
(2008) 09 AHC CK 0200

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 16652 of 1992 and 42432 of 2000

Surendra Prakash Goel etc

APPELLANT

Vs

Vth Addl District Judge, Muzaffar Nagar and others, etc.

RESPONDENT

Date of Decision : 17-09-2008

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21(1)(a), 22
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 — Rule 16(1)

Citation : (2008) 09 AHC CK 0200

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

Final Decision : Disposed Of

Judgement

V.K. Shukla, J.—Civil Misc. Writ Petition No. 16652 of 1992 has been filed by Surendra Prakash Goel (landlord) questioning the validity of the judgment and order dated 15.5.1991 passed by Prescribed Authority rejecting release application filed under Section 21(1)(a) of U.P. Act No. 13 of 1972 and the order of affirmance in Appeal on 26.3.1992 by the Vth Additional District Judge, Muzaffarnagar.

2. Civil Misc. Writ Petition No. 42432 of 2000 has been filed by tenant Vrindavan Bihari questioning the decision dated 7.9.2001 passed by 7th Additional District Judge, Muzaffarnagar allowing the Rent Control Appeal No. 27 of 1996, (Surendra Prakash Goel v. Vrindavan Bihari) Annexure 12 to aforesaid writ petition under Section 22 of U.P. Act No. XIII of 1972, and thus, allowing release application under Section 21 (1)(a) of U.P. Act No XIII of 1972.

3. Brief background of the case is that Surendra Prakash Goel is the owner landlord of three adjacent flats bearing No. 25/1, 25/2 and 25/3 situated at Civil Lines South Muzaffarnagar. In flat No. 25/2 Civil Lines South Muzaffarnagar, K.K. Arora has been residing; in flat No. 25/1 Vrindavan Bihari has been residing. House No. 25/3 Civil Lines South Muzaffarnagar was got released by petitioner

landlord Surendra Prakash Goel in August 1983 for staying of company Medical Representatives and for staying of salesmen as petitionerlandlord was whole seller of medicines. House No. 25/3 after same was released for some time was used as guest house and as was not found feasible by the petitioner to accommodate guest it was rented out to Factory Inspector on 5.9.1983 and same was subsequently rented to the department owned by State Government on 10.5.1984 by Rent Control Authority. Petitionerlandlord at that point of time was staying in a rented house No. 28 Kuchcha Amir Singh, Muzaffarnagar on monthly rent of Rs. 75/. One Rajendra Singh Ponwar in respect of house No. 28 Kuchcha Amir Singh, Muzaffarnagar as house No. 25/3 which was residential accommodation had been vacated by one Dr. Bansal raised plea that there was vacancy in respect of house No. 28 Kuchcha Amir Singh, Muzaffarnagar. In spite of fact that accommodation which was released in favour of petitioner was reallocated to Government Department, the tenanted house where petitionerlandlord has been residing at house No. 28 Kuchcha Amir Singh, Muzaffarnagar vacancy was declared on 18.10.1984 and Delegated Authority as house No. 25/3 Civil Lines South Muzaffarnagar was allotted to Factory Inspector before 18.10.1984, in this background proceeded to drop the proceedings. Against the order passed by Delegated Authority dropping the proceedings, Rajendra Singh Ponwar filed Revision before District Judge and said Revision was allowed and against the same Civil Misc. Writ Petition No. 15328 of 1985 was filed by petitionerlandlord before this Court and said writ petition was dismissed and then petitionerlandlord filed Special Leave to Appeal before Hon"ble Apex Court and said Special Leave to Appeal was also dismissed and Hon"ble Apex Court granted time to landlordpetitioner to vacate house No. 28 Kuchcha Amir Singh, Muzaffarnagar by 30.9.1987. Petitionerlandlord submits that thereafter he has vacated the premises in question on 30.9.1988, as he was permitted to overstay in the premises in question by landlady on the basis of compromise. Petitionerlandlord thereafter took another rented house No. 186/15Aryapuri, Muzaffarnagar on monthly rent of Rs. 1200/and since 15.9.1988, petitioner is residing therein, in this background of the litigation petitioner filed release application in respect of house No. 25/2 Civil Lines, South Muzaffarnagar which is in possession of K.K. Arora. In the said proceedings so undertaken petitioner clearly and specifically narrated that he was in bonafide and genuine need of house No. 25/2 Civil Lines, South Muzaffarnagar and he has been forced to stay at rented accommodation. Plea was sought to be taken that after getting premisses in question released petitioner landlord will sell the same. Petitionerlandlord filed specific affidavit that he would not sell the premises on question. After evidences were led the Prescribed Authority rejected the application of the petitionerlandlord for release initially by mentioning that at present landlord of petitioner landlord has filed eviction suit No. 47 of 1989 as such need of the landlordpetitioner is bonafide and genuine one and then has further proceeded to mention that in respect of House No. 25/3, Civil Lines South Muzaffarnagar, entire proceedings were there and circumstances reflect that petitioner landlord intends to sell the same in this background, proceedings

taken are ingenuine one. Against the same Appeal has been filed and said Appeal has also dismissed on 5.3.1992. At this juncture Civil Misc. Writ Petition No. 11652 of 1992 has been filed.

4. In respect of House No. 25/1 Civil Lines South Muzaffarnagar in tenancy of Vrindavan Bihari release application was filed being P.A. Case No. 56 of 1983 on 28.10.1988 contending therein that flat in question is bonafidely required. In the said case plea was taken that earlier House No. 25/3 was got release from the possession of M.K. Bansal and same was again got collusively reallocated to the Inspector of Factories U.P. Incharge Muzaffarnagar Region Muzaffarnagar. Further reference was also given of the another litigation of K. K. Arora. Prescribed Authority rejected the said release application by holding that need of landlord was not a bonafide and genuine one. Aggrieved landlord preferred Rent Control Appeal No. 27 of 1996 and said Appeal in question has been allowed. At this juncture Civil Misc. Writ Petition No. 42432 of 2000 has been filed.

5. Pleadings inter se parties have been exchanged and thereafter with the consent of the parties both the writ petitions have been clubbed and are being heard and decided together.

6. Sri Swetashwa Agarwal learned counsel for the petitioner landlord Surendra Prakash Goel contended with vehemence that need of the landlord was bonafide and genuine one, inasmuch as, under the orders of Hon"ble Apex Court premises in question was compulsorily to be vacated by the landlord and as landlord was staying in tenanted accommodation, in this background merely because as in the past one release application was allowed in respect of House No. 25/3 and same was given back to the Department of State Government, same could not have been made foundation and basis to nonsuit the bonafide and genuine need of the landlord and on comparative hardship front also landlord cannot be forced to stay in a tenanted accommodation specially in the circumstances when he has got his own residential accommodation within the municipal limit and as such Civil Misc. Writ Petition No. 16652 of 1992 deserves to be allowed and Civil Misc. Writ Petition No. 42432 of 2000 deserves to be dismissed.

7. Sri M.K. Pandey, Advocate appearing alongwith Sri Amit Krishna Advocate for legal heirs of K.K. Arora namely Narendra Kumar Arora and Manoj Kumar Arora on the other hand countered the said submission by contending that in the present case both the Courts below have not found need of the petitioner landlord to be bonafide and genuine one, and conduct of landlord clearly disentitles him from getting possession of the house as such orders in question warrant no interference and as such writ petition deserves to be dismissed.

8. Sri Sharad Mandhyan, Advocate appearing for tenant Vrindavan Bihari contended with vehemence that in the present case need of the landlord is not at all bonafide and genuine one and on comparative hardship front also scale of justice should tilt in favour of Vrindavan Bihari, as such Civil Misc. Writ Petition No. 42432 of 2000 deserves to be allowed.

9. After respective arguments have been advanced factual position qua which there is no dispute that petitioner is owner of three adjacent flats bearing No. 25/1, 25/2 and 25/3 Civil Lines South Muzaffarnagar. K.K. Arora alongwith his family members has been staying in House No. 25/2; Vrindavan Bihari has been staying in House No. 25/1 and House No. 25/3 was in tenancy of Dr. Bansal. Landlord S.P. Goel has moved release application in the past for releasing said premises namely House No. 23/3 in question for staying of Medical Representatives and Salesman and said release application was allowed by way of compromise. Specific case of the landlord has been that said house was to be used by Medical Representatives and Sales Representatives and as practical difficulties were there in running the same as such it was again given to the Factory Inspector. The theory set up by petitioner landlord on this score has been found untruthful, as landlord has been found negotiating with the Department concerned, even before prior to passing of release order. This question has been answered in favour of petitioner landlord that this cannot be ground to nonsuit the petitioner landlord of his release application being allowed for another premises in question, if his need is found to be bonafide and genuine one. Subsequent facts which have emerged is that as House No. 25/3 was residential premises and said premises in question was got released by landlord, in this background one Rajendra Singh Ponwar initiated proceedings for declaration of the vacancy of House No. 28 Kuchcha Amir Singh, Muzaffarnagar wherein landlord had been occupying/staying with his family members. Qua the premises in question namely House No. 28 Kuchcha Amir Singh, Muzaffarnagar vacancy was declared on 28.10.1984 but as House No. 25/3 Civil Lines South Muzaffarnagar was allotted to Factory Inspector, said proceedings were dropped. Rajendra Singh Ponwar filed Revision before District Judge Muzaffarnagar qua House No. 28 Kuchcha Amir Singh, Muzaffarnagar and objected for dropping of proceedings. Said Revision was allowed and against same Civil Misc. Writ Petition No. 15328 of 1985 was filed by petitionerlandlord before this Court and said writ petition was dismissed and then petitioner landlord filed Special Leave to Appeal before Hon''ble Apex Court and said Special Leave to Appeal was also dismissed and Hon''ble Apex Court granted time to landlordpetitioner to vacate house No. 28 Kuchcha Amir Singh, Muzaffarnagar by 30.9.1987. Petitioner landlord had moved an application for allotment the said premises where vacancy had been declared and the said premises was released in favour of landlady of House No. 28 Kuchcha Amir Singh, Muzaffarnagar, Smt. Pawan Singhal. Against the same petitioner landlord preferred Revision No. 8 of 1987, and ultimately petitioner landlord conscious of the fact that already he has lost from Hon''ble Apex Court, entered into compromise, by getting said time of vacation of premises extended up till 30.9.1988. In the meantime petitionerlandlord fully conscious of his eviction filed release application for releasing the House No. 25/2 in possession of K.K. Arora situated at Civil Line South, Muzaffarnagar. Said application was objected to by K.K. Arora. Prescribed Authority and the Appellate Authority both the Courts below rejected the release application of the landlord on the ground that landlord has not clearly indicated that he will not sell the property in

question and there is evidence that negotiation were there and further no action has been taken against Vrindavan Bihari and circumstances reflects that need is not at all bonafide and genuine one.

10. Section 21 of U.P. Act No. XIII of 1972 reads as under:

"21. Proceedings for release of building under occupation of tenant.(1) The Prescribed Authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists namely

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him either for residential purposes or for purposes of any profession, trade, or calling or where the landlord is the trustee of a public trust for the objects of the trust;

(b) that the building is in a dilapidated condition and is required for purpose of demolition and new construction:

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds mentioned in clause (a), unless a period of three years has elapsed since the date of such acquisition and the landlord has given a notice in that behalf to the tenant not less than six months before such application and such notice may be given even before the expiration of the aforesaid period of three years:

Provided further that if any application under clause (a) is made in respect of [any building let out exclusively for nonresidential purposes] the prescribed authority while making the order of eviction shall after considering all relevant facts of the case award against the landlord to the tenant [an amount not exceeding two years rent] as compensation and may, subject to rules, impose such other condition as he thinks fit:

Provided also that no application under clause (a) shall be entertained

(i) for the purposes of a charitable trust, the objects of which provide for discrimination in respect of its beneficiaries on the ground of religion, caste or place of birth;

(ii) in the case of any residential building for occupation for business purposes;

(iii) in the case of any residential building, against any tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act 1925 (Act No. IV of 1925) has issued a certificate that he is serving under special conditions within the meaning of Section 3 of that Act or where he has died by enemy action while "so serving then against his heirs".

[Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.]

Explanation.....

Rule 16. Application for release on the ground of personal requirement [Section 21(1) (a) and 24 (8)].(1) In considering the requirements of personal occupation for purposes of residence by the landlord or any member of his family the prescribed authority shall also have regard to such factors as the following:

(a) where the landlord already has adequate and reasonable suitable accommodation having regard to the number of members of his family and their respective ages and his means and social status, his claim for additional requirements and be construed strictly;

(b) where residential building was let out at the time when the sons of the landlord were minors and subsequently one or more of them has married the additional requirement of accommodation for the landlord's sons shall be given due consideration;

(c) where the tenant has apart, from the building under tenancy, other adequate accommodation, whether owned by him or held as tenant of any public premises, having regard to the number of members of his family and their respective ages and his social status, the landlord's claim for additional requirement shall be constructed liberally;

(d) where the tenant's need would be adequately met by leaving with him a part of the building under tenancy and the landlord's need would be served by releasing the other part, the prescribed authority shall release only the other part of the building;

(e) where there are a number of tenant separately occupying a block of tenements and the landlord desires their eviction on the ground of his personal need the prescribed authority shall consider whether suitable alternative accommodation is likely to be available to such tenants;

(f) where the landlord offers to the tenant alternative accommodation reasonable suitable to the needs of the tenant and his family the landlord's claim for release of the building under tenancy shall be constructed liberally;

(g) where the landlord was engaged in any employment in the same city, municipality, notified area or town area in which the building is situate and was in occupation of other accommodation by reason of such employment or where the landlord is the wife or minor son or unmarried daughter of a person who was engaged in any profession, trade, calling or employment away from the city municipality, notified area or town area within which the building is situate and

was living with such person, and by reason of the cessation of such engagement, the landlord needs the building for occupation by himself for residential purposes, such need shall ordinarily be deemed sufficient."

11. Application of the aforementioned provisions to the facts of this case is in question. The expression "bonafide required" appearing in the context of Section 21(1)(a) has received judicial interpretation in various pronouncements.

12. Full Bench of this Court construed this to mean genuinely or in good faith and conveying an idea of absence of any intent to deceive in contradiction to malafide [C.K. Sah v. D.J. Varanasi, AIR 1976 All 328]. The assessment has to be objective depending on the facts of the case. Mere desire is not enough Landlord will have to show that he genuinely required residential premises for himself or for any member of his family.

13. Hon"ble Apex Court in the case of Joginder Pal v. Nawal Kishore Bahl, 2002 (5) SCC 397, considered the words "for his own use" qua the landlord and took the view that same must receive a wide, liberal and useful meaning rather than narrow or strict construction. Paragraph 30 reads as follows:

"The expression "for his own use" as occurring in Section 13(3)(a)(iii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfil the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. The expression landlord requires for "his own use", is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal "emanations" of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as interrelationship and interdependence economic or otherwise, between the landlord and such person in the background of social, socioreligious and local customs and obligations of the society or region to which they belong. The tests to be applied are : (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement? and, (ii) whether on the facts and in the circumstances of a given case actual occupation and user by a person other than the landlord would be deemed by the landlord as "his own1 occupation or user? The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as "his own" and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the

tenant, will uphold the landlord's claim. While casting its judicial verdict, the Court shall adopt a practical and meaningful approach guided by the realities of life."

14. Said judgment has been recently followed in the case of A.K. Jain v. Prem Kapoor, 2008 AIR SCW 5390, wherein Hon''ble Apex Court on admitted facts, set aside the order passed by High Court rejecting eviction application of landlord whereas facts substantiated personal need of the landlord and formal amendment was held not required.

15. Now coming to the facts of present case. The Prescribed Authority as well as Appellate Court in the present case Civil Misc. Writ Petition No. 16652 of 1992 have totally misdirected themselves specially in the peculiar features of the present case. Petitionerlandlord admittedly got flat No. 25/3 Civil Lines south Muzaffarnagar released in his favour for accommodating Medical Representatives and Sales Representatives in designed manner and let out the same to Factory Inspector on 5.9.1983, a Government Department. In between qua aforementioned designed release proceedings he had to pay heavy price as for the place wherein he was staying namely House No. 28 Kuchcha Amir Singh, Muzaffarnagar qua the same application for declaration of the vacancy had been moved wherein vacancy had been declared and qua said proceedings landlord, S.R Goel has gone upto Hon''ble Apex Court and lost the battle wherein he was asked to vacate premises up to 30.9.1987 and ultimately premises in question was vacated on 30.9.1988 after he entered compromise with the landlady. The fact of the matter is that under the orders of Hon''ble Apex Court and in terms of compromise petitionerlandlord had to vacate the rented premises and shift to another rented place. Once under the orders of Hon''ble Apex Court petitionerlandlord has been evicted from the tenanted premises and had taken another tenanted premises for himself and his family members then in this background, release application moved for releasing of the premises in question cannot be dubbed and labelled to be not a bonafide and a genuine one. This was glaring case of bonafide and genuine need and here both Appellate Court as well as Prescribed Authority have totally misdirected themselves by placing unnecessary emphasis on the fact that landlord will sell the property and no action has been taken against Vrindavan Bihari and there was no sufficient need. There was already an undertaking furnished by landlord on 10.5.1991, clearly and categorically mentioning that from the date of release of accommodation, minimum for ten years he would neither sell nor gift nor mortgage and would stay in the premises in question. It was also categorically mentioned therein that Court may impose any other condition which the Court deems fit in the facts of case, in respect of transfer. Both the Courts below conveniently ignored the same by mentioning that said undertaking does not wipe out the intention and devoted much time on the fact that petitioner had been intending for the sale. Accepting for the purposes of case that petitioner had some talks for sale, which though is being disputed by petitionerlandlord once undertaking was furnished leaving every thing in the hand of Court then in this background due weight ought to

have been attached to the said undertaking instead of proceedings to ignore the same. Both the Courts below, accepted that need of landlord on account of eviction order of Hon''ble Apex Court was bonafide one and merely because that there was some doubts that it would be sold have refused the relief. Till date most surprisingly no sale deed has been executed. Approach of both Courts below is totally unjustifiable in the present case in not allowing the release application, inasmuch as landlord who has been evicted under the orders passed by Hon''ble Apex Court cannot be asked to stay in a tenanted accommodation on higher rent and tenant be permitted to stay on in the house for lower rent. Approach of the Prescribed Authority as well as Appellate Authority is unjust and cannot be subscribed.

16. It has been next contended that for this purpose matter be remitted back to be decided afresh. It is true that when both the Courts below have rejected the release application and judgment are found to be erroneous, matter is normally remanded but said formula is not be mechanically followed when already much delay has taken place. Release application has been filed in the year 1988, from the date of filing release application more than twenty years period has already elapsed. Hon''ble Apex Court in AIR 2002 SC 200, G.C. Kapoorv. N.K. Bhasin allowed the release application out rightly which had been rejected by the Prescribed authority, Lower Appellate Court as well as High Court. Hon''ble Apex Court has also held in 2004 A.C.J. 304 (SC), R.E.V. Gounderv. V.V.P. Temple and 2002 (2) A.R.C. 298 (SC), R.C. Kesharwani v. Dwarika Prasad that when the matter is pending for long remand must be avoided. Hon''ble Apex Court in its authority in Shail v. Manoj Kumar, 2004 A.C.J. 1213 placing reliance upon Surya Dev Rai v. R.C. Rai, 2003 (6) S.C.C. 675 has held that in exercise of writ jurisdiction High Court has the jurisdiction also to pass itself such a decision or direction as the inferior court or tribunal should have made. Again recently Hon''ble Apex Court in the case of Yadvendra Arya v. Mukesh Kumar Verma, 2008(1) ARC 322 in paragraph 16 has taken the view that remand should be deprecated.

17. In the present case, twenty years period have already elapsed, tenanted accommodation wherein petitioner landlord is currently staying there has been lot of civil/criminal litigation ongoing inter se parties which is matter of record in this background as till date tenant has not made any attempt to search alternative accommodation, both the question of bonafide need and comparative hardship are titling heavily in favour of landlord, in stead of remanding the matter back, both the orders are hereby quashed and release application filed against N.K. Arora substituted through his legal heirs is allowed with a direction to his legal heirs to vacate the premises.

18. In Civil Misc. Writ Petition No. 42432 of 2000, Appellate Authority has taken rightful view in allowing the release application, inasmuch as on admitted position need of the respondentlandlord in the present case is bonafide and genuine need and landlord has large family comprising himself, his wife, son and

daughter in law and children, in this background, once bonafide need is there and no attempt whatsoever has been made by the tenant to search another accommodation, this Court cannot accord any reprieve to the tenant in the fact of the present case. From the release of both the flats seeing the size of flats and the size of family members of landlord the need of the landlord would be fully satisfied keeping in view the guiding factor provided for under Rule 16(1).

19. Both release applications filed on behalf of landlord were liable to be allowed for the reasons stated above as such order dated 15.5.1991 passed by Prescribed Authority rejecting release application filed under Section 21 (1)(a) of U.P. Act No. 13 of 1972 and the order dated 26.3.1992 passed by Vth Additional District Judge are hereby quashed and set aside. Order dated 7.9.2001 passed by 7th Additional District Judge, Muzaffarnagar challenged in Civil Misc. Writ Petition No. 42432 of 2000 is hereby upheld.

20. Consequently, Civil Misc. Writ Petition No. 16652 of 1992 is allowed and Civil Misc. Writ Petition No. 42432 of 2000 is dismissed. However tenants are granted time to vacate the premises in question within six months from today and hand over peaceful possession to the petitionerlandlord 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.