
(2008) 09 AHC CK 0108
In the Allahabad High Court

Sri Bengali Mal and Others

APPELLANT

Vs

The XII Additional District Judge and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

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

Citation : (2008) 09 AHC CK 0108

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Shukla, J.—This is landlord's petition questioning the validity of the order dated 24.11.2000 passed Appellate Authority passed by XII Additional District Judge, Agra allowing the Appeal preferred on behalf of tenant in proceedings u/s 21(1)(a) of U.P. Act No. 13 of 1972.

2. Brief facts giving rise to instant writ petition in brief are that petitioners" are landlord of premises No. 29/1995 situated at Chhipitola, Agra. In the said premises in question and one Sikandar was tenant of shop in question at the rent of Rs. 6/- per month. Said Sikandar died and Mohd. Ikram, Mohd. Yameen and Smt. Batulan are his legal heirs and representatives. Release application u/s 21(1)(a) of U.P. Act No. 13 of 1972 was filed by the landlord on the ground that Dharmendra Kumar, petitioner No. 4 and Virendra Kumar petitioner No. 2 are sitting idle and they do not possess any shop and they intend to run goldsmith business. It was also specifically mentioned that sons of Ram Nath are also sitting idle and they have also experience of goldsmith. Release application filed was opposed by Mohd. Ikram and others and it was contended that shop in question was not at all bonafidly required and there are various shops in their possession and as such application be rejected. In the proceedings so undertaken Bengali Mal petitioner No. 1 filed his own affidavit mentioning therein that he has only one tenanted shop in House No. 29/106 situated at Chhipitola,

Agra which is owned by late Sri Chiranjilal Jain and in the said shop, business of goldsmith is being run by Sri Bengali Mal petitioner No. 1 and Sri Sonpal petitioner No. 2 and said shop is very small shop. Affidavit was filed by Dharmendra Kumar stating therein the facts as stated by Bengali Mal. Another affidavit was filed by petitioner No. 1 on 17.03.1994 mentioning therein the details of family members and other subsequent facts. Rejoinder affidavit was filed and therein it was also stated that Jitendra Kumar and Virendra Kumar are not in employment. Again supplementary rejoinder affidavit was filed giving factum of family members and inconveniences. After respective evidence has been led the Prescribed Authority on 23.08.1996 allowed the release application. Against the said order Rent Control Appeal No. 378 of 1996 was filed u/s 22 of U.P. Act No. 13 of 1972. Said Appeal in question was allowed on 08.05.1997 and matter was remitted back. After remand order was passed joint affidavit was filed before Prescribed Authority by Bengali Mal, Jitendra Kumar and Sonpal and another affidavit was filed on 17.02.1998 by Bengali Mal, Jitendra Kumar and Sonpal. Thereafter Prescribed Authority on 10.08.1998 allowed the application returning finding of bonafide need and comparative hardship in favour of landlord. Against said order Appeal was preferred and said Appeal in question was allowed on 24.11.2000. At this juncture present writ petition has been filed.

3. Pleading inter se parties have been exchanged and thereafter present writ petition is being taken up for final hearing and disposal with the consent of the parties.

4. Sri B.N. Agarwal, learned Counsel for the petitioner contended with vehemence that in the present case Prescribed Authority on the basis of material and evidence which was available on record recorded categorical finding of facts on the issue of bonafide need and comparative hardship and thereafter Appellate Authority on mere surmises and conjecture suggesting that shops were already available to the petitioners, proceeded to non-suit the bonafide need of petitioners and totally misdirected itself on the question of comparative hardship as such unwarranted and unreasonable view has been taken as such order passed by Appellate Authority is liable to be quashed. Sri B.D. Mandhyan, Senior Advocate appearing with Sri O.P. Lohiya, Advocate contended with vehemence that in the present case circumstances are indicating that need of the landlord was at all bonafide one and circumstances were speaking for itself and even on comparative hardship front balance has rightly been tilted in favour of the tenant, as such order passed is sustainable, and warrants no interference by this Court.

5. After respective arguments have been advanced factual position qua which there is no dispute that as far as family of the landlord is concerned it is extensively very large family details of which has been set out in paragraphs 6 to 17 of the writ petition and said fact has not been disputed in counter affidavit so filed, however, it has been sought to be suggested that landlord have got several residential and commercial accommodation at their disposal. Release application

has been filed and therein clear and categorical mentioned has been made therein that two sons Dharmendra Kumar and Virendra Kumar are sitting idle and they intend to open shop for doing goldsmith business. It was also specifically mentioned therein that sons of Ram Nath are also sitting idle who have also experience of goldsmith. Prescribed Authority found need of landlord to be bonafide and genuine one and even on comparative hardship front finding has been returned in favour of the landlord. Hon''ble Apex Court in the case of Smt. Sushila v. 2nd Additional District Judge, Banda and Ors. reported in 2003 (1) ARC 256 has taken the view that need for settling married and major son is bona fide need, and he cannot be compelled to join his father and do work. Relevant paragraphs 5,10 and 11 of the said judgment are being extracted below:

5. We find that Prem Prakash is a young man who is unemployed. He is married and has children. There is every justification for him or for his mother to settle him in life independently. He cannot be compelled to join his father in his Goldsmith and money-lending work in his small shop. In our opinion, he is entitled to start business of his own choice and independently. The appellate Court took a view, as indicated above, which is palpably wrong and wholly unacceptable.

10. In the case in hand we find that even though the period of tenancy of the respondent is no doubt long but availability of another shop to him where he can very well shift his business as found by the Prescribed Authority, neutralises the factor of length of tenancy in the accommodation in dispute. We further find that the landlady has no other shop where she can establish her son who is married and unemployed. There is nothing on the record to indicate that the business of father of Prem Prakash is so huge or that it is a very flourishing business so as to attract application of Clause (c) of Rule 16(2). As observed earlier it is clear that length of period of tenancy as provided under Clause (a) of Sub-rule (2) of Rule 16 of the Rules, 1972 is only one of the factors to be taken into account in context with other facts and circumstances of the case. It cannot be a sole criterion or deciding factor to order or not the eviction of the tenant. Considering the facts in the light of Rule 16 pressed into service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favour of the un employed son of the landlady whose need is certainly bona fide and has also been so accepted by the respondent before us.

11. It may be mentioned that we are not taking into account of Clause (d) of Sub-rule (2) of Rule 16 of the Rules; where yet another factor is to be borne in mind, in favour of releasing the shop, if the person has some technical education to his credit but not employed in any Government service and wants to engage in self-employment. The Petitioner had shown that her son Prem Parkash had undergone a training course in household electrical wiring and had obtained a certificate from Industrial Training Institute, Banda. He did not get any Government job and wanted to be self-employed by starting a shop of electrical goods and utensils. The Prescribed Authority considered this factor but we find

that the appellate Court expressed doubt on the fact that the certificate related to Prem Parkash being lead by the fact that his residence was shown as village Lukhtara, undisputedly that village also falls in the district of Banda. It was also observed by the appellate Court that it could not be shown as to what Government job Prem Parkash could get by virtue of the certificate he had obtained from Industrial Training Institute, Banda. The whole approach to the point was misdirected. Be that as it may, we make it clear that even by excluding the factor of Prem Parkash being technically educated, otherwise as well as find that the need and requirement of the landlady is bona fide even after considering the same in the light of Rule 16 of the Rules and in the background of comparative hardship which we find would be more to the landlady, in the event of disallowing the application for eviction.

6. Hon''ble Apex Court in the case of Akhileshwar Kumar and Others Vs. Mustaqim and Others, , took the view that simply because educated unemployed son was provisionally assisting his father in family business same does not mean that he should not start his own independent business. Relevant paragraphs 3 and 4 are being extracted below:

3. In our opinion, the approach adopted by the High Court cannot be countenanced and has occasioned a failure of justice. Overwhelming evidence is available to show that the plaintiff No. 1 is sitting idle, without any adequate commercial activity available to him so as to gainfully employ him. The plaintiff No. 1 and his father both have deposed to this fact. Simply because the plaintiff No. 1 is provisionally assisting his father in their family business, it does not mean that he should never start his own independent business. What the High Court has overlooked is the evidence to the effect, relied on by the trial Court too, that the husband of plaintiff No. 4, i.e. son-in-law of Ram Chandra Sao, was assisting the latter in his business and there was little left to be done by the three sons.

4. So is the case with the availability of alternative accommodation, as opined by the High Court. There is a shop in respect of which a suit for eviction was filed to satisfy the need of plaintiff No. 2. The suit was compromised and the shop was got vacated. The shop is meant for the business of plaintiff No. 2. There is yet another shop constructed by the father of the plaintiffs which is situated over a septic tank but the same is almost inaccessible inasmuch as there is a deep ditch in front of the shop and that is why it is lying vacant and utilized. Once it has been proved by a landlord that the suit accommodation is required bona fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot thrust upon its own choice on the needy. Of course, the choice has to be exercised reasonably and not whimsically. The alternative accommodation which have prevailed with the High Court are either not available to the plaintiff No. 1 or not suitable in all respects as the suit

accommodation is. The approach of the High Court that an accommodation got vacated to satisfy the need of plaintiff No. 2, who too is an educated unemployed, should be diverted or can be considered as relevant alternative accommodation to satisfy the requirement of plaintiff No. 1 another educated unemployed brother, cannot be countenanced. So also considering a shop situated over a septic tank and inaccessible on account of a ditch in front of the shop and hence lying vacant cannot be considered a suitable alternative to the suit shop which is situated in a marketing complex, is easily accessible and has been purchased by the plaintiffs to satisfy the felt need of one of them.

7. Hon''ble Apex Court in the case of Ragavendra Kumar Vs. Firm Prem Machinery and Co., has held as follows:

It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. See: Prativa Devi Vs. T.V. Krishnan, In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.

8. Hon''ble Apex Court in the case of Yadvendra Arya and Anr. v. Mukesh Kumar Verma 2008 (1) ARC 256 has taken the view that it is landlord who is the best judge of his requirement. He has complete freedom in the matter and the landlord has got every right to file release application for settling his unemployed son in independent business, and the son cannot be accommodated with the father in his business.

9. On the parameters which has been set out and finding recorded is being looked into. Conclusion which has been arrived at are rightful conclusion or same are based merely on surmises and conjectures ignoring relevant material evidence available on record.

10. Appellate Authority in the present case has proceeded to non-suit the claim of the petitioners on the ground that during the pendency of the writ petition one shop of same size has been vacated by Kapoor Chand and said shop in question was not being utilized and it was clearly indicative of fact that need of the landlord is not at all bonafide one. This fact has not been disputed that during the pendency of on going proceedings u/s 21(1)(a) of U.P. Act No. 13 of 1972 one shop in question has been got vacated by Kapoor Chandra on the persuasion of petitioners in Appeal when before Prescribed Authority, Kapoor Chandra had lost the litigation. In the said shop in question Virendra Kumar had been temporarily carrying on business and it is precise case of landlord that his family is large and in order to accommodate family members namely Dharmendra Kumar and Virendra Kumar and sons of Ramnath who are sitting idle, they are legitimately waiting for present shop in question also being released so that two walls in between are removed and four independent shops are carved out for independent settlement of family members. Appellate Authority has not at all appreciated this aspect of the matter that and there is no adverse material qua

the conduct of the petitioner that after getting shop in question they have let out the shop and thus, dis entitled themselves. Conduct of the landlord cannot be said to be unreasonable in the backdrop of large family members waiting for their independent establishment and specially when in the release application it was specifically mentioned that shop in question was required for Dharmendra Kumar and Virendra Kumar and other family members. In this background merely because one shop had been acquired by personal effort and landlord had been waiting for present shop in question to be also released, then wall of both shops being removed and converting the same to four shop for effective independent settlement of family members in business cannot be taken as adverse circumstances against landlord. Appellate Authority in the present case has placed much emphasis on the fact, that shop of Shiv Prasad and Ram Nath were also available. Prescribed Authority on the basis of assessment of evidence had clearly ruled out that there was no evidence that possession of said shop has been handed over back to landlord which they can conveniently use as per their discretion. Appellate Authority qua Shiv Prasad recorded finding that he has shifted to Debri Road Madhunagar Agra and in this background has drawn presumption, that shop occupied by Shiv Prasad has been handed over to landlord. Documentary evidence was filed by landlord that he was still continuing in the premises in question and for this purpose request was also made in the affidavit dated 23.01.1998, for making personal inspection of the shops. In respect of Ram Nath also statement to the similar effect had been made. At no point of time inspection as requested had ever been carried out to find out the exact situation which existed on the spot, in respect of possession of those two shops being in the hand of landlord. Moreover in the facts of present case though it has been stated that all these young men are carrying on their business no evidence to show and substantiate said fact has been brought on record. Release application was for settlement of Dharendra Kumar, Virendra Kumar, Sunil Sanjai and Mukesh all sons of Ramnath, all young men. Release application qua the shop of Kapoor Chandra, therein apart from these five persons name of Jitendra Kumar another young man in the family had been mentioned. In normal course as appellate authority had not considered the request for making spot inspection to find out the truth, matter would have been remitted back, but as matter is already nineteen years old the matter is being decided at this level only, as on admitted facts question can be answered. On admitted position including Jitendra Kumar in whose favour alongwith other persons shop of Kapoor Chandra had been released, in all there are six unemployed men waiting to settle themselves independently. Right of landlord to settle his son independently bereft of family business has been termed to be bonafide and genuine need. In this background though this fact has been disputed that shop of Shiv Prasad and Ramnath is not open for these unemployed men, accepting that the said shops are available in the facts of case vis-a-viz six unemployed young men, only four shops are available. Once right to settle independently, bereft of family business is recognized, then in this background view of Appellate Court can not be subscribed, as statutory provisions are to read and applied in manner so as to

give effect to the object and purport of the Act and not in impartial manner to defeat the purpose of Act. Landlord is the best judge of his need and requirement. Question of bonafide need, sons being unemployed cannot be ruled out and cannot be said to be mere desire.

11. At this place the judgements cited at the bar, by Sri B.D. Mandhyan, Senior Advocate are being looked into. Hon'ble Apex Court in the case of T. Sivasubramaniam v. Kashi Nath 1999 (37)ALR 752 SC, look the view that need must be bonafide, genuine, honest and conceived in good faith. Whenever landlord desires a premises, the requirement of law is that the landlord must set out his need for the premisses in his petition and establish that such need is bonafide. In the said case landlord has neither set out his need for requirement for occupation, nor he led any evidence to show that his need is bonafide. Here in the present case, factual position is all together different as need has been set up and evidence is also there.

12. Reliance has been placed on the judgment of Maqbolinsa v. Mohd. Saleha Quraishi 1998 (2) ARC 567 for the preposition that mere "desire" to have large shop cannot be equated with genuine bonafide need. In the said case one of the main factors which impelled the Court to take such a view was that it was not stated in evidence that shop vacated was not sufficient accommodation to enable her son to carry on said business. Here in the present case two separate independent proceedings for release has been filed. It is true that in the said release application, five names are common except for the name of Jitendra Kumar. This much finding has also come that all these six persons are unemployed and as stop gap arrangement, are helping others in their family business. Against the order passed by Prescribed Authority, allowing release application, Appeal had been filed by Kapoor Chandra and said proceedings have been finalized by way compromise. In the present case this, fact has been brought on record, by way of affidavit by the landlord which has been referred to in the order passed by Appellate Authority clearly mentioning therein that same is not sufficient for settlement of family members, as such on facts ratio of the said case cited for are not applicable.

13. Here in the present case mere desire is not there rather circumstances are clearly reflecting that on account of big family being there with unemployed sons being there bonafide and genuine endeavour to get the shop in question is there and in this direction with personal effort one shop has been acquired by entering into compromise at the Appellate stage and present shop is being asked for, so that the family members are provided independent shop. This is not at all case of tenant, that shop in question after being acquired has been handed over to some one else. In view of this view taken by the Appellate authority cannot be subscribed. Apart from this in the present case Appellate Authority suggested that shop situated near gate could have been used. It is choice of landlord as to from where should he carry on his business and which place would be suitable for settling his business. Such suggestion on the part of the Appellate Authority

cannot be said to be correct suggestion. Thus, in the facts of the present case totally arbitrary view has been taken by the Appellate Authority while reversing the view taken by the Prescribed Authority on the question of bonafide need specially when sons are unemployed and intended to carry on independent business from shop in question.

14. Even on the comparative hardship front it was landlord who was likely to suffer irreparable loss as qua his unemployed sons it would be much more unreasonable not to provide shop to unemployed sons to establish themselves, specially in the circumstances when no attempt has been made by tenant to search alternative accommodation.

15. Hon"ble Apex Court in the case of Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, Hon"ble Apex court had occasion to deal in detail with the comparative hardship"s aspect as follows:

Moreover Section 11(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 as to make it impossible or extremely difficult for one 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 State 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.

In this connection our attention was drawn to the evidence led by the defendants that the main source of their income is the hotel business carried on by them in the premises and if they are thrown out they are likely to get any alternative accommodation. The High Court has accepted the case of the defendants on this point, but does not appear to have considered the natural consequences, which flow from a comparative assessment of the advantages and disadvantages of the landlord and the tenant if a decree for eviction follows. It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the legislature when Section 11(1)(h) of the Act was introduced in the Act. This by itself would not be valid ground for refusing the plaintiffs for eviction.

Thus, on careful comparison and assessment of the relative advantage and disadvantages of the landlord and the tenant it seems to us that the scale is titled in favour of the plaintiff. The inconvenience, loss and trouble resulting from

denial of a decree for eviction in favour of the plaintiffs far outweigh the eviction from that point of view.

16. Judgement quoted above has been followed by Hon''ble Apex Court in the case of Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, and apart from the same in paragraph 13 mentioned as follows:

13. In Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, the issue as to comparative hardship arose for the consideration of the Court of Appeal under the Rent Act, 1957. Lord Denning opined: (All ER p. 457E-F)

When I look at all the evidence in this case and see the strong case of hardship which the landlord put forward, and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to buy or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and that is that the tenant did not prove (and burden is on him to prove) the case of greater hardship.

Hodson, L.J. opined: (All ER p. 458)

The tenant has not been able to say anything more than the minimum which every tenant can say, namely, that he has in fact been in occupation of the bungalow, and that he has not at the moment any other place to go to. He has not, however, sought to prove anything additional to that by way of hardship, such as unsuccessful attempts to find other accommodation, or, indeed, to raise the question of his relative financial incompetence as compared with the landlord.

Hon''ble Apex Court in recent judgment of Ganga Devi v. District Judge Nainital 2008 (7) ADJ 501, where tenant has not made any effort to search accommodation, has not accorded any relief to the tenant. Paragraphs 15, 16 and 19 of the said judgment are being extracted below:

15. There is also nothing on record to show that for the last so many years the appellant had made any effort to find out a tenanted premises for herself so that she can continue with her business. No such material at least has been brought on record. Any subsequent event as regards thereto has neither been pleaded nor proved.

The provisions of the statutory rules must be interpreted so as to give effect to the object and purport of the Act. It cannot be applied in a vacuum, as the statute requires comparison of the hardship of both the tenant as also the landlord. It is, therefore, not a case where Rule 16 has any application.

16. The court would not determine a question only on the basis of sympathy or sentiment. *Stricto sensu* equity as such may not have any role to play.

19. In the facts and circumstances of this case, we are of the opinion, that six months'' time should be granted to the 1st respondent to vacate the premises, which should serve the ends of justice. It is directed accordingly. Subject to the

aforementioned directions, this appeal is dismissed. In the facts and circumstances of this case, there shall be no order as to cost.

17. In the present case even on the comparative hardship front Appellate Authority has totally failed to appreciate and it is long drawn litigation in question pending since year 1989 and for all these years no attempt has been made to search alternative accommodation. It has also come on record that alternative business was there, qua the same tenant has stated that he has closed the said business. Once there are unemployed member in family and for settling them shop in question is required and there is tenant who has admittedly not made any attempt to search alternative accommodation, then no reprieve can be accorded to tenants. Consequently, present writ petition is allowed. order dated 24.11.2000 passed Appellate Authority passed by XII Additional District Judge, Agra is hereby quashed. Respondents are granted time to vacate the premises in question within six months from today and hand over peaceful possession to the petitioners subject to the condition that undertaking is furnished within one month before Prescribed Authority that peacefully possession would be handed over. In the event of failure to furnish undertaking interim protection accorded shall come to an end.