

(2006) 01 AHC CK 0228

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14813 of 1982

Sri Parma Nand

APPELLANT

Vs

3rd Additional District Judge, Prescribed Authority, Diwan
Chandra Sharma and Smt. Mengi Bai

RESPONDENT

Date of Decision : 27-01-2006

Acts Referred:

Rent Control Act, 1972 — Section 20(7), 21

Citation : (2006) 3 AWC 2532

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

Bench : Single Bench

Advocate : P.K. Sinha, A.K. Gupta, M.K. Gupta and V.K. Gupta, for the Appellant; A.K. Banerji and Santosh Kumar and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.U. Khan, J.—This is tenant's writ petition arising out of eviction/release proceedings initiated by original landlord-respondent No. 3 Diwan Chand Sharma, since deceased and survived by legal representatives against original tenant Rattomal, on the ground of bona fide need u/s 21 of U.P. Act No. 13 of 1972 in the form of U.P.U.B. Case No. 36 of 1980 on the file of Prescribed Authority, Aligarh. During pendency of release proceedings before Prescribed Authority original tenant Ratto Mal died and was substituted by his widow and one of his sons Parmanand. The other two sons of Rattomal i.e. Bhuramal and Asha Ram were residing at Bhopal, hence they were not impleaded.

2. Property in dispute is a house having four rooms, Varandah, Sehan and other amenities. Rent of the accommodation in dispute is Rs. 35/-per month. In the release application, it was stated that landlord had three sons out of whom two her serving in Army. (Now all the sons of original landlord have retired). Landlord pleaded that he was a retired Postmaster and was residing in a small portion in house No. 171 Tantanparha, Aligarh along with his wife on rent which contained only one room. It was also pleaded that occasionally sons of the landlord visited

him at Aligarh and for the said purpose tenanted accommodation at his disposal was quite sufficient. It was also asserted that two of the grandsons of the landlord intended to reside with him at Aligarh for getting education. It was also pleaded that Parma Nand, son of original tenant Rattomal, resided at 154 Kothi Lankram, G.T. Road, Aligarh and that even the widow of Rattomal was not residing with him at the time of his death and she was residing at Bhopal along with her sons. Additional Prescribed Authority / Munsif Hawaii, Aligarh through judgement and order dated 27.1.1982 dismissed the release application. Against the said judgement and order original landlord Diwan Chand filed U.P.U.B. Appeal No. 10 of 1984. 3rd A.D.J. Aligarh through judgement and order dated 14.12.1982 allowed the appeal, set aside the judgement and order passed by the Prescribed Authority and allowed the release application of the landlord.

3. Appellate Court held that Parma Nand resided at house No. 154/6 Kothi Lankram and in the house in dispute along with Rattomal his sister's son Gopi Chand was residing.

4. In respect of bona fide need Appellate Court held that the tenanted accommodation in possession of the landlord consisted of a very small room, hence his need was quite bona fide. I fully agree with the findings of the learned lower appellate Court. Even otherwise tenanted accommodation available to the landlord can not be taken in to consideration while deciding his bona fide need for his own house vide Smt. G. Kaushalya Devi Vs. Ghanshyamdas,

5. Regarding comparative hardship the Appellate Court recorded a finding of fact that Parma Nand was residing at Kothi Lankram. There is no such error in the said finding which can warrant interference in exercise of writ jurisdiction. Even Prescribed Authority did not hold that at no point of time Parma Nand resided at Kothi Lankram.

6. However, unfortunately this writ petition remained pending in this Court for more than 23 years. During such long period subsequent events were bound to happen and, in fact, some important subsequent events took place. Landlord died. His widow is now quite old hence incapable of residing alone. She has shifted to Delhi to reside with her sons. Landlord had also set up the need of his grand sons for the purposes of their education. More than 25 years have passed since setting up of the said need. During 25 years, the age for education is over. These subsequent facts have been brought on record through supplementary affidavit by the son of the petitioner, filed along with application dated 9.5.2005. Learned counsel for the landlord-respondents was directed to file reply to the said supplementary affidavit through order dated 17.5.2005 (on the order sheet). However no reply has been filed.

7. The Supreme Court in Ansuyaben Kantilal Bhatt Vs. Rashiklal Manilal Shah and Another, has held that if due to pendency of proceedings landlord becomes quite old (around 87 years of age in that case), then order releasing the shop in favour of the landlord has to be set aside as such an old person can not carry on any

business.

8. It has also been held by the Supreme Court in *K.N. Agarwal v. Dhanraji Devi* 2001 (2) A.R.C. S.C. 764 that if the landlord, for whose need release application was filed and allowed, dies during pendency of the writ petition, then his heirs must bring on record their own need in terms of Section 20(7) of the Act, otherwise release order will have to be set aside.

9. Accordingly, in view of subsequent events of death of landlord, extreme old age of the widow of the original landlord, frustration of the purpose of education of grandsons of original landlord, passage of 25 years since the filing of the release application and non-filing of reply to the supplementary affidavit filed by the tenant-petitioner bringing on record new facts, I have got no option but to set aside the release order passed by the lower Appellate Court in favour of the landlord (which was perfectly legal when passed).

10. Accordingly, writ petition is allowed judgement and order passed by lower appellate court is set aside and the judgement and order passed by the prescribed authority is restored.

11. I have held in *Khursheeda v. A.D.J.* 2004 (2) A.R.C. 64 that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act, writ court is empowered to enhance the rent to a reasonable extent. Rent of Rs. 35/- per month for a house containing 4 rooms situated in Masoodabad Aligarh is virtually as well as actually no rent. In the aforesaid authority of *A.K. Bhatt*, the Supreme Court enhanced the rent even for the period during which the matter remained pending before it and dispossession of the tenant was stayed due to stay order. Accordingly it is directed that with effect from 1.11.1983 till 31.12.92 tenant petitioner shall pay rent to the landlords-respondents @ Rs. 400/- per month. With effect from 1.1.93 till 31.1.2006 rent must be paid @ Rs. 600/- per month. With effect from February, 2006 onward rent shall be paid @ Rs. 1500/- per month.

12. The arrears of rent due till 31.1.2006 shall be paid in 36 equal monthly instalments along with current rent. In case of failure to pay the arrears of rent due till 31.1.2006 as indicated above, this order shall stand vacated and the writ petition shall stand dismissed. (This direction is being issued in view of similar direction given by Supreme Court in the aforesaid authority of *A.K. Bhatt*).