

(2012) 01 AHC CK 0436

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3463 of 2012

Sohan Singh @ Mallu (Dead) and others

APPELLANT

Vs

Prescribed Authority No.2/Addl.Civil Judge (S.D.), Agra and others

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Citation : (2012) 01 AHC CK 0436

Hon'ble Judges : Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dilip Gupta, J.

The tenants have filed this petition for quashing the order dated 24th March, 2011 passed by the Prescribed Authority by which the application filed by the landlord under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act") for release of the accommodation, was allowed. The petitioners have also sought the quashing of the judgment and order dated 8th December, 2011 by which the appeal filed by the petitioners under Section 22 of the Act for setting aside the order of the Prescribed Authority was dismissed.

The need set up by the landlord, who is an Advocate practicing in the District Court at Agra, in the application filed under Section 21(1)(a) of the Act, was additional accommodation for residence and for setting up his chamber. The applicant stated that the drawing room was being used for attending his clients and keeping his law books and journals and not only was it not suitable but at times also caused embarrassment. It was also stated that his married sister also visited the applicant and space was needed for her as well as for the family friends, relatives and guests. The tenanted portion was, therefore, bona fide required by the applicant so that after obtaining possession, he would renovate, restructure, remodel and revamp the existing accommodation to meet the requirement for his residence and the chamber. It was also stated that the

applicant was likely to suffer greater hardship in case the application was not allowed.

The tenants filed a reply stating that the landlord did not bona fide require the tenanted portion as there was enough space with the landlord for his office and his family members. It was also stated that the tenants were likely to suffer greater hardship if the application under Section 21(1)(a) of the Act was allowed.

The Prescribed Authority, on a consideration of the materials available on record, came to the conclusion that the applicant bona fide required the tenanted accommodation and the landlord was likely to suffer greater hardship. The Appellate Authority has confirmed these findings of the Prescribed Authority and has, therefore, dismissed the appeal filed by the tenants.

Learned counsel for the petitioners has raised the same submissions as were advanced before the Prescribed Authority and the Appellate Authority. It is his submission that in case the landlord thought that additional space for his chamber was required then the landlord could utilise the open space in front of his accommodation for constructing his chamber. It is also his submission that the tenants are residing in khaprail and a tinshed which would not be suitable for the landlord for the residence or for establishing his chamber. He has also submitted that the tenants are not in a position to find out alternative accommodation and, as such, the comparative hardship was in favour of the tenants.

Learned counsel for the landlord has, however, submitted that the landlord cannot be compelled to raise additional construction on the open piece of land and that the accommodation available with the tenants was bona fide required by the landlord for not only establishing his chamber but also for catering to the need of his sister and his guests, who often visited him. It is also his submission that looking to the large practice of the applicant, it was essential for him to have an independent chamber since at present he is utilising the drawing room as his chamber.

I have considered the submissions advanced by the learned counsel for the parties.

The Prescribed Authority and the Appellate Authority, on a consideration of the materials available on record, have come to the conclusion that the need of the landlord was bona fide. Nothing has been pointed out by learned counsel for the petitioners which may show that the findings recorded by the Courts below are perverse. Indeed, the need of an Advocate to have his own independent chamber is a bona fide need and the tenants cannot insist that the landlord should raise additional construction on the open piece of land available in front of his accommodation to cater to this need.

The Supreme Court has time and again explained what bona fide need is. In *Siddalingamma & Anr. Vs. Mamtha Shenoy*, AIR 2001 SC 2896, the supreme

Court pointed out:

"Rent Controls Legislation generally leans in favour of tenant, it is only the provision for seeking eviction of the tenant on the ground of bona fide requirement of landlord for his own occupation or use of the tenanted accommodation which treats the landlord with some sympathy. In Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta (1999) 6 SCC 222 this Court has held that a bona fide requirement must be an outcome of a sincere, honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. The question to be asked by a judge of facts, by placing himself in the place of the landlord is, whether in the given facts proved by material on record the need to occupy the premises can be said to be natural, real, sincere honest? If the answer be in the positive the need is bona fide. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself dwell into lesser premises so as to protect the tenant's continued occupation in tenancy premises."

(emphasis supplied)

The Supreme Court in Sarla Ahuja Vs. United India Insurance Co. Ltd., AIR 1999 SC 100, also observed:

".....When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

In Mst. Bega Begum, & Ors. Vs. Abdul Ahad Khan (dead) by L.R's & Ors., AIR 1979 SC 272, the supreme Court observed:

"Moreover, S. 11 (1) (h) of the Act uses the words ""reasonable requirement"" which undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term ""need"" or ""requirement"" should not be artificially extended nor its language so unduly stretched or strained so as to artificially extended nor its language so unduly stretched or strained so as to make it

impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other States in the country. This Court has considered the import of the word ""requirement" and pointed out that it merely connotes that there should be an element of need."

(emphasis supplied)

This Court in *Sardar Kulwant Singh Vs. VIth Additional district Judge, Saharanpur & Anr.* 2007 (66) ALR 498 has observed that the need of the landlord to establish a lawyers" chamber is bona fide.

Nothing has also been brought on record to show that the tenants made any effort to find out any alternative accommodation during the pendency of the application filed by the landlord under Section 21(1)(a) of the Act. The Prescribed Authority and the Appellate Authority, therefore, committed no illegality in holding that the landlord was likely to suffer greater hardship.

The petition is, therefore, liable to be dismissed.

Learned counsel for the petitioners, however, submitted that some time may be given to the tenants to vacate the accommodation and for this period, the tenants are ready to pay damages at the rate of Rs.100/ per month.

Learned counsel for the landlord has stated that the landlord will have no objection to some reasonable time being granted to the tenants provided suitable damages are awarded.

The tenants are, accordingly, granted time upto 18th May, 2012 to handover the peaceful possession of the accommodation to the landlord subject to the tenants giving an undertaking within three weeks from today before the Prescribed Authority to the following effect :

1. That the tenants shall handover peaceful possession of the accommodation to the landlord on or before the 18th May, 2012.
2. That the tenants shall pay damages at the rate of Rs.100/ per month up to the date they handover the possession of the accommodation to the landlord.
3. That the tenants shall not induct any other person in the accommodation.

It is made clear that in the event the tenants fail to give the undertaking within the aforesaid period or fail to comply with any of the terms of the undertaking, it will be open to the landlord to get the order enforced.

The writ petition is, accordingly, dismissed with the aforesaid observations.