

(1999) 03 AHC CK 0058
In the Allahabad High Court
Case No : C.M.W.P. No. 6031 of 1990

Thakur Singh and another

APPELLANT

Vs

VIIth Addl. District and Sessions Judge, Ghaziabad and
another

RESPONDENT

Date of Decision : 16-03-1999

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 16(2)

Citation : (1999) 2 AWC 1400

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Dr. R.G. Padia, for the Appellant; N.C. Rajvanshi, for the Respondent

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of the appellate authority dated 8.2.1990 allowing the appeal and releasing the disputed shop in favour of the landlord-respondent No. 2 u/s 21 (1) (a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act).

2. The landlord-respondent No. 2 filed an application for release of the disputed shop in the year 1984 on the allegations that he has two sons namely, Anuj Kumar and Atul Kumar. Atul Kumar is carrying on business of general merchandise and his son Anuj Kumar is unemployed. The petitioners are tenants of Shop No. 245, Jawahar Bazar, Pilkhua, district Ghaziabad. It is required for carrying on business by Anuj Kumar. The Prescribed Authority rejected the application. The landlord-respondent filed an appeal against the said order. The appeal has been allowed by the impugned order dated 8.2.1990.

3. I have heard Dr. R.G. Padia, learned counsel for the petitioners and Sri N.C. Rajvanshi, learned counsel for the respondent.

4. Learned counsel for the petitioners has assailed the findings recorded by the

appellate authority that Anuj Kumar required the shop in question for carrying on business. The landlord-respondent has two sons, namely, Anuj Kumar and Atul Kumar. In the application filed by respondent No. 2 it was stated that his younger son Atul Kumar is carrying on business of general merchandise in Shop No. 40 situate in Mohalla Chhipiwara, Pilkhua. He has a betel shop in his own house. His son Anuj Kumar is unemployed. He wants to be settled in business in sale of books and stationery in the disputed shop.

5. The petitioners contested the application alleging that Anuj Kumar, his elder son is carrying on trade of lending novel and the assertion of respondent No. 2 that his younger son is carrying on general merchandise business in Shop No. 40, is incorrect. In fact, his younger son is engaged in sale of newspapers and both sons are employed. Besides, this it was asserted that there is another shop in between "Pan" shop and Shop No. 40 and that was let out by respondent No. 2 to one Ram Autar Nitin Kumar just before six months before the filing of the release application.

6. The parties led oral and documentary evidence. The petitioners filed quinquennial assessment of the Municipal Board for the years 1980-81 to 1981-85 in which Anuj Kumar is recorded as occupant of Shop No. 40, Chhipibara and in the assessment years 1986-87 to 1990-91 respondent No. 2 has been shown as occupant. Respondent No. 2 filed quinquennial assessment extract indicating that Anuj Kumar was recorded as occupant. Much emphasis has been placed that in the assessment years 1980-81 to 1981-85 Anuj Kumar was recorded in occupation of Shop No. 40 which indicates that Anuj Kumar was carrying on business of sale of novels as suggested by the petitioners. The Prescribed Authority had appointed an Advocate Commissioner to find out the actual position of Shop No. 40. The Advocate Commissioner found that in Shop No. 40 some furniture were found and out side the shop certain novels were found which were 100 in number. The municipal record itself was not conclusive as to who was carrying on business. The appellate authority considered the municipal records, report of the Commissioner and the affidavit filed by the parties and held that Anuj Kumar was not carrying on any business. Respondent No. 2 has two sons, namely, Anuj Kumar and Atul Kumar. Each of them requires a shop for carrying on independent business. The suggestion of the petitioners was that Anuj Kumar was carrying on trade of lending novel and his younger son Atul Kumar was engaged in sale of newspapers. Respondent No. 2 wanted his both sons to carry on independent business. Respondent No. 2 filed the documents from the Bank which indicated that the Syndicate Bank had given loan to Atul Kumar for carrying on business. Considering the certificate of the Bank, it was found that Atul Kumar was, in fact, carrying on business in Shop No. 40 since the year 1985. This finding is based on the assessment of evidence. There is no legal infirmity in this finding.

7. Learned counsel for the petitioners suggested that there is another shop which is available to Anuj Kumar for carrying on business if he requires the shop in

question. The petitioners did not take this specific plea in their written statement. The petitioners have summarised the contents of the written statement in paragraph Nos. 11 and 12 of the writ petition and it has not been suggested that there is any other shop which is available to Anuj Kumar, the son of respondent No. 2 to carry on business. In para 12 of the writ petition, it has been stated that there was another shop in between "Pan" shop and Shop No. 40 and that was let out by respondent No. 2 to one Ram Autar Nitin Kumar just before six months before the filing of the release application. The Advocate Commissioner was appointed by the Prescribed Authority. He submitted a report indicating that in between Shop No. 40 and "Pan" shop, there was a gallery and in that gallery there was some "kotha" and one person named Radhey Shyam was sitting there and had certain goods. The appellate authority has recorded a finding in para 18 of the judgment that the said space is not a shop available to respondent No. 2 to establish his son in business. It has not been found that Anuj Kumar has any other suitable vacant shop to carry on his business. The appellate authority was justified in recording the finding that the need of respondent No.2 to settle his son. Anuj Kumar in business, was bona fide and genuine.

8. The last submission of the petitioner is that in the event the petitioners are evicted, they would suffer greater hardship as they had been carrying on business for the last 30 years. The appellate authority found that the petitioners have two vacant shops in their house situate at Railway road, Pilkhua. This finding has been assailed by the petitioners. Respondent No. 2 had filed his own affidavit annexing the assessment register of Nagar Palika, Pilkhua which indicated that there are two shops in the house owned by the petitioners situate at Railway road. This is a question of fact based on evidence on record. It is further contended that the appellate authority should have taken into consideration Rule 16 (2) clause (b) of the Rules framed under the Act which provides that where the tenant has available with him suitable accommodation to which he can shift his business without substantial loss, there shall be greater justification for allowing the application and in absence of any finding that the petitioner has suitable accommodation, there was no justification for allowing the application filed by respondent No. 2 u/s 21(1) (a) of the Act. He has placed reliance upon the decision Ramington Rand of India Ltd. v. Vth Additional District and Sessions Judge, Meerut and others 1998 (2) ARC 245, wherein the Court advertng to this Rule, observed that the tenant may have some shops but if the shifting of business causes his substantial loss, no benefit can be availed of by the landlord on the basis of this sub-rule. The Court, however, further made the following observations :

"It is true that the mere fact that a tenant is likely to suffer a loss in his business by shifting his business at some other place, by itself would not be sufficient to discard the need of the landlord which has been otherwise found to be bona fide and genuine. It is also well established that mere length of occupation of premises by a tenant cannot be the sole ground to reject the landlord's claim of personal requirement. While weighing the hardship of the parties, the Courts are

bound to take all these factors into consideration as well as the goodwill earned by the tenant and record a finding as to which of the parties was likely to suffer a greater hardship than the other."

In *Ashok Kumar v. VIIth Additional District Judge, Muzaffarnagar and others* 1998 (2) ARC 430, similar view was expressed. The law does not require that unless a suitable alternative accommodation is made available to the tenant, the application of the landlord u/s 21 (1) (a), of the Act cannot be allowed. In *Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others*, , the Supreme Court clarified that in deciding the extent of the hardship that may be caused to one party or the other, in case a decree for eviction is passed or is refused, each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable. It was observed that it is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed and was fully in contemplation of the Legislature when Section 11 (1) (h), of the Act was introduced in the Act. This by itself would not be a valid ground for refusing the plaintiffs a decree for eviction.

9. In *Ajay Kumar Tandon v. XIVth Additional District Judge, Kanpur and others* 1989 (1) ARC 509, the Court considered the provisions of Rule 16 (2) (a) and observed that the Act does not contemplate that in every case where an application for release is made, the landlord has to further establish that the tenant has an alternative accommodation and then only his release application can be allowed. Rule 16 (2) (a) merely prescribes a guideline for determining question of hardship. Considering Rule 16 (2) (a) which provides that greater the period since when the tenant opposite party, or the original tenant whose heir the opposite party has been carrying on his business in that building, the less justification for allowing the application, the Court in *Mangali Prasad v. XIIIth Additional District Judge, Kanpur and others* 1985 (1) ARC 510, held that it only lays down the guideline but the mere fact that the tenant has been carrying on business for the long time, would not be a justified ground itself to refuse the application of the landlord if his need is found bona fide and he would suffer a greater hardship. The applicability of Rule 16 (2) (a) of the Act was referred to a larger Bench and the Division Bench of this Court in *Shiv Dev Raj v. Additional District Judge and others*. 1996 ARC 559, held that this Rule does not take away the right of the landlord to have release of his accommodation or prohibit Prescribed Authority to allow release application merely on the ground that the tenant was carrying on business for a long time. Rule 16 only lays down guidelines. Rule 16 (2), uses the expression "have regard to" which merely requires that those provisions must be taken into consideration while considering the hardship of the parties in regard to allowing the application against the tenant for eviction from the accommodation. On the facts of the present case, the appellate authority found that Anuj Kumar son of respondent No. 2 required the shop in question for carrying on business. The application was filed in the

year 1984 and almost 15 years have expired. The petitioners are alleged to be carrying on cloth business and even if they do not have any shop, they could have obtained an alternative accommodation.

10. In view of the above, I do not find any merit in the writ petition. It is, accordingly, dismissed with costs.