

(2011) 05 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition No. 154 (M/S) of 2006

Sri Basant Kumar Naudiyal (deceased) by L.R. and Others	APPELLANT
Vs	
District Judge Pauri Garhwal and two Others	RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1)(a)

Citation : (2012) 2 UC 988

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : S.K. Posti, for the Appellant; Sudhir Kumar, Brief Holder for Respondents 1 and 2 and Mr. S.K. Jain, Advocate, for the Respondent

Judgement

Brahma Singh Verma, J.—By means of this petition the petitioners have sought the following relief:-

(A) To issue an order or direction to summon the record of case and set aside the order of 1st Appellate Court dated 23.12.2005 (Annexure No. 5 to the writ petition).

(B) To issue an order or direction, directing the respondents to vacate the disputed accommodation in favour of landlord.

(C) To issue an order or direction to the respondents to allow the application u/s 21(1)(a) of the U.P. Act No. 13 of 1972 of the landlord.

Briefly stated the facts of the case giving rise to the instant writ petition, according to the petitioner are that petitioner is land-lord of House No. 94 situated at Patel Marg, Kotdwar, within the Municipal Limit Kotdwar. The respondent No. 3 was tenant of shop situated in the ground floor of the above house at a monthly rent of Rs. 250/-, which was let out to him in the year 1975 and the respondent No. 3 was running a shop in the disputed accommodation.

The tenant has closed his shop in the disputed accommodation and shifted his business at Nazibabad Road, Kotdwar before 10 years and disputed accommodation is in locked position in the possession of tenant. The landlord moved an application U/s. 21(1)(a) of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972, in the Court of Prescribed Authority Kotdwar, for the eviction of the tenant from the said accommodation. The landlord in the application has stated that he has four sons and two sons Harsh Vardhan and Vijay Kumar are in the Government Service and living separately with their family at the places of their employment. The other two sons of landlord, Ajay Kumar and Sailendra Naudiyal, are unemployed and Ajay Kumar is a Junior Advocate. He is married, having two children also. He wants to start his legal practice at Kotdwar and for that purpose he requires disputed accommodation for chamber purposes. It is further alleged that at present Ajay Kumar is practicing at Pauri and his village is at a distance of 15 kilometers from Pauri Town and is further 1? Kms. Away from the motor head, there-fore, it is very difficult to do legal practice at Pauri because there is no accommodation available with him at Pauri Town. The land-lord further alleged that the tenant has already shifted from the disputed accommodation to Nazibabad road Kotdwar and the tenant is also having in his possession other accommodation in Ward No. 22 House No. 68, Patel Marg at the house of Ramesh Chand Bhardwaj. The tenant has also second accommodation House No. 25, in his possession at Ward No. 23, at Najibabad road. A shop is in possession of tenant is at the house of Maszid Committee. The petitioner further stated that the tenant has his house at Ward No. 19. The tenant is also having his go down on the ground floor of House No. 1, situated at Hemwati Nandan Bahuguna Road. In this way the contention of petitioner is that the tenant is having three more accommodations apart from the disputed one for his business purposes, which are situated within the Municipal limit, Kotdwar, while on the other hand landlord is not having any accommodation available to him to establish his son Ajay Kumar Naudiyal, except the disputed premises. The petitioner's allegation further is that the tenant was in the arrears of rent from 2001 to 2003.

2. The tenant/respondent No. 3, filed objection to the application filed U/s. 21(1) (a) of the U.P. Act No. 13 of 1972. He has accepted that he had another tenanted accommodation for go-down at the house of Ramesh Chandra Bhardwaj. In para-4 of the W.S. the tenant has denied this fact that Ajay Kumar and Sailendra Kumar are unemployed and Ajay Kumar wants to do legal practice at Kotdwar. In para-11 of the W.S. it is alleged that the application filed by the landlord is against the law and facts and there is no need of disputed shop to the land-lord for running the legal profession of his son. In para-12 it has been alleged that the son of landlord is not engaged in legal practice. It is further alleged in the W.S. that adjacent to the shop in dispute there is one another shop of the landlord which is in the tenancy of Sri Ganesh Kotnala, who has shifted the shop from there and the said shop is lying vacant and the landlord can very-well accommodate his son on that shop to do his legal profession. The tenant,

therefore, alleged that there is no bonafide need of landlord and if the tenant is evicted from the shop in question he will be put to a great hardship.

3. The learned Prescribed Authority, framed issues in the case, parties led evidence in support of their case. Thereafter, the Prescribed Authority, after hearing the parties and considering the entire evidence on record, allowed the application of landlord vide judgment and order dated 15.3.2005, and directed the tenant to release the disputed premises in favour of landlord within a period of two months.

4. Feeling aggrieved, the tenant preferred appeal before the District Judge Pauri, who vide impugned judgment and order dated 23.12.2005, allowed the appeal and quashed the judgment and order passed by Prescribed Authority and rejected the application of the landlord for release of disputed accommodation. The learned District Judge, while rejecting the release application, has recorded a finding that there is no bonafide need of landlord as the son of landlord can open his office at his home and if he has no accommodation there, then he can open his office nearby to court campus after taking a room on rent. There is no justification to open the office of an Advocate in the market site. The learned Appellate Court also held that the son of land-lord can also open office on the room which was vacant with him and the another room which was constructed by him later-on and gave it to his son-in-law on rent.

5. Aggrieved by the Appellate Court's judgment and order the landlord has preferred this writ petition.

6. The petitioner by filing this writ petition, has challenged the order of Appellate Court alleging therein that findings of the appellate court are arbitrary on the point that an Advocate has no need of a big accommodation in the market area, rather the office of the Advocate should be approachable to the client which cannot be better than on market area. Regarding finding of appellate court that two room accommodation in vacant position, is available with the land lord and his son can start his legal practice in that accommodation, is against the evidence on record. The petitioner in his replication has specifically stated that in the said accommodation Virendra Kumar Bhardwaj is tenant and Ganesh Kotnala has yet not vacated his portion and the same is still in his possession. The petitioner reiterated that rent of accommodation with tenant at the house of Ramesh Chandra Bhardwaj is 4800/- which clearly demonstrate that all these accommodations are in possession of tenant. The petitioner further alleged that the First Appellate Court has not recorded finding of fact and merely on the basis of suggestion made by him set aside the order of trial court which cannot be sustained in the eyes of law as the same has been passed on surmises and conjectures.

7. The tenant/respondent No. 3 resisted the writ petition by filing the counter affidavit and denied the contents of the writ petition. He alleged that landlord failed to establish his bona fide need, and comparative hardship, therefore, the

application U/s. 21 of the U.P. Act No. 13 of 1972, has rightly been rejected by the appellate court. He further alleged that accommodation in actual physical possession of the landlord in house No. 94 situated at Patel Marg Kotdwar consist of eight big rooms. Admittedly, two rooms were in the tenancy of Dhyan Singh Rawat, two rooms were in the tenancy of Ganesh Prasad Kotnala, which are just - adjacent to the disputed go down and during the pendency of the application the landlord permitted his son-in-law Sri Virendra Prasad Bahuguna in two rooms as licensee and rest of two rooms with two kitchen were newly constructed by the applicant in western side. In this way the applicant has eight rooms at his disposal, which are lying vacant.

8. On behalf of the landlord/petitioner, his son Ajay Kumar, filed rejoinder affidavit and reiterated the facts mentioned in the writ petition.

9. The landlord/petitioner Basant Kumar died during the pendency of writ petition and his legal heirs were impleaded as petitioners.

10. Further, the pendency of writ petition, on the ground of subsequent events, the respondent/tenant with the permission of the court, filed supplementary affidavit on 21st September, 2010, and in para-6 it has been alleged that it is not disputed that in the release application the landlord had pleaded the only requirement of his son Ajay Kumar Naudiyal. The release application was totally silent about the requirements of any other member of the family of the landlord as the other members of the family are already settled in their independent business or service. In para-7 it has been alleged that during the pendency of writ petition Ajay Kumar Naudiyal unfortunately could not succeed in the legal profession, hence he left this profession and decided to do teaching job and on 30-1-2009 he was permanently appointed as a teacher in Rajkiya Primary Vidhyalaya Buga-2 District Pauri and he is getting a salary of Rs. 16,799/- and now the requirement of landlord for the demised premises has come to an end.

11. The petitioner also filed counter affidavit to the supplementary affidavit filed by the tenant and alleged that the release application was filed jointly for the need of two sons of landlord Ajay Kumar and Sailendra Kumar. Sailendra Kumar is still unemployed and at present he is married and his family is also living at Kotdwar and he wants to start his business in the tenanted accommodation to earn livelihood of his family. Regarding joining service by Ajay Kumar, it has been alleged that as there was no accommodation available at Pauri and since he was the beginner, he cannot afford the expenses of a house to be taken on rent at Pauri, therefore, he was daily doing up and down from his village, which is about 15 Kms. away from Pauri, which was not suitable for his legal profession and, therefore, under the compelling circumstances, he joined the service of Assistant Teacher in Primacy School and he is posted in a remote area.

12. I have heard learned counsel for parties and perused the record.

13. Learned counsel for the petitioner has submitted that the Prescribed Authority on finding the bonafide need of the land lord to start legal profession of

his son Ajay Kumar, has passed the order for release of the tenanted premises. The bona fide need which has to be judged was on the date of application and subsequent events cannot bring any change in liability of tenant of being evicted. He further submitted that the landlord had filed the application narrating therein that his two sons Ajay Kumar and Sailendra Kumar are unemployed and bona fide need of Sailendra Kumar still subsists, therefore, the tenant be evicted from the demised premises. In support of his contention learned counsel has cited before me the following case law:-

- (1) Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by LR"s., .
- (2) Jamila Khatoon (Smt.) and others Vs. Addl. District Judge, Sahranpur and others, reported in [2004 (1) ARC 282].
- (3) Gaya Prasad Vs. Sh. Pradeep Srivastava, .
- (4) Raj Kumar Sharma Vs. Additional District Judge-III and Others .
- (5) Writ Petition No. 4128 of 2001 (M/S) P.P. Narang (deceased) by L.Rs. of late P.R. Narang Vs. IIIrd Addl. District Judge, Dehradun and others, rendered by learned Singh Judge of this Court on 5-1-2011.

14. On the other hand learned counsel for the respondent/tenant has submitted that normally right to relief must be judged by reference to date of application is instituted, however, subsequent developments cannot be shut out and in the instant case the landlord had specifically pleaded the bona fide need of his son Ajay Kumar to start legal practice on the demised premises, need of another son Sailendra Kumar was not pleaded, and during the pendency of writ petition as Ajay Kumar has left the legal profession and has permanently joined Government service of a teacher, hence, the bonafide need has extinguished, therefore, the release application has no substance. In support of his contention learned counsel has cited before me the case of Seshambal (dead) through L.Rs. Vs. Chelur Corporation Chelur Building and Others, and the judgment dated 6.1.2011, rendered by this court in W.P. No. 3933(M/S) of 2001, Madan Lal Aggarwal & another Vs. District Judge Pauri Garhwal & another.

15. I have gone through the above cited cases. In the case of Kamleshwar Prasad Vs. Pradumanju Agarwal mentioned at serial No. 1, the Hon"ble Apex Court in para No. 3 has held as under-

Having given an anxious consideration to the contention raised by the learned counsel for the appellant and under the facts and circumstances of this case we are of the considered opinion that this case does not warrant interference by this Court under Article 136 of the Constitution. Under the Act, the order of the appellate authority is final and the said order is a decree of the Civil Court and decree of a competent court having become final cannot be interfered with by the High Court in exercise of its power of superintendence under Articles 226 and 227 of the Constitution by taking into account any subsequent event which might have happened. That apart, the fact that the landlord needed the premises in

question for starting a business which fact has been found by the appellate authority, in the eye of law, must be that on the day of application for eviction which is a crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder son. In this view of matter, we find no force in the contention of Mr. Manoj Swarup, learned counsel appearing for the appellant and we do not find any error in the impugned judgment of the High Court warranting interference by this Court under Article 136 of the Constitution. The appeal, accordingly fails and is dismissed but in the circumstances without any order as to costs.

16. In the case of Jamila Khatoon (Smt.) and others, (supra) mentioned at serial No. 2, release application for the shop was filed by Anil Kumar 3rd son of landlord who had passed chartered accountancy examination and wanted to start his own profession of chartered accountancy. Meanwhile, Anil Kumar had joined the service in Hindustan Times, group for the time being, he could not sit idle awaiting release of the shop. The Hon'ble Apex court has held that even if he had joined the partnership firm of chartered accountancy at Kanpur for some time his need of starting his own profession did not come to an end.

17. In the case of Gaya Prasad Vs. Pradeep Srivastava, noted at serial No. 3, the Hon'ble Apex Court has observed as under-

we have no doubt that the crucial date for deciding as to the bona fide of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps having utility for him to reach the said crucial date of consideration. If every subsequent development during the post-petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists.

In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events.

The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the list. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.

Considering all the aforesaid decisions, we are of the definite view that the subsequent events pleaded and highlighted by the appellant are too insufficient to overshadow the bona fide need concurrently found by the fact finding courts.

18. In the case of Raj Kumar Vs. IIIrd Addl. District Judge, Meerut and other noted at serial No. 4, the Hon"ble Apex Court in para No. 4 has observed as below:-

4. So far as the question that the landlord respondent has purchased some property during the pendency of the writ petition is concerned, the same is not relevant as the release order which was passed by two courts below had attained finality. The Apex Court in the case of Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by LR"s., has held that if subsequent event takes place during the pendency of writ petition, that will not affect finality attached to a release order passed by the court below.

19. In Writ Petition No. 4128 of 2001 (M/S) P.R. Narang Vs. IIIrd Addl. District Judge, Dehradun and others, cited by learned counsel for petitioner, the learned Single Judge of this Court, after interpreting various judgments of Apex Court on the point of subsequent events, has observed that the subsequent events cannot overshadow the genuineness of the need and that the subsequent events to overshadow such genuine need must be of such nature and of such a dimension that the need of the landlord is eclipsed by subsequent events. In that case, the court was of the opinion that the need existed and the cause of action still survived and was not eclipsed by the subsequent events that had been brought on record and the writ petition was dismissed accordingly.

20. In the instant case the landlord had filed application U/s. 21(1)(a) of the Act, mentioning therein that he had two unemployed sons Ajay Kumar and Sailendra Kumar and the premises is needed to open office by Ajay Kumar to start his legal profession. The trial court finding the bonafide need of landlord decreed the suit. However, the Appellate Court has set aside the decree simply on the ground that the Advocate does not require a big office to start his business, and he can open his office on a nearby room of the courts after taking it on rent. The Appellate Court also observed that market place is not suitable for opening his office by an Advocate to start his business. The aforesaid findings of the First Appellate Court are perverse. The learned trial court has recorded a categorical finding after evaluating the evidence on record that the landlord had a bonafide need of the premises in question and he was having comparative hardship in comparison to the tenant.

21. The contention of learned counsel for respondent/tenant that during the pendency of petition Ajay Kumar has left the idea of doing legal profession and has joined government job of teaching, hence this subsequent development has closed the chapter of bonafide need of the landlord, has got no substance. The cause of action still survives and the bonafide need of another son of landlord subsists. This fact has been pleaded by the petitioner in the rejoinder affidavit. Anyhow, it is well settled that the bonafide need of a person is always to be seen and judged on the date of application for eviction. If every subsequent development during the post-petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would

perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. Considering all the aforesaid decisions, I am of the definite view that the subsequent event pleaded and highlighted by the respondent/tenant is too insufficient to overshadow the bona fide need concurrently found by the fact finding court, i.e. trial court on the date of application.

22. I have also gone through cases cited on behalf of learned counsel for the respondent/tenant. In the case of Seshambal (dead) through L.Rs. Vs. Chelur Corporation Chelur Building and Others, , the Hon"ble Apex Court has dealt with the bona fide requirement of landlord, and has held that requirement pleaded by original petitioners was their own personal requirement and not of members of their family whether dependent or otherwise. Position may have been different if in original petition owners had pleaded their own requirement and the requirement of any member of their family dependent upon them. None of the legal representatives were dependent upon deceased petitioner, therefore, after death of petitioners their right to seek eviction on ground of personal requirement for demised premises became extinct, hence no order on the basis of any such requirement could be passed.

23. On the point of subsequent events, the Hon"ble Apex Court in the above cited case has observed that normally right to relief must be judged by reference to date suit or legal proceedings are instituted, however, subsequent developments having a bearing on right to relief claimed by a party cannot be shut out from consideration. The courts are expected to examine impact of such subsequent developments on right to relief claimed by a party and if necessary, suitably mould the relief. However, in the case in hand I do not find that the subsequent event pleaded by the respondent/tenant has any impact on the right to relief claimed by the petitioner, firstly on the ground that the need of Ajay Kumar to open his legal profession on demised premises was still there before the Appellate Court and secondly that when Ajay Kumar got government job the requirement of another son Sailendra Kumar still subsists and in the aforesaid circumstances the bonafide need is to be considered at the date when the release application was filed. The ruling cited by the respondent is of no help to him.

24. I have also gone through the judgment of learned Single of this court cited by the learned counsel for the respondent. In Writ Petition No. 3933 (M/S) of 2001, decided by learned Single Judge of this Court on 6.1.2011 has dismissed the writ petition. The controversy before the learned Single Judge was that the landlord showing his need for the shop in question for himself and for his four sons had moved application U/s. 21(1)(a) of Act No. XIII of 1972. The Prescribed Authority decreed the suit. The tenant filed appeal which was allowed holding that the landlord had not disclosed the nature of business that he wanted to start consequently the need was not bonafide. The landlord filed writ petition No. 6667 of 1978 which was allowed by Allahabad High Court. The High Court found that

the petitioners in the release application had urged that they want to start their ancestral business but since the exact nature of business was not indicated, the writ court allowed the petition and quashed the order of appellate court and remitted the matter to the appellate court to decide the matter afresh and a liberty was given to the petitioner to file an application and an affidavit disclosing the nature of business sought to be carried on in the shop in question. Thereafter the petitioner moved application along with an affidavit indicating that the petitioner along with his sons would like to carry on their ancestral business in cloth from the premises in question. The tenant filed objection reiterating that the petitioner had no bonafide need. The appellate court found that the landlord was already doing a business of transportation and was plying his own trucks and that one of the sons of landlord was a contractor in U.P. Jal Nigam and that another son was doing the work of a contractor in the Irrigation Department at Lansdowne and consequently concluded that the need of the shop to restart the family business in cloths does not appear to be genuine or bonafide and that a mere desire to do business was not sufficient. The lower appellate court allowed the appeal again and set aside the order of Prescribed Authority. Thereafter, above writ petition was filed. During the pendency of writ petition the landlord died and his heirs were substituted. An affidavit along with an application was filed indicating that during the pendency of writ petition subsequent events have taken place and that the grand-sons of the original landlord have also grown up who are unemployed and, consequently, are also required to be settled in business. The learned Single Judge has observed that specific assertion for each grandchildren should have been made to show their need and a bald assertion is not sufficient, and declined to consider the need to do business for the grandchildren in the premises in question.

25. However, in the instant case at the time of filing the release application the landlord had specifically mentioned therein that he has two sons who are unemployed. During the pendency of writ petition Ajay Kumar has joined government job, but another son of landlord Sailendra Kumar is still unemployed and assertion has been made by filing rejoinder affidavit that he wants to start his business on the premises in suit. Mere getting job by Ajay Kumar the bonafide need of the premises does not come to an end as another son of landlord Sailendra Kumar is still unemployed and he has bonafide need of the premises. The comparative hardship is in favour of landlord. The trial court has concluded that the tenant has occupied other premises also where he runs his some of the business.

26. In the above facts and circumstances of the case, I am of the considered view that the finding recorded by the Appellate Court are erroneous, absurd and misreading of evidence and the same are liable to be set aside. The writ petition is allowed. The impugned judgment and order dated 23.12.2005 (Annexure No. 5 to the writ petition), passed by Appellate Court is set aside. The judgment and order dated 15.3.2005, passed by the Prescribed Authority is upheld. The petitioner/tenant is directed to vacate the premises in suit within a period of

three months and hand over the possession of the same to Sailendra Kumar, son of land-lord Basant Kumar Naudiyal (since deceased).