
(2016) 02 AHC CK 0090
In the Allahabad High Court
Case No : Writ A. No. 5658 of 2016.

Swaroop Singh (Died) and 2 others	Vs	APPELLANT
Champa Devi		RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

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

Citation : (2016) 117 ALR 198 : (2016) 2 ARC 36

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Surendra Nath Tripathi, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J. - Heard Sri S.N. Tripathi, learned counsel for the petitioner.

2. This writ petition has been filed challenging the order dated 18.12.2015 in Rent Appeal No. 04 of 2013 [Smt. Champa Devi v. Sri Swaroop Singh (Dead) and others] passed by the Court of Special Judge/(E.C. Act)/Additional District Judge, Rampur.

3. Briefly stated the facts of the present case are that:

Plaintiff respondent/landlady is undisputedly owner and landlord of the tenanted shop in question situate on Matkhera road, tehsil Bilaspur, District Rampur. Besides this she owns two adjoining shops in which her son Gajraj is carrying on business of Aurvedic medicines, food supplements and cosmetic goods etc. under the name and style of M/s. Patanjali Ayurved Kendra. She filed an application under Section 21(1)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 (hereinafter referred to as the Act) for eviction of the tenant from the tenanted shop in question on the ground mainly that she is in need of the tenanted shop in question for the purposes of business

of her son and because of non availability of the tenanted shop he is not able to carry on business smoothly and is facing difficulty to expand it because of the shortage of space and thus she is in bonafide need of the tenanted shop in question. The petitioner tenant opposed the application mainly on the ground that he is carrying of business of bangles in the tenanted shop which is main source of his livelihood and son of the plaintiff-landlady may expand his business in the vacant shop in Gama market. The objection raised by the petitioner tenant was opposed by the plaintiff-landlady stating that the main source of income of the petitioner tenant is not the business of bangles from the tenanted shop but agricultural business of food-grain which he is doing from his house and the tenanted shop is closed from about one year.

4. Oral evidences were lead by both sides. The petitioner-tenant, Sri Swaroop Singh (dead) filed his affidavit stating in paragraph 16 that in case the plaintiff landlady needs shop then she may take the vacant shop in Gama market. While suggesting so, the petitioner plaintiff did not give any reason that if vacant shops are available in Gama market then why he can not take the shop on rent in the Gama market. There is no denial of the fact that the tenanted shop in question is adjoining the shop of the son of the plaintiff landlady whose son is doing business as aforesaid in the shops in his occupation. The fact that the plaintiff landlady needs the tenanted shop in question to meet the shortage of space for his son's business could not be disputed by the petitioner tenant and instead it was suggested that she may take the vacant shop in Gama market. Thus it is clear that the plaintiff landlady needs the tenanted shop in question which is adjoining to the shop in his occupation to utilise the same for the purposes of business of her son, merely by removing the wall.

5. However, the case of the plaintiff landlady was rejected by the Prescribed authority/Additional Civil Judge (S.D.) Rampur by order dated 18.7.2013 passed in P.A. case No. 17 of 2011 on the conclusion that the plaintiff-landlady has not given the size of the shops so as to demonstrate that the shops are small or insufficient for the business of her son and no evidence was filed by her that the tenanted shop remains closed nor she has got declared the vacancy nor it has been stated that what is the size of the family of her son and the difficulty being faced by her for livelihood from the present business. On these grounds he came to conclusion that the plaintiff landlady is not in bonafide need of the tenanted shop in question. Aggrieved with the aforesaid order of the prescribed authority, the plaintiff landlady filed rent appeal No. 04 of 2013 which has been allowed and the order of the prescribed authority has been set aside against which the present writ petition has been filed by the petitioner tenant.

6. In the impugned order the Appellate Authority has considered the issue as to the bonafide need of the plaintiff landlady. A finding of fact has been recorded in the impugned order that the plaintiff landlady is in bonafide need of the tenanted shop in question. It has also been observed that when the petitioner tenant knows that vacant shops are available in the Gama market then he may take the

shop on rent in the Gama market.

7. In view of the above discussion, I do not find any infirmity in the impugned order dated 18.12.2015. Writ petition is wholly misconceived and, therefore, deserves to be dismissed.

8. In result, writ petition fails and is hereby dismissed. However, there shall be no order as to costs.

9. After the judgment was dictated in the open court learned counsel for the petitioner states on the basis of instructions of the petitioners that three months time may be granted to vacate the tenanted shop in question with the undertaking to vacate the tenanted shop within three months from today and to handover peaceful possession to the plaintiff-landlady within three months. Considering the prayer so made by the petitioners before this Court, it is provided that the tenant shall give the aforementioned undertaking before the court below alongwith proof of deposit of the decretal amount within one month from today and shall pay damages @ Rs. 2000/- per month to the plaintiff lady. If these conditions are not complied with then no protection from eviction for three months shall be available to the petitioners.

10. Writ petition is dismissed with the aforesaid observations.