At the time of filing of release application petitioner No. 3 was doing apprentice job in L.E.S.A. The other allegation was that in house No. 512/105 Ka, landlords were having some shops in vacant state.

8. The Courts below held that the petitioner No. 1 Smt. Shushila Devi, did not appear as witness in spite of order in that regard which was wrong. In the writ petition petitioner No. 1 Smt. Shushila Devi has been described to be aged about 83 years. However, according to the Courts below petitioner No. 1 should have produced herself to be cross-examined for determining the rate of rent. For the purpose of release application rate of rent is not much relevant. In any case findings recorded by the Courts below in favour of the tenant regarding the rate of rent being Rs. 31.25/- per month are basically findings of fact requiring no interference in exercise of writ jurisdiction.

9. Courts below have mentioned that in the map filed by the architect engaged by the tenant, in landlords' house No. 512/105 Ka, 6th Lane, Nishatganj, Mahanagar, Lucknow, some shops have been shown towards 7th lane which are near the shop in dispute.

10. The tenant categorically admitted that his son Mohd. Salman purchased another shop on 14.7.2008 and was doing tailoring business from the said shop.

11. At the time of filing release application in 1986 petitioner No. 3 was doing apprentice training. Apprentice trainee is not a regular workman or employee accordingly such engagement cannot be treated to be a bar for seeking release of the shop for business.

12. Similarly, getting a job during the pendency of release application does not mitigate against the need as no person for whose need shop is sought to be released is supposed to sit idle until release application is finally allowed. Release application was filed in the year 1986. If until the year 1999, i.e., for 13 years, it was not decided and out of frustration petitioner No. 3 took up a job with a private employer it did not mean that his need did not remain bona fide. In this regard reference may be made to the following authorities of the Supreme Court:

1. Smt. Ramkubai Since Deceased by Lrs. and Others Vs. Hajarimal Dhokalchand Chandak and Others, .

2. Gaya Prasad Vs. Sh. Pradeep Srivastava, .

3. G.C. Kapoor Vs. Nand Kumar Bhasin and Others, .

13. In the last of the above authorities, i.e., G.C. Kapoor Vs. Nand Kumar Bhasin and Others, , prescribed authority Lower Appellate Court as well as High Court had rejected the release application of the landlord. The Supreme Court allowed the appeal set aside all the three orders and out rightly allowed the release application of the landlord.

14. Acquisition of a new shop by the son of the tenant is a very important factor for consideration of comparative hardship.

15. Gravity of the need lies in the realm of comparative hardship, Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, .

16. In Sushila Vs. IInd Addl. District Judge, Banda and Others, it has been held that long period of tenancy in a business accommodation is not much relevant.

17. The Supreme Court in Siddalingamma and Another Vs. Mamtha Shenoy, has held that rent control legislation generally leans in favour of the tenant and it is only the provision of eviction of the tenant on the ground of bona fide requirement of the landlord which treats the landlord with some sympathy.

18. In Pratap Rai Tanwani and Another Vs. Uttam Chand and Another, , it has been held that if shop is required for establishing the son of the landlord in business, the fact that he had temporarily gone abroad did not make any difference upon the need.

19. The question which now requires to be decided is regarding availability of shop in residential house of the landlords. The copy of map prepared by Shri A.K. Verma the Architect engaged by the tenant/opposite party No. 3 alongwith additional affidavit of opposite party No. 3 filed before the prescribed authority is Annexure-C.A. VII. Para 4 of the supplementary-affidavit filed by the opposite party No. 3 on 16.1.2014 is quoted below:

That during the course of cross-examination of Sri Yashpal Singh appearing for and on behalf of applicant on 12.2.2009, he has confirmed that Paper No. B 151/4 is the exact Map at page 50 of the site. Paper No. B-151/4 is the same

Map at page 50 of the Counter Affidavit containing the same number and thus with regard to the Map and structures existing in pursuance thereof are not disputed. A true typed copy of the statement of Yashpal Singh dated 12.2.2009 is being annexed herewith as Annexure No. SCA-2 to this Supplementary Counter Affidavit.

20. The architect map annexed alongwith the above additional affidavit (page 50 of the C.A.) shows the shop in dispute on main road and the house of the landlord in a lane connected with the main road. The house has its opening in lane No. 6 and back towards lane No. 7. At the back of the house five portions are shown as shops. However it has not been stated in the Additional affidavit (Annexure C.A. 7) that any of those portions was ever used as shop. The landlords asserted that the entire house was being used as residential and assessed for house tax purposes as residential. If in a residential house some room is on road side, landlord cannot be compelled to use the same for commercial purposes. Above quoted para also states that the portions shown as shops by Architect can be used as shop by the landlords. However the said para does not suggest that any of the said portions was ever used as shop.

21. Moreover a shop on main road is far more beneficial than a shop in a lane. Supreme Court in Chandrika Prasad (D) Thr. Lrs. and Another Vs. Umesh Kumar Verma and Others, has held that availability of less useful accommodation (away from main road) is no ground to decline release of more useful (on main road) accommodation for commercial purposes.

22. Accordingly both the points decided by both the Courts below (availability of job and another accommodation to the landlord) being utterly illegal and in any case wholly irrelevant are set aside.

23. When both the Courts below have rejected the release application of the landlord and judgments are found to be erroneous in law by Writ Court, matter is normally remanded. However, that formula is not to be necessarily followed in every case particularly when the matter is pending for long. Release application in the instant case was filed in the year 1986.

24. In my opinion it is a fit case where ultimate relief shall be granted to the landlord. Supreme Court has also held in R.E.V. Gounder v. V.V.P. Temple AIR 2003 SC 4584 : 2002 (47) ALR 502 (SC) and R.C. Kesharwani v. Dwarika Prasad 2002 (2) ARC 298 (SC) : JT 2002 (Supp. 1) SC 491, that when the matter is pending for long, remand must be avoided. Supreme Court in its authority in Smt. Shail Vs. Shri Manoj Kumar and Others, , placing reliance upon Surya Dev Rai Vs. Ram Chander Rai and Others, , has held that in exercise of writ jurisdiction High Court has the jurisdiction also to pass itself such a decision or direction as the inferior Court or Tribunal should have made. Accordingly writ petition is allowed. Both the impugned judgments are set aside. Release application of the petitioner landlord is allowed.

Tenant-opposite party No. 3 is granted six months time to vacate provided that:

1. Within one month from today tenant files an undertaking before the Prescribed Authority, to the effect that on or before the expiry of aforesaid period of six months he will willingly vacate and handover possession of the property in dispute to the landlords-petitioners.

2. For this period of six months, which has been granted to the tenant-opposite party No. 3 to vacate, he is required to pay Rs. 6,000/- (at the rate of Rs. 1,000/- 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-petitioners.

In case of default in compliance of any of these conditions tenant-respondent 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 tenant-respondent shall be liable to pay damages at the rate of Rs. 2,000/- 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 house 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. 2,000/- 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 landlords-petitioners to file contempt petition for violation of undertaking and initiate execution proceedings u/s 23 of the Act.