

(2008) 08 AHC CK 0160

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40090 of 1993

Sri Niwas Pawnday

APPELLANT

Vs

IInd Additional District Judge, Kanpur and another

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

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

Citation : (2008) 08 AHC CK 0160

Hon'ble Judges : S.U.Khan, J

Final Decision : Dismissed

Judgement

S.U. Khan, J.

1. In spite of sufficient service, no one has appeared on behalf of substituted legal representatives of landlord respondent No. 2.

2. Heard learned Counsel for the petitioner.

3. This is tenant's writ petition. Original landlord respondent No. 2 J.N. Budhwar filed Rent Case No. 129 of 1988 against tenant petitioner under section 21 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 for release of the tenanted accommodation on the ground of bona fide need. Property in dispute is a shop, rent of which is only Rs. 22/ per month. The release application was dismissed by Prescribed Authority/Additional C.M.M., Kanpur. Date of judgment is not mentioned in the Annexure35, which is copy of the judgment. However, from the judgment of the Appellate Court, it is clear that the said judgment was passed on 24.2.1992. Against the said judgment and order, landlord respondent No. 2 filed Rent Appeal No. 84 of 1992. IInd A.D.J., Kanpur, through judgment and order dated 14.9.1993, allowed the appeal, set aside the judgment and order passed by prescribed authority and allowed the release application of the landlord. The said judgment of the Lower Appellate Court has been challenged through this writ petition.

4. Prescribed authority had mainly rejected the release application on the ground that during pendency of the said application, a shop belonging to the landlord was vacated by its tenant and with the consent of the landlord it was allotted to another person. File of the said allotment proceedings had also been summoned by the Trial Court.

5. In the release application, copy of which is Annexure1 to the writ petition, the original landlord Sri J.N. Budhwar categorically stated that he was retired person and did not have any regular source of income except the rental income, which was quite meagre. Even though in Para 5 of the release application, it was stated that two ladies of the family (landlord's granddaughtersinlaw) were doing the job of embroidery and they had agreed to join hands with the landlord applicant to carry on business of readymade garments, however, the need set up was exclusively for the landlord and not for any of his family members. Lower Appellate Court also allowed the release application only for the need of the landlord. Lower Appellate court held that even though landlord was quite old but he could take help of his grand daughtersinlaw. Lower Appellate Court in this regard observed as follows (translated in English) :

"In my opinion, house owner is fully entitled to take help of any family member or even someone out side the family in his business."

6. As landlord has died, hence the need set up in the release application has come to an end. Writ petition is therefore to be allowed on this ground alone. I do not consider it necessary to consider other aspects of the matter and arguments of learned Counsel for the tenant petitioner.

7. Accordingly, writ petition is allowed. Judgment and order passed by the Lower Appellate Court is set aside. Judgment and order passed by the prescribed authority is restored. Release application is rejected.

8. I have held in *Khursheeda v. A.D.J.*, 2004 (55) ALR 586 and *H.M. Kichlu v. A.D.J.*, 2004 (2) ARC 652 that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act or while maintaining the said relief already granted by the Courts below, Writ Court is empowered to enhance the rent to a reasonable extent.

9. In the aforesaid authority of *Khursheeda* (supra), I placed reliance upon the Supreme Court authority of *M.V. Acharya v. State of Maharashtra*, AIR 1988 SC 602 where it was held that it was essential to provide for periodical enhancement of rent under the Rent Control Acts. The Supreme Court has further held that frozen rents are giving rise to lawlessness and landlords out of frustration are approaching muscle man to get the premises vacated and Courts of law are becoming redundant in this sphere, this authority has recently been followed by the Supreme Court in *Satwyawati Sharma (dead) by LRs. v. Union of India* and another, (2008) 5 SCC 287=2008 (71) ALR 499 part of Para29 and Para34 of which are quoted below :

"29. It is trite to say that legislation which may be quite reasonable, and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become nonexistent.

34. In *Malpe Vishuwnath Acharya and others v. State, of Maharashtra and another (supra)*, the Court found that the criteria for determination and fixation of rent by freezing or by pegging down of rent as on 1.9.1940 or as on first date of letting, had, with the passage of time become irrational and arbitrary but did not strike down the same on the ground that extended period of Bombay Rent Act was coming to an end on 31.3.1998."

10. Under U.P. Rent Control Act, there is no provision of enhancement of rent after October, 1972 [Except where landlord is public charitable or public religious institution (section 9 A) or Government is tenant (section 21 (8))]. In the aforesaid authority of *Khursheeda*, I have also placed reliance upon the authority of Supreme Court in *"Shangrila Food Products Ltd. v. Life Insurance Corporation of India"*, AIR 1996 SC 2410 paragraph 11 of which is quoted below :

"It is wellsettled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief."

11. Thereafter in Para 8 of the aforesaid authority of *Khursheeda*, I held as under :

"Rent Control Act confers a reasonable advantage upon the tenant of protection against arbitrary eviction. Tenant under the Rent Control Act cannot be evicted except on specific grounds like bona fide need of the landlord, arrears of rent, subletting and material alteration etc. This advantage is also coupled with the advantage of immunity from enhancement of rent. The latter advantage cannot be said to be either reasonable or equitable. The Supreme Court in the aforesaid authority of *S.F.P. v. L.I.C.*, AIR 1996 SC 2410 has laid down that while granting relief to a party the Writ Court can very well ask the said party to shed the unfair advantage which it gained under the impugned order. By slightly extending the said doctrine it may safely be held that while granting the reasonable advantage to the tenant conferred upon him by the Rent Control Act the tenant may be asked to shed the unreasonable arbitrary advantage conferred upon him by the said Rent Control Act. The Writ Court therefore while granting or maintaining the

relief against arbitrary ejection to the tenant can very well ask the tenant to shed the unreasonable benefit of the Rent Control Act granted to him in the form of immunity against enhancement of rent, however inadequate the rent might be. Tenant will have to shed the undue advantage of immunity from enhancement of rent under the Rent Control Act to barter his protection from arbitrary eviction provided for by the said Act."

12. Thereafter in H.M. Kitchlu v. A.D.J., 2004 (2) ARC 652 I have held that the same principle of enhancement of rent to a reasonable extent may be made applicable while dismissing the writ petition of the landlord for the reason that by doing so Writ Court approves the protection of Rent Control Act granted to the tenant by the Courts below.

13. Property in dispute is a shop situate in Kanpur, which is most expensive city of U.P. Existing rent is Rs. 22/ per month, which is virtually as well as actually no rent. It is rather ridiculous. Current rent of the shop in dispute may not be less than several thousands of rupees per month.

14. Accordingly, it is directed that w.e.f. August, 2008 onwards tenant petitioner shall pay rent to the landlord respondent @ Rs. 1800/ per month. No further amount as water tax etc. shall be payable over and above Rs. 1800/ per month.