
(2010) 04 AHC CK 0135
In the Allahabad High Court

Smt. Sushila Devi and Others

APPELLANT

Vs

Abdul Qayum and Others

RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

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

Citation : (2010) 04 AHC CK 0135

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Judgement

Ritu Raj Awasthi, J.—The present writ petition has been filed by the petitioners-tenants against the judgment and order dated 23.10.2009, passed by the appellate Court i.e. Additional District Judge/F.T.C.-IV, Court No. 13, Sultanpur, whereby the judgment and order dated 8.8.2008, passed by the prescribed authority/Addl.C.J.M., Sultanpur, was set aside and the application moved u/s 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction), Act, 1972 (U.P. Act No. 13 of 1972), (hereinafter referred to as "Act 1972"), for release of the shop in dispute against the petitioners-respondents has been allowed.

2. Heard Sri S.K. Mehrotra, learned Counsel for the petitioners as well as Mr. Mohd. Arif Khan, learned Sr. Advocate, assisted by Mr. Mohinuddin for the respondents and perused the record.

3. With the consent of the parties" counsel the present writ petition is being disposed of finally at the admission stage.

4. As per the facts of the case an application u/s 21(1)(a) of the Act, 1972, was filed for release of the shop No. 168, by the opposite party No. 1, Abdul Qayum, situated at Mohalla Chowk, Ghantaghar, Sadar, Sultanpur city. The release of the shop in dispute was sought by the opposite party No. 1, on the ground of need for settling his two sons, Abdul Hai and Abdul Momin in business, which was registered as P.A. Case No. 4 of 1979 (Abdul Qayum v. Ram Sumiran Lal and

Ors.).

5. It is submitted by the learned Counsel for the petitioners-tenants that written statements were filed by the tenants. The prescribed authority/Munsif (South), by order dated 27.11.1980, had rejected the said application for release, holding that the need set out by the landlord as not to be bonafide. Thereafter, the Addl. District Judge by order dated 7.12.1981, had dismissed the appeal filed by the landlord. Subsequently, a Writ Petition No. 969 (R/C) of 1982, was filed by the opposite party No. 1, which was allowed by this Court by order dated 26.4.1996, whereby this Court had remanded the matter to the prescribed authority to decide the aforesaid application afresh considering the latest developments which were alleged before this Court by the opposite party No. 1.

6. It is further submitted that thereafter the written statement was filed on 19.2.1999 by one Sri Om Prakash, the predecessor of the petitioners, who had inherited the tenancy of the disputed shop on the death of the original tenant. In the said statement, it was pointed out that the opposite party No. 1, had constructed a new market and owned 13 shops and in one of which his son has established the book shop in the name and style of Modern Book Depot, which is being looked after by the opposite party No. 1, himself after his retirement. His eldest son Abdul Hai is in the Government service as Supervisor Kanoongo and remaining two sons have established a Modern Training School and are imparting training in electronics. Thus, all the sons of the opposite party No. 1, are in gainful employment while the opposite party No. 1, himself is in possession of several newly built shops, which are still vacant.

7. It is further contended by the learned Counsel for the petitioners that the prescribed authority after examining the matter in detail and considering the material on record as well as the relevant evidence by order 8.8.2008, has rejected the release application filed by the opposite party No. 1, holding that the opposite party No. 1 and his sons are gainfully employed and the opposite party No. 1, owned and possessed several shops which are still vacant. Therefore, the need of the landlord is neither actual nor bonafide.

8. The learned Addl. District Judge/F.T.C.-IV, Court No. 13, Sultanpur, by the impugned judgment dated 23.10.2009, has allowed the Rent Appeal No. 4 of 2008, filed by the opposite party No. 1, in an illegal manner, ignoring the relevant material facts that after remand of the case it was required to be decided considering the latest developments but the opposite party No. 1, had not amended his pleadings in the release application and, therefore, the evidences produced by him were not admissible and were liable to be ignored. It is further submitted that the learned appellate Court on complete misapplication of law and on perverse findings has reversed the order of the prescribed authority and has allowed the application for release of the shop in question resulting into miscarriage of justice to the petitioners.

9. Mr. Mohd. Arif Khan, learned Sr. Advocate, appearing for the landlords-opposite parties has submitted that the shop in dispute was originally given on rent to one Sri Ram Sumiran Lal and his brother Ram Sunder Lal more than 60 years ago. Sri Ram Sumiran Lal, one of the tenants of the above shop had died in December, 1989. It is further submitted that in W.P. No. 969 (R/C) of 1982, a counter affidavit was filed by the legal heirs of Ram Sumiran Lal, stating therein that Sri Ram Sumiran Lal alone was doing business in the shop in question and after his death his son Om Prakash Srivastava only is doing cloth business and his other son Chandra Prakash has no concern with the shop in question. The opposite party No. 1, who was earlier employed in Government service had retired on 28.2.1987 and his three sons during this period have become major but remained unemployed and they have no place or places for starting any business. The shop in question is closed ever since the death of Sri Ram Sumiran Lal, who died in 1989 and his two sons namely; Om Prakash Srivastava and Chandra Prakash Srivastava are running printing press separately in their house situated in the main market at Mohalla, Perkinsganj, Sultanpur.

10. Further submission is that this Court, while deciding the W.P. No. 969 (R/C) of 1982, was of the view that the prescribed authority had rejected the release application filed u/s 21(1)(a) of the Act 1972, on 27.11.1980 and certain developments have taken place thereafter, therefore, it would be appropriate that the application u/s 21(1)(a) of the Act, should be decided afresh by the prescribed authority. The said writ petition was, therefore, allowed by the judgment and order dated 26.4.1996, with a direction to decide the application moved u/s 21(1)(a) of the Act, afresh after providing opportunity to the parties and after taking into consideration the latest developments, which have taken place in the matter.

11. It has been vehemently argued by the learned Counsel for the landlords-respondents that the shop in question is closed since long time and no business is being run by the petitioners from the said shop. The electricity connection of the shop in question has been disconnected and if at all any cloth business is to be done by the petitioners then the same can be done easily from their residence which is situated in the main market area.

12. It has been further asserted by Mr. Mohd. Arif Khan, learned Counsel for the respondents that the proceedings for release of the shop in question u/s 21(1)(a) of U.P. Act No. 13 of 1972, are the summary proceedings and no specific pleadings are required for appreciating the evidences disclosed through the affidavit or otherwise which can be looked into by the competent court. He further submits that even otherwise, the pleadings as set out in the application moved u/s 21(1)(a) of the Act, are sufficient to establish the bona fide need of the family of the landlord. The contention raised by the learned Counsel for the petitioners is, therefore, misconceived.

13. It is admitted case of the parties that the release application was filed in January, 1979 and since then the landlords of the shop in question are trying to

get the shop released from the tenants. The rent of the shop in question is Rs. 50/-per month. During pendency of the litigation between the parties, Ram Sumiran Lal and his brother Ram Sunder Lal and Om Prakash son of Ram Sumiran Lal have died and on the other side Abdul Hai, the original landlord has also died and in their places their legal heirs have been substituted and are before the Court. The prescribed authority while rejecting the release application has come to the conclusion that the need of the landlords is neither bona fide nor genuine and the comparative hardship is in favour of the tenants.

14. The appellate authority on the basis of the material evidence and the pleadings on record while setting aside the judgment and order of the prescribed authority dated 8.8.2008, has mainly given the following findings:

1. The lower court has not considered the evidence on record especially the photographs and the negatives filed along with the affidavit, indicating therein that the shop in question remained closed since long and in front of the shop as well as on the footpath other shopkeepers are doing their business of garments and bag etc. The learned court below has also not given any reason as to why the shop in question was closed. The evidence in this regard clearly goes to establish the closer of the shop which has not been properly considered by the lower court.

2. The learned court below has also not properly considered the directions given by the High Court in its judgment and order dated 26.4.1996, passed in W.P. No. 969 (R/C) of 1982. In the counter affidavit filed by Om Prakash Srivastava son of Ram Sumiran Lal, it was disclosed that his father Ram Sumiran Lal has died in 1989. The petitioner-landlord has retired from the Government service and getting Rs. 1900/-per month as pension. He has three sons namely; Abdul Momin, Sarvar Rehman and Nazeeb, who have grown up and are unemployed and he has one daughter. The respondents No. 1/1 and 1/2, have a printing press in Mohalla Perkinsganj, Sultanpur. The respondent had one printing press at the time filing of the said writ petition and second printing press was established in Mohalla, Perkinsganj afterwards. In case they were able to open the second printing press why they could not shift their business from the shop in question.

3. The lower court has not complied Rule 16 of U.P. Act No. 13 of 1972 and a wrong opinion has been formed looking into the comparative hardship of the tenants and held in favour of the tenants, which is contrary to the law propounded by the High Court.

4. The lower court on the basis of goodwill found the comparative hardship in favour of the tenant. In the case of Ramesh Narain v. A.D.J., Ghaziabad 2006 ARC 572, the High Court has held that the goodwill is not of any particular item or business but of a person which depends on his reputation. Therefore, the findings of the lower court in this regard are not supported by law.

5. The press established during the pendency of the litigation by the tenants at

Mohalla, Perkinsganj, clears shows that premises for the shop was available with the tenants and as such no effort was made to arrange the alternative accommodation by the tenants.

6. The release application was filed in 1979 and since then, the litigation was going on for the release of the shop in question, but no effort was made during this period by the tenants to find out an alternative accommodation and nor any application Under Rule 10 (3), was moved by the tenants.

7. The learned court below has wrongly presumed that there must be some income from the Modern Training Institute to the landlords. The Modern Training Institute was a social institution, but the lower court has arrived to the conclusion that there was some income from the said social Institution. The two sons of the landlord, Sarvar Rahman and Najeeb could not be said to have income from the said Institution and they cannot be treated to be in the category of employees.

8. The lower court has wrongly given a finding that there is a Modern Book Depot run by Mohd. Momin and the applicant. The Modern Book Depot has been closed and in its place, garments shop is being established, which is on rent in Samad Market.

9. The lower court has mentioned the availability of the shops No. 19,20, 21 & 22, however, it is established as to whether those shops belong to the applicant or his brothers.

10. Even if some business on temporary basis was started by some persons then also the need of the applicant and his sons would be treated to be as a bona fide need. On the basis of the findings recorded by the lower court, it is established beyond doubt that the tenants have two printing presses. In Mohalla, Perkinsganj there are garments shops adjacent to the said printing press and from there the business of garments could have been easily done by the tenants. As such the bona fide need of the landlords has been wrongly rejected on the basis of presumption, which is contrary to the evidence on record.

15. In order to examine the contention raised by the counsel for the petitioners, Sri S.K. Mehrotra that the release application was to be decided on the basis of the pleadings made therein and the subsequent developments could not have been taken into consideration as there were no specific pleadings in this regard, therefore, the evidences brought on record were not admissible, I have gone through the release application filed u/s 21(1)(a) of the Act, 1972. In para 4 of the said application, it has been mentioned that the applicant, Abdul Qayum has four sons and one daughter. The eldest son is Abdul Hai, who has passed B.A. examination and is unemployed. The second son, Abdul Momin after completing High School has taken training from Kohinoor Tailoring Shop at Sultanpur and he is competent to establish the business of tailoring but he was not able to establish his business due to lack of space. The applicant (respondent No. 1, herein), has very limited resources. The remaining two sons and the daughter

are studying. In para-7, it has been mentioned that Abdul Hai and Mohd. Momin wants to open the tailoring business. In Para-8, it is mentioned that the opposite party Nos. 1 and 2 has constructed a house in Mohalla, Perkinsganj and they are in possession over the said house and they have also ancestral house in Mohalla, Gandanala where they can do their business of garments. In Para-10, it is mentioned that the opposite party Nos. 1 and 2, have one more house in Mauza Gondwa, Tehsil and District Sultanpur, which is two and half kms. from the city and there is sufficient means of transport to go and come from the said house. It is also mentioned in Para-11 that the tenants have a press in their ancestral house at Gandanala where they can easily adjust their garments business.

16. It is very much clear that the opposite party No. 1, Abdul Qayum, in the release application had pleaded that the shop in question is needed to establish his sons, who are unemployed. The appellate court has given the findings that the sons of the opposite party No. 1, Abdul Qayum, cannot be treated to be under the gainful employment and, therefore, they are unemployed. There are sufficient evidences that the shop in question has remained closed and the electricity connection was disconnected in 1992 and the reconnection has been taken only at the time of final hearing in the case in May, 2006. There is force in the arguments of the learned Counsel for the opposite parties that there are sufficient pleadings as set out in the application moved u/s 21(1)(a) of the Act, 1972, to establish the bona fide and genuine need of the family of the landlord. The appellant court has rightly come to the conclusion that the evidences brought on record were not properly considered by the prescribed authority.

17. In this regard, in support of his contention, learned Counsel for the petitioners, Sri S.K. Mehrotra has relied upon the decisions rendered in the cases of A.V.G.P. Chettiar and Sons and Others Vs. T. Palanisamy Gounder, and Smt. Razia Khatoons v. Ist A.D.J., Badaun, 1997 (2) A.R.C. 175.

18. Since I have come to the conclusion that there are sufficient pleadings to establish the bonafide and genuine need of the family of the landlord and evidences brought on record in support of the said pleadings were not properly considered by the prescribed authority, the above cited case laws relied upon by the learned Counsel for the petitioners are of no assistance to him.

19. So far as the second submission of the learned Counsel for the petitioners that the landlord has constructed some new shops and he has got sufficient space to establish his sons is concerned, it has been held by the appellate court that it is not clear as to whether the said shops belong to the opposite party No. 1 or his brothers.

20. Sri Mohd. Arif Khan, learned Sr. Advocate appearing on behalf of the opposite parties, has further submitted that it has not been controverted that the alleged shops which are said to have been constructed, the same were constructed after partition in the family by the brother of the opposite party No. 1.

21. Sri S.K. Mehrotra in this regard has also relied upon the decisions of this

Court in the case of Natthu Ram v. 7th Addl. District Judge, Varanasi and Ors. 2005 (23) LCD 1151 and Vinay Joseph and Anr. v. VIth A.D.J., Bareilly and Anr. 2009 (1) ARC 80, in support of his contention. In the case of Natthu Ram (Supra), it was held that since during the pendency of the writ petition, the landlord had obtained possession of one of the shops, therefore, the need of the landlord stood satisfied to a great extent.

22. In the case of Vinay Joseph and Anr. (Supra), it has been held that the landlord will have to prove his bonafide need even after relying upon the Explanation (1) to Section 21 (1) of the Act. The said judgments are of no assistance to the petitioners as the facts and circumstances of the present case are altogether different. There is nothing to disbelieve the findings of the learned appellate court that the ownership of the alleged shops, which are said to be newly constructed was not established and there is no evidence on record on the basis of which it can be presumed that the said shops belong to the applicant-landlord.

23. It is to be noted that the release application was moved in January, 1979 and since then the litigation has been going on for release of the shop in question i.e. for the last more than 30 years. However, no efforts were made during this period by the tenants to search an alternative accommodation and establish his business at the alternative place. There is no evidence on record to show that any effort was made by the petitioner to find out the alternative accommodation.

24. The Apex Court in the case of Mst Bega Begum and Ors. v. Abdul Ahad Khand (dead) by L.R. and Ors. (1979) SCC, 273, has held that it is no doubt true that the tenant will have to be ousted from the house if a decree of eviction is passed but such an event would happen eventually whenever a decree for eviction is passed and merely because the tenant will be ousted from the premises where he was running his activity cannot be itself be considered to be a hardship and be availed ground for refusing the landlord a decree for eviction.

25. In the instant case, since the tenants did not make any effort to search an alternative accommodation immediately after filing of the release application and even thereafter the said facts are sufficient to tilt the balance of comparative hardship against the tenants as held by the Apex Court in the case Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, the said authority has been followed by this Court in Salim Khan v. IVth Additional District Judge, Jhansi and Ors. 2006 (1) ARC 588, wherein it is held as under:

In respect of comparative hardship, tenant did not show what efforts they made to search alternative accommodation after filing of the release application. This case is sufficient to tilt the balance of hardship against them vide Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, Moreover, rent of Rs. 6/- per month which the tenants are paying is virtually as well as actually no rent. By paying such insignificant rent they must have saved a lot of money. Money saved is money earned. They must, therefore, be in a position to take another

house on good rent. Further, they did not file any allotment application for allotment of another house. Under Rule 10(3) of the Rules framed under the Act, a tenant, against whom release application has been filed, is entitled to apply for allotment of another house immediately. Naturally such person is to be given preference in the matter of allotment. Respondents did not file any such allotment application. Thus, the question of comparative hardship has also to be decided against the tenants.

26. The said view has been further reiterated by this Court in the following cases:

- (1) Jai Raj Agarwal v. Bhola Nath Kapoor and Ors. 2005(3) ARC 417.
- (2) Rulemuddin and Ors. v. Abdul Nadeem 2007 (2) ARC 62.
- (3) Mohabbey Ali v. Taj Bahadur and Ors. 2009 (2) ARC 715
- (4) Raj Kumar v. Lal Khan 2009 (2) ARC 740
- (5) Ashis Sonar and Ors. v. Prescribed Authority and Ors. 2009 (3) ARC 269.

27. From the record, it is very much clear that the original tenant Ram Sumiran Lal and Ram Sunder Lal have died and Om Prakash has also died. The present writ petition has been filed by the legal heirs of Om Prakash who are said to be in possession of the shop in question.

28. The learned appellate court has rightly come to the conclusion that the need of the landlord and his family is genuine and bona fide. The hardship faced by the tenants in the release of the shop can be redressed by paying compensation which has been calculated by the appellate court to the amount of rent for two years.

29. For the foregoing reasons, the present writ petition filed by the petitioners-tenants lacks merits and is dismissed accordingly.

30. However considering the facts and circumstances of the case and also in the interest of justice, I direct that the order of eviction against the petitioners - tenants shall not be executed till 31.7.2010; provided:

1. the petitioners-tenants shall furnish an undertaking before the prescribed authority within a period of one month from today to the effect that they will deposit the entire rent/damages at the rate of rent till date, if not already deposited or paid to the landlords and continue to deposit the same as and when the same falls due by the 1st week of each succeeding month so long as they remain in possession or till 31.7.2010, whichever is earlier, and

2 thepetitioners-tenants shall vacate and handover the peaceful possession of the shop in question on or before 31st July, 2010 to the landlords.

3 in the event of default of any of the conditions mentioned above, it will be open to the landlord to get order of eviction executed.