
(2003) 03 AHC CK 0103

In the Allahabad High Court

Case No : Civil Miscellaneous WP No. 9160 of 2003

Suresh Kumar Gupta

APPELLANT

Vs

Girja Shanker Shankadhar

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

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

Citation : (2003) 03 AHC CK 0103

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—This writ petition has been filed by the petitioner under Article 226 of the Constitution of India, inter alia praying for quashing the order dated 551999 (Annexure No. 9 to the writ petition) passed by the Prescribed Authority, Moradabad and the order dated 122003 (Annexure No. 11 to the writ petition) passed by the Appellate Authority (learned District Judge, Court No. 3), Moradabad.

2. The dispute relates to a shop situated in Mohalla Kathghar/Garikhana, Moradabad, the details whereof have been given in the release application referred to hereinafter. The said shop has hereinafter been referred to as the ? disputed shop.?

The petitioner has, inter alia filed the following supplementary affidavits in this writ petition:

(1) First Supplementary Affidavit sworn on 532003.

(2) Second Supplementary Affidavit sworn on 632003.

(3) Third Supplementary Affidavit sworn on 1232003.

3. From the allegations made in the writ petition and the affidavits filed on behalf of the petitioner, it appears the the respondent filed a release application under

Section 21 (1) (a) of the U.P. Act No. XIII of 1972 (also referred to, in short as ? the Act?) against the petitioner for release of the disputed shop. It was inter alia alleged by the respondent in the said release application that the respondent wanted to start the businesses of general merchant after his retirement from irrigation department, and that the need of the respondent for the disputed shop for starting the business of general merchant was urgent and genuine, and that on comparison of hardships, the petitioner would not suffer any hardship as the petitioner could shift his business to his own shop while in case of rejection of the release application, the respondent would be put to much greater hardship. The said release application was registered as PA Case No. 8 of 1997. Copy of the said release application has been filed as Annexure No. 1 to the writ petition.

4. The petitioner contested the said release application and filed his written statement, copy whereof has been filed as Annexure No. 2 to the writ petition.

5. Both the sides filed evidence in support of their respective cases.

6. The learned Prescribed Authority, Moradabad by the judgment and order dated 551999 allowed the said release application in respect of the disputed shop. It was, inter alia held by the learned Prescribed Authority that the need of the respondent for the disputed shop was real and bona fide. It was, inter alia, further held by the learned Prescribed Authority that on comparison of hardships, the respondent would suffer much greater hardship in case of rejection of the release application than would be suffered by the petitioner in case, the release application was allowed.

7. Against the said judgment and order dated 551999, the petitioner filed an appeal which was registered as Rent Control Appeal No. 23 of 1999.

8. It appears that during the pendency of the said appeal, the petitioner filed an application dated 2312001 under Section 34 (1) (b) of the Act read with Rule 22 (f) of the Rules framed under the Act and Order XLI Rule 27 and Section 151 Code of Civil Procedure. By the said application filed on behalf of the petitioner, an affidavit sworn by the petitioner on 2312001 was sought to be brought on record an additional evidence. Copy of the said application dated 2312001 has been filed as Annexure No. 10 to the writ petition, and copy of the said affidavit sworn on 2312001 sought to be brought on record as additional evidence has been filed as Annexure No. 11 to the writ petition.

9. It further appears that the respondent filed objection dated 1422001 along with counteraffidavit sworn on 1422001 in reply to the said application dated 2312001 and the said affidavit sworn on 23 12001. Copy of the said objection dated 1422001 filed on behalf of the respondent has been filed as Annexure SA1 to the Third Supplementary Affidavit and copy of the said counteraffidavit sworn on 1422001 filed on behalf of the respondent has been filed as Annexure SA2 to the Third Supplementary Affidavit.

10. It further appears that by the order dated 1422001, the learned Appellate

Authority allowed the said application dated 2312001. The Appellate Authority by the said order dated 142 2001, inter alia, further directed the said counter affidavit sworn on 1422001 filed on behalf of the respondent to be taken on record. The said order dated 1422001 has been quoted in paragraph No. 3 of the First Supplementary Affidavit filed on behalf of the petitioner in this writ petition.

11. By the judgment and order dated 122003, the learned Appellate Authority dismissed the said Rent Appeal No. 23 of 1999 filed on behalf of the petitioner.

12. The learned Appellate Authority, inter alia agreed with the conclusions drawn by the learned Prescribed Authority and held that the need of the respondent was bona fide and genuine and that the respondent would suffer greater hardship in case of rejection of the release application than would be suffered by the petitioner, in case, the release application was allowed.

13. Thereafter, the petitioner has filed the present writ petition seeking reliefs mentioned above.

14. I have heard Sri Rajesh Tandon, learned Senior Counsel assisted by Sri Vijay Bahadur, Advocate appearing for the petitioner.

15. Sri Rajesh Tandon, learned Senior Counsel submits that the affidavit sworn on 2312001 filed on behalf of the petitioner before the Appellate Authority had been taken on record by the Appellate Authority by its order dated 1422001 but the said affidavit has not been considered by the Appellate Authority in its judgment and order dated 122003. Therefore, the submission proceeds, the said judgment and order dated 122003 is vitiated.

16. Having considered the submissions made by Sri Rajesh Tandon, learned Senior Counsel appearing for the petitioner, I find myself unable to accept the same.

17. The said affidavit sworn on 2312003 filed on behalf of the petitioner, inter alia, alleged that another shop in the south of the disputed shop which was under the tenancy of one Surendra Nath Sachdeva had been vacated by the said Surendra Nath Sachdeva, and the said shop was in occupation of the respondent, and was being kept by the respondent locked.

18. In reply to the said affidavit sworn on 2312003 filed on behalf of the petitioner before the Appellate Authority, counter affidavit sworn on 1422001 (Annexure SA2 to the Third Supplementary Affidavit) was filed on behalf of the respondent. In the said counteraffidavit, it was, inter alia denied by the respondent that the said shop in the tenancy of the said Surendra Nath Sachdeva was in occupation of the respondent, and that the said shop was being kept locked by the respondent. It was, inter alia stated in the said counteraffidavit that the said shop was still in occupation of the said Surendra Nath Sachdeva. It was, inter alia further stated in the said counteraffidavit that a release application had been filed by the respondent against the said Surendra Nath Sachdeva for the release of the said shop in the tenancy of the said Surendra

Nath Sachdeva and the said release application was still pending. Alongwith the said counteraffidavit sworn on 1422001, the respondent also filed a copy of the said release application (numbered as PA Case No. 2 of 2000). Copy of the said release application (numbered as PA Case No. 2 of 2000) has also been filed as part of Annexure SA2 to the Third Supplementary Affidavit.

19. A perusal of the judgment and order dated 122003 shows that the learned Appellate Authority considered the question of availability of alternative accommodation with the respondent, and after considering material on record, concluded that ?it cannot be said that any other accommodation is laying vacant in which the landlord can run the business of General Merchant.? In view of the specific finding recorded by the learned Appellate Authority on consideration of material on record, it is not possible in my opinion, to accept the submission made by the learned Senior Counsel for the petitioner that the said affidavit sworn on 2312001 filed on behalf of the petitioner was not considered by the learned Appellate Authority. A perusal of the judgment and order dated 122003 shows that the learned Appellate Authority considered the evidence on record in recording various findings including finding on the question of availability of alternative accommodation to the respondent.

20. In my view, merely because the affidavit sworn on 2312001 has not been specifically mentioned in the said judgment and order dated 122003 it cannot be said that the said affidavit was not considered by the learned Appellate Authority. Once a perusal of the said judgment and order dated 122003 shows that the learned Appellate Authority applied its mind to the entire material on record, it is not material that certain documents/affidavits have not been specifically mentioned in the said judgment and order.

21. In *Kali Sahu and another v. Kedar Mal Marwari*, AIR 1917 Patna 288, a Division Bench of the Patna High Court laid down as follows (at page 289 of the said AIR):

?.....Where a Judge has made only a colourable pretence of considering the evidence this Court in second appeal will not accept his decision upon a question of fact as binding upon it. But I cannot accept this as meaning that a Judge must discuss in his judgment all the evidence upon the record. If the evidence discussed is reasonably adequate for a decision, the judgment is a good judgment....?

22. In *Mt. Akhtari Begum v. Allah Jawaya and others*, AIR 1936 Lahore 543, it was laid down as under (at page 544 of the said AIR):

?.....There is no authority which lays down that the lower appellate Court before recording a finding of fact should refer to each and every document or piece of evidence on the record while recording its finding. We may take it that all the relevant evidence was brought to the notice of the District Judge and he had it in his mind when he delivered his judgment.....?

23. In *Ram Khelawan and another v. Sri Ram and another*, AIR 1952 Allahabad 191, it was laid down as follows (paragraph No. 6 of the said AIR):

?.....It is no doubt true that Exs. 1 and A. 1 are not specifically referred to by the lower appellate Court but the mere fact that they are not referred to is no ground for presuming that the lower appellate Court did not take them into consideration: (See *Kallu v. Ghulam Haider Khan*, AIR (30) 1943 Oudh 429). The finding, therefore, remains nonetheless a finding of fact which is binding in second appeal.....?

24. In *Har Bhaj and another v. Barfi and others*, AIR 1969 Delhi 197, it was laid down as follows (paragraph Nos. 2 and 3 of the said AIR):

?(2).....The Courts of first appeal must always bear in mind that their conclusions of fact are binding on this Court on second appeal and this Court has, in view of Section 100 C.P.C. no jurisdiction to reappraise or reevaluate the evidence for the purposes of appreciating the correctness or otherwise of conclusions on questions of fact. It is, therefore, incumbent on the Courts of first appeal to pay proper attention to the evidence on the record and to make wellreasoned orders in regard to those conclusions, particularly when they are reversing the conclusions of fact of the first Court.?

(3).....I must not be understood to lay down as a general rule that in all cases the Courts of first appeal must mention every piece of evidence and reproduce the testimony of every witness with elaborate comment. All that I intend to lay down is that the judgments of such Courts must clearly suggest that they have applied their judicial mind to the appreciation of the evidence and manifestly convey the process of judicial thinking by which they differ from the conclusions of the Courts below.?

25. In *Bhagwan Das Sharma v. Gaya Sah and others*, AIR 1967 Patna 254, it was laid down as follows (paragraph Nos. 5 and 6 of the said AIR):

?(5).....It is argued that upon the directions given by this Court, it was incumbent upon the Court of appeal below to consider the evidence of PWs 4, 5 and 8 specifically before the plaintiffs case of possession based on oral evidence could have been accepted. It is argued that five defendants' witnesses were examined on their case of possession and no reference has been made to the evidence of these witnesses by the Court of appeal below. Thus, according to the learned Counsel for the appellant, the judgment after remand is again vitiated. Having heard learned Counsel for the parties on these contentions and having perused the judgment under appeal, I am of the opinion that it is not possible to hold that the judgment is vitiated on the contentions raised by the learned Counsel for the appellant. No doubt, the learned Judge on appeal has made specific reference to the evidence of PW 4 only, in paragraph No. 14 of the judgment, but that cannot lead to the interference that he was unmindful of the other oral evidence adduced by the plaintiffs.....Therefore, I am not in a position to hold that absence of any specific reference to the oral evidence given

by plaintiff No. 1 and his son can be said to vitiate the judgment under consideration. Similarly, absence of any specific reference to the defendants' witnesses cannot necessarily imply that the Court below was unmindful of the evidence adduced by the defendants. At a number of places in the judgment the learned Judge on appeal has referred to the defendants' case of possession and in my opinion, it must be taken that this reference was in the context of the evidence given by the defendants' witnesses in Court.?

?(6) Learned Counsel for the appellant has relied upon three unreported decisions of this Court, which are Civil Revision No. 150 of 1964, dated 25121964 (Pat). Second Appeal No. 611 of 1961, dated 1881962 (Pat) and Second Appeal No. 377 of 1957, dated 179 1959 (Pat), for his argument that in the absence of specific reference to the evidence of all the witnesses adduced by both the parties, the judgment of the Court of appeal below ought to be set aside and the case remanded once again. The principles laid down in the three decisions, mentioned above, is unexceptionable, but, I have indicated above, that the judgment of the Court of appeal below gives a clear indication of the fact that the Court has come to its conclusions after a scrutiny of the evidence on record, oral and documentary. Therefore, the judgment cannot be set aside on the contentions raised by learned Counsel for the appellant in this context.?

The propositions which, amongst others can be deduced from the above decisions are as follows:

(a) What is necessary for a Court of Appeal is to apply its mind to the oral and documentary evidence on record in recording findings of fact, but it is necessary for the Court to specifically refer to each piece of oral and/or documentary evidence.

(b) If a perusal of the judgment of the Court of Appeal shows that the Court has recorded findings of fact after scrutinizing the oral and documentary evidence on record, such findings cannot be said to be vitiated merely because there is no specific reference to certain oral and/or documentary evidence.

(c) Such findings of fact cannot be interfered within Second Appeal under Section 100 Code of Civil Procedure merely on the ground of nonconsideration of the evidence which has not been specifically mentioned in the judgment of the Court of Appeal.

(d) If, however, a perusal of the judgment of the Court of appeal shows that the Court while recording findings of fact, has not at all applied its mind to certain material oral and/or documentary evidence, and this is why, there is no specific reference to such evidence in the judgment, then the findings of fact are vitiated which can be interfered within Second Appeal under Section 100 of the Code of Civil Procedure.

It is true that the above propositions have been laid down with reference to the provisions of the Code of Civil Procedure, but the principles underlying the said

propositions may be applied to the proceedings under the Act.

The said principles, in my opinion, support the conclusions drawn above with regard to the question of consideration of the affidavit sworn on 2312001 by the learned Appellate Authority.

26. Even otherwise, as noted above, the respondent in the said counteraffidavit sworn on 1422001 categorically denied that the said shop in the tenancy of the said Surendra Nath Sachdeva was in occupation of the respondent. It was, inter alia, pointed out that the release application under Section 21 (1) (a) of the U.P. Act No. XIII of 1972 in respect of the said shop in the tenancy of the said Surendra Nath Sachdeva was still pending. It has not been disputed before me that the said release application filed in respect of the said shop in the tenancy of the said Surendra Nath Sachdeva (registered as PA Case No. 2 of 2000) is still pending.

27. In view of the fact that the release application under Section 2 (1) (a) of the U.P. Act No. XIII of 1972 in respect of the said shop in the tenancy of the said Surendra Nath Sachdeva was pending, it cannot be said that the said shop was available to the respondent for the purpose of consideration of bona fide need of the respondent in respect of the disputed shop. In my opinion, since on account of pendency of the release application under Section 21 (1) (a) of the U.P. Act No. XIII of 1972 in respect of the said shop in the tenancy of the said Surendra Nath Sachdeva, it could not be said that the said shop was available to the respondent for the purpose of consideration of bona fide need of the respondent in respect of the disputed shop, therefore, the learned Appellate Authority was not required to consider the said shop in the tenancy of the said Surendra Nath Sachdeva while considering the question of availability of alternative accommodation with the respondent.

28. It is noteworthy that even if an accommodation falls vacant and the landlord comes in occupation thereof, still the said accommodation cannot be said to be available to the landlord for deciding the question of bona fide need under Section 21 (1) (a) of the U.P. Act No. XIII of 1972 unless and until the landlord gets the said accommodation released in his favour under Section 16 (1) (b) of the said Act. In other words, the said accommodation can be said to be available to the landlord for deciding the question of bona fide need under Section 21 (1) (a) of the U.P. Act No. XIII of 1972, only if the landlord gets the same released in his favour under Section 16 (1) (b) of the said Act.

29. Sri Tandon, learned Senior Counsel appearing for the petitioner submits that the findings recorded by the authorities below on the questions of bona fide need and comparative hardships were illegal as the relevant factors for deciding the said questions were not considered by the authorities below.

30. Having considered the submission made by Sri Tandon, learned Senior Counsel, I am of the view that the same cannot be accepted.

31. A perusal of the judgments and orders passed by the authorities below shows that the authorities below considered the questions of bona fide need and comparative hardships taking into account various factors relevant for deciding the said questions.

32. In deciding the question of bona fide need, the authorities below considered various relevant factors including the question of availability of alternative accommodation with the respondent.

33. Similarly in deciding the question of comparative hardships, the authorities below considered various relevant factors including the fact of availability of alternative accommodation with the petitioner.

34. Further, the learned Prescribed Authority considered the question of hardship which would be caused to the petitioner on account of his old occupation and awarded two years' rent as compensation.

35. In my opinion, therefore, the findings recorded by the authorities below on the questions of bona fide need and comparative hardships do not suffer from any illegality.

36. Sri Tandon, learned Senior Counsel next submits that the findings recorded on the questions of bona fide need and comparative hardships are vitiated. In my opinion, the submission made by Sri Tandon cannot be accepted.

37. It is well established that the findings on the questions of bona fide need and comparative hardships are the findings of fact. This Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India normally does not interfere with the findings of fact unless such findings are shown to be patently illegal or perverse. No illegality or perversity has been shown in the findings recorded by the authorities below on the questions of bona fide need and comparative hardships. No interference is, therefore, called for with the said findings recorded by the authorities below.

Certain judicial decisions may be referred to in this regard.

38. In *M/s. India Pipe Fitting Co. v. Fakruddin M.A. Baker and another*, AIR 1978 SC 45, it was laid down by the apex Court that the conclusions of fact cannot be interfered with by the High Court under Article 227 of the Constitution of India. The findings on the question of bona fide requirement of the landlord recorded by the Courts below by appreciating the entire evidence cannot be interfered with by the High Court under Article 227 of the Constitution of India.

39. In *Munni Lal and others v. Prescribed Authority and others*, AIR 1978 SC 29, it was laid down by the Supreme Court that the finding on the question of comparative hardship of the landlord was finding of fact, and the same cannot be interfered with by the High Court in the exercise of its writ jurisdiction under Article 226 of the Constitution of India.

40. In *Ashok Kumar and others v. Sita Ram*, 2001 (2) JCLR 249 (SC) : 2001 (2)

ARC 1 : 2001 (43) ALR 783 (SC), the apex Court held as follows (paragraphs 9 and 15 of the said ARC):

?(9) The position is too well settled to admit of any controversy that the finding of fact recorded by the final Court of fact should not ordinarily be interfered with by the High Court in exercise of writ jurisdiction, unless the Court is satisfied that the finding is vitiated by manifest error of law or is patently perverse. The High Court should not interfere with a finding of fact simply because it feels persuaded to take a different view on the material on record.

(15) The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter, which no reasonable person was likely to take. In that view of the matter there was no justification for the High Court to interfere with the order in exercise of its writ jurisdiction. In a matter like the present case where orders passed by the Statutory Authority vested with power to act quasijudicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High Court is not expected to interfere with the final order passed by the Statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another Appellate Court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case.?

41. In view of the aforesaid discussion, I am of the opinion that this writ petition lacks merit, and the same is liable to be dismissed. The writ petition is dismissed accordingly.

42. Sri Rajesh Tandon, learned Senior Counsel appearing for the petitioner then submits that some reasonable time may be granted to the petitioner for vacating the disputed shop.

43. Having considered the facts and circumstances of the case, and the submissions made by the learned Senior Counsel for the petitioner, the petitioner is granted time upto 30th September, 2003 for vacating the disputed shop provided the petitioner gives an undertaking within six weeks from today on his personal affidavit incorporating the following conditions:

(1) The petitioner will vacate the disputed shop on or before 30th September, 2003 and will handover peaceful possession thereof to the respondent.

(2) The petitioner will continue to pay rent in respect the disputed shop to the respondent till the date of vacating the disputed shop.

44. In case the aforesaid requisite undertaking is not given within the time granted or any of the conditions incorporated in the undertaking is violated, the order granting time to the petitioner for vacating the disputed shop will stand

automatically vacated, and it will become open to the respondent to execute the release order forthwith.