
(2008) 09 AHC CK 0023
In the Allahabad High Court
Case No : Writ Petition No. 130 (R/C) of 2008

Susheel Kumar Agarwal

APPELLANT

Vs

Additional District Judge/Special Judge, S.C./S.T. Act and
Others

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Citation : (2009) 1 AWC 1040

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Advocate : Ashish Mishra, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard Mr. Ashish Mishra, learned Counsel for the Petitioner and perused the record.

2. This case has come up for admission today.

3. Through this petition, the Petitioner has assailed the judgment and order passed by the Additional District Judge/Special Judge (S.C./S.T. Act), Bahraich in Appeal No. 62 of 2002, whereby he has reversed the order dated 13.8.2002, passed by the prescribed authority for release of the rented shop.

4. The prescribed authority has allowed the release application filed by the landlord on various grounds including that the tenant had sub-let the premises. He was owner of eight shops in the city of Bahraich. Out of these eight shops, six were rented out and two were vacant. In addition to this property, the tenant had three more shops. The prescribed authority has also dealt with the point of bona fide need of the landlord. Shiv Shankar, father of the Petitioner has four children, namely, Lallu, Susheel Kumar (Petitioner), Raju and Baby.

5. The Petitioner got married in the year 1989 and wanted to settle himself in business. It was demonstrated in the release application that the Petitioner

wanted to sell garments, for which adequate capital was available with his father. The shop was purchased by his father, Shiv Shanker, from its erstwhile owner, Ram Anuj, for the same purpose. It was also mentioned that the shop was in dilapidated condition and in future, after demolishing the structure, a new shop could be constructed.

6. It was pleaded before the prescribed authority that the tenant had sub-let the shop to the opposite parties 4 to 7. The landlord had given details of the property of the tenant, which were available in the City of Bahraich. This fact was placed before the prescribed authority and dealt with that the tenant was carrying on his business of selling bangles in a separate shop. The release application was pending disposal before the prescribed authority for more than ten years. It was hotly contested by the tenant. However, the release application was allowed by the prescribed authority, i.e., Civil Judge (Junior Division), by passing a detailed judgment and the order dated 13.8.2002, dealing with each and every point raised by the contesting parties regarding the bona fide need, comparative hardship and all other factors. The prescribed authority had directed the tenant to vacate the shop within two months, after handing over the peaceful possession to the Petitioner.

7. In appeal, the appellate authority had reversed the findings vide judgment and order dated 30.8.2008, impugned in this writ petition. This Court has gone through the impugned judgment and judicially scrutinized it, in the light of the latest pronouncements on this subject, settling such controversies.

8. The appellate authority, has in fact, dealt with the appeal, as if he is conducting a re-trial of the case, sitting as a super prescribed authority under the rent laws, while disposing of the appeal. The rent law as stands today provides that if an unemployed son of a landlord wants to settle himself in business in his own shops, he is free to choose the location of the shop amongst his shops, which is required by him for carrying out his business. The tenant cannot dictate the landlord as to how he can satisfy his need without disturbing the tenant.

The following cases deal with this point:

1. Smt. Savitri Devi Vs. Xth Additional District Judge and Others,
2. Prakash Chandra Agarwal v. VIIIth Additional District Judge, Lucknow and Ors. 2006 (24) LCD 1434;
3. Prakash Chandra Agarwal v. Additional District Judge, Lucknow and Ors. 2006 (24) LCD 1427 ; and
4. Sarju Prasad Vs. VIIIth Additional District Judge and Others,
9. As the learned appellate court has not dealt with the modern rent laws, it cannot stand. At one place, he has written that

other language

10. This conclusion is wholly perverse. After all, the Court ought to have seen that the landlord has four sons. Two of them had joined their father and their family business, while the remaining two were looking for some business according to their choice. The career of a young educated person cannot be guided as per desire of the tenant, who was paying a meagre rent of Rs. 45 for enjoying use and benefit of the shop situated in the central area of City Bahraich.

11. The appellate authority has failed to see the relevant provisions of U.P. Act XIII of 1972 and the rules made thereunder. Right from Apex Court to this Court, the law is settled that on submission of a release application, the tenant must look for alternative accommodation/residential premise. Even as per the latest rent laws, the goodwill of a shop keeper or businessman would not play any dominant role because the goodwill is like fragrance, which can travel any where, like flower's scent and the customers will go to the new location. This Court has dealt with this issue in Writ Petition No. 21 of 1999 (R/C), Bata Shoe Company and Anr. v. VIth Additional District Judge, Faizabad and others, which as per learned Counsel for the Petitioner has been affirmed by the Apex Court.

12. Recently, the Apex Court has held in a rent matter relating to tenancy of shops situated in the posh area of Connaught Place in the Capital City New Delhi that dealing with the bona fide need of the landlord. His interest cannot be ignored giving some special preference to a tenant. The need of the landlord is to be construed more liberally, if suitable alternative accommodation is available to the tenant. This Court has dealt with this point and recorded a finding in a case in Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, and recent decision of this Court in Jogendra Singh Bajaj (Dr.) and Others Vs. IVth Additional District Judge and Another, and Braham Kumar and Ors. v. Raja Ram and 2006 (1) ARC 93 ; Kafeel Ahmad Vs. Smt. Satvindra Kaur, Sidh Nath Shukla Vs. Judge Small Causes (Prescribed Authority) and Others, Javed Jameel Vs. Distt. Judge and Others, Sarju Prasad Vs. VIIIth Additional District Judge and Others, Seth Bashir Ahmad Bhatti v. Additional District Judge, Court No. 9, Seth Bashir Ahmad Bhatti Vs. Addl. District Judge and Another, Shyam Lal Sahu v. Smt. Phoolmati Devi and Ors. 2006 (24) LCD 1479; Krishna Prasad Arora v. Xth Additional District Judge, Varanasi and Ors. 2007 (25) LCD 159 and Mullan Yadav v. Additional District Judge, Court No. 9, Varanasi and Ors. 2007 (25) LCD 306.

13. In these days, several shopping areas, malls, new markets are coming up and even in small cities, new market construction are being raised by the development authorities, which are working hard to provide residential and commercial accommodation to the urban population. The tenants on learning about the submission of release application can look for an alternative accommodation. In fact, the process of law is abused and the tenants take advantage of the delay which takes place in adjudication of rent matters.

14. The release application was submitted on 7.2.1992. Thereafter, the tenant had to search for alternative accommodation. Interestingly, in this case, it was specifically pleaded before the appellate court that the tenant was himself having

eight shops. Out of them, six shops were rented by him. He was enjoying the rent received from the tenants. While, the Petitioner, a young educated person, who was newly married at the relevant time, i.e., in 1989, was looking for a shop. It has come in the findings that the tenant has two more shops, which according to whims of the tenant, were not useful for the bangle selling business. It has also come in the findings recorded by the prescribed authority that the tenant had two vacant shops and he has also acquired more shops in the city of Bahraich.

15. The appellate authority ought to have considered the point regarding the honest efforts of the tenant to search for some other shop. No effort has been made in this case and this point was dealt with. It has also come in the findings that the tenant had sub-let the shops to 4-5 sub-tenants and the landlord had impleaded all of them as parties and they are associated with the litigation and had filed their written statements also, which were dealt with by the prescribed authority. How can sub-letting be permitted by the Court.

16. One more important aspect has been left by the appellate court that a meagre rent was being paid by the tenant, while the shop was situated in a Central Bazar of Bahraich City. Applying the principles of *Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd.*, it is the duty of the rent court to consider as to what should be the adequate rent to be paid for use and occupation of the residential/building or shop. The appellate court has ignored that the release application was filed on 7.2.1992 and the said application had remained pending for about 10 years, which itself is a very long time. A young man of 28 years old has almost lost its prime youth, which could be put in establishing his business. Now, according to the learned Counsel for the Petitioner, he is 44 years old, meaning thereby that his prime youth and active age has gone in awaiting decision. There were no justified reasons before the appellate authority for remanding the case. The rules also provide a time-limit, to be kept in mind by the rent courts.

17. According to learned Counsel for the Petitioner, instead of remanding the matter, the appellate authority should have considered and dealt with the matter. This Court has taken note that when the litigation started, the person was 28 years old young man who is now 44 years" mature man. Instead of spending his early days of youth in establishing his business, this time was wasted in litigation while the tenant has enjoyed the long period of litigation by using and occupying the shop in question and even subletting the shop.

18. In view of above discussion, the writ petition is allowed and the order passed by the appellate authority dated 30.8.2008 is quashed. The matter is remanded to the appellate authority for deciding it afresh. This Court is of the view that the appellate authority should give a fresh look to the appeal taking into account the latest rent laws, which have been spelt out in the present judgment and other judgments which may be placed by the contesting parties including tenant and form its opinion based on law and after considering all these points, the appellate

authority shall deliver its judgment. The appeal shall be decided within six weeks from the date of presentation of a certified copy of this order. It is made clear that unnecessary adjournments shall be avoided.