

(2009) 10 UK CK 0028

In the Uttarakhand High Court

Case No : Writ Petition No. 3515 of 2001 (M/S)

Sri Gulab Rai (since deceased) through L. Rs.

APPELLANT

Vs

The II Additional District Judge and Others

RESPONDENT

Date of Decision : 05-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Uttar Pradesh Reorganisation Act, 2000 — Section 35

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

Citation : (2009) 10 UK CK 0028

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

**Advocate : K.N. Joshi, for the Appellant; Anirudh Bhatt and Rajesh Joshi,
Present, for the Respondent**

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—By way of this petition moved under Article 226 read with 227 of Constitution of India, the Petitioner has challenged the order dated 04-04-1990 passed by Prescribed Authority, Haldwani, whereby release application of the landlord is rejected. Also, order dated 28-02-1996 passed by Respondent No. 1 (Appellate Court) whereby the appeal of the landlord, is dismissed, is sought to be quashed.

2. Heard Learned Counsel for the parties and perused the affidavit, counter affidavit and other papers on record.

3. Brief facts of the case as narrated in the writ petition are that Petitioner Gulab Rai (since deceased) was landlord of shop in question situated in Bhairo Chowk, Haldwani (District Nainital). Respondent No. 3 Daya Kishan Pandey is the tenant in said shop on rent at the rate of Rs. 50/- per month. Petitioner Gulab Rai moved an application u/s 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short U.P. Act 13 of 1972) for release of said

shop on the ground that his son Arvind Kumar wants to run business of hardware in the said shop. It is pleaded in the application that Arvind Kumar is unemployed graduate. It is further pleaded that the Respondent No. 3 (tenant) can conveniently shift his business anywhere. As such claiming the bona fide need and greater comparative hardship, the release application was moved in the year 1987 which was registered as Rent Control Case No. 17 of 1987. The Respondent No. 3 (tenant) contested the release application, and filed his written statement in which the need of the landlord as alleged by him, is denied. It is further pleaded by the tenant that he has no other shop easily available to shift his business and as such there is greater hardship to him. The Prescribed Authority after taking evidence from the parties and hearing them, rejected the release application holding that the need of the landlord is not bona fide. The Prescribed Authority further held that there is greater hardship to the tenant in allowing the application as against the landlord. Aggrieved by the said order dated 04-04-1990 passed by the Prescribed Authority, Haldwani, in RCC No. 17 of 1987 the landlord preferred Rent Control Appeal No. 10 of 1990 before the Appellate Court. Earlier, Second Additional District Judge, Nainital, vide his order dated 24-12-1991, after hearing the parties, reversed the findings of the Prescribed Authority and held that the need of the landlord was bona fide and there is greater hardship to the landlord as against the tenant. With these findings the release application was allowed and the tenant was directed to vacate the shop within three months. On this, the tenant Daya Kishan Pandey filed writ petition No. 5662 of 1992 before Allahabad High Court, challenging the order passed by the Appellate Court which was decided by the said court on 14th of August, 1995. Allahabad High Court vide order dated 14-08-1995 remanded the matter back to the Appellate Court to decide the matter afresh in the light of the observations made by it. Thereafter the Appellate Court (present Respondent No. 1) after spot inspection, decided the Rent Control Appeal No. 10 of 1990 again vide impugned order dated 28-02-1996 whereby the appeal of the landlord is dismissed. Hence this petition was filed by the landlord before Allahabad High Court in the year 1996 challenging the order passed by the Prescribed Authority and the order dated 28-02-1996 passed by the Appellate Court on the ground that the findings recorded by the authorities below are against the record, and also that it was none of the business of the authorities to suggest to the son of the landlord to start particular business with his father in particular shop. It is further stated in the writ petition that business of hardware is different to the business of selling honey which was the business of the landlord (Gulab Rai). The writ petition is received by this Court u/s 35 of U.P. Reorganisation Act, 2000 (Central Act 35 of 2000) for its disposal.

4. The writ petition is contested by the Respondent No. 3 who filed his counter affidavit. In the counter affidavit, it has been stated by Respondent No. 3 that the shop of the Petitioner (Gulab Rai) in which he used to sell honey consisted four rooms and said shop is lying closed as such the Petitioner's son could start his business in said shop. Apart from this, it is alleged that the Petitioner's son

could start his business in Railway Bazar, Haldwani where the landlord owned another building. It is stated that the Petitioner's need was not bona fide. It is further stated that the answering Respondent has earned the goodwill in the shop in question, and no other shop is easily available to him as such the authority below have rightly held that the hardship to the tenant is more as against the landlord. It is further stated in the counter affidavit that earlier the Petitioner filed SCC Suit No. 17 of 1987 for eviction of the Respondent No. 3 on the ground of alteration of the shop but said suit was dismissed vide judgment and decree dated 30th of September 1989. Referring to the spot inspection made by the Appellate Court, it is pleaded that there is no error in the finding of fact recorded by the Appellate court.

5. In the rejoinder affidavit filed on behalf of the Petitioner the facts stated in the writ petition are reiterated. In the supplementary counter affidavit filed on behalf of the Respondent No. 3 it is stated that the property in question has been inherited by the Respondent No. 1/1 Arvind Kumar after death of his father Gulab Rai (original Petitioner) during the pendency of the writ petition.

6. On going through the impugned order dated 04-04-1990 passed by the Prescribed Authority, this Court finds that while recording the finding of fact that the landlord's need is not bona fide and that there is no greater comparative hardship to the landlord, the Prescribed Authority has observed that the Petitioner's (Gulab Rai's) son can do his business of selling honey with his father. It is further observed by the Prescribed Authority in the impugned order that Gulab Rai can make his business prosperous by taking his son with him in it. Such observations in recording finding as to bona fide need are totally irrelevant considerations. It is erroneous in law on the part of the Prescribed Authority to advise the landlord and his son, as to what business should they do and with whom should they do. The fact on the record remains that the landlord's son was unemployed graduate and intended to run business of hardware in the shop in Question. From the papers on record, it is evident that the plea of the tenant that the landlord was having another building in Railway Bazar and the suggestion of the tenant that the Petitioner could have made his son settled in business in Railway Bazar is unfounded as said building was found residential. Also the another suggestion of the tenant that the landlord's son Arvind Kumar was doing his business in Bareilly Road in the name and style of "Mala Paints" was found incorrect as said business was run by the elder son (Sudhir Chandra) of the landlord Gulab Rai that too in the tenanted premises. As such the finding recorded by the Prescribed Authority on the point of bona fide need against the landlord is totally perverse and against the record.

7. As far as the comparative hardship is concerned, it is clear from the impugned order dated 04-04-1990 passed by the Prescribed Authority that Durga Dutt Joshi who filed affidavit in support of the tenant Daya Kishan Pandey that he had a talk with Anant Ram regarding the feasibility of getting another shop but failed, found wrong as affidavit 49C was filed by Anant Ram himself in support of the

landlord denying that he had ever had any talk with the tenant. Said fact read with other facts and circumstances of the case does show that even on the point of comparative hardship the Petitioner had proved the case in his favour.

8. It is pertinent to mention here that the Appellate Court earlier vide its order dated 24-12-1991 passed in Rent Control Appeal No. 10 of 1990, set aside the impugned order of the Prescribed Authority holding that the need of the landlord was bonafide and there was greater hardship in his favour. However the case got complicated after the order dated 14th of August, 1995 passed in writ petition No. 5662 of 1992 by the Allahabad High Court and the order dated 27th of December, 1991 passed by the Appellate Court was set aside and matter was remanded to the Appellate Court. It is pertinent to mention here that Allahabad High Court in its order dated 14-08-1995 (copy of which is annexure 15 to the writ petition) shows that the High Court desired that the Appellate Court should re-examine whether Arvind Kumar (younger son of the landlord) can start his business in one of the four rooms situated in Patel Chowk, Haldwani where the landlord (Gulab Rai) was running his business of selling honey. Perusal of the impugned order dated 28-02-1996 passed by the Appellate Court, after the matter is remanded, shows that the Presiding Officer of the Appellate Court made a spot inspection and found that there were not four shops, rather it were three rooms, one behind the another and the rooms which were behind the shop were in fact being used as a store, As such the Appellate Court should have clearly held that it was not possible for Arvind Kumar (younger son of the landlord) to run his business of hardware, in the shop of selling honey by his father. On going through the impugned order dated 28-02-1996 passed by the Appellate Court (present Respondent No. 1) this Court finds that the Appellate Court has committed grave error of law in dismissing the appeal of the landlord even after finding that four rooms were one behind another and it was not possible to landlord's son to run, his business of hardware, in a shop used by his father to sell honey.

9. Sri Anirudh Bhatt Learned Counsel for the Respondent No. 3 argued that now the Petitioner Gulab Rai has died as such his son (Petitioner No. 1/1) can run his business in the shop owned by his father. I am unable to accept contention advanced on behalf of the tenant as it is not just and proper for this Court to advise the Petitioner's son to run a particular business in a particular shop. Sale of honey may require a small window shop but it may not be possible to run the business of hardware in such kind of shop.

10. For the reasons as discussed above this Court is of the view that the Prescribed Authority as well as the Appellate Court have committed grave error of law in dismissing the release application, and dismissing the appeal of the landlord. Therefore the writ petition deserves to be allowed. Accordingly the writ petition is allowed. Impugned order dated 04-04-1990 passed by Prescribed Authority in PA case No. 17 of 1987 and order dated 28-02-1996 passed by IInd Additional District Judge, Nainital in Rent Control Appeal No. 10 of 1990 are

hereby quashed. The release application of the landlord stands allowed. However, considering the facts and circumstances of the case the Respondent No. 3 (tenant) is allowed period up to 30th of April, 2010 to vacate the premises of the shop in question and deliver the possession to the landlord / Petitioners, failing which this order may be got executed through the Prescribed Authority.