

(2008) 09 AHC CK 0159
In the Allahabad High Court
Case No : Writ Petition No. 160(R/C) of 1999

Urmila Gupta

APPELLANT

Vs

Ramesh Chandra Tripathi and others

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Citation : (2008) 09 AHC CK 0159

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Disposed Of

Judgement

Rakesh Sharma, J.—This writ petition has been filed by the landlordpetitioner, in the month of December, 1999, assailing the judgment and order passed by the Additional District Judge, Hardoi dated 29.9.1999 and the same was admitted on 22.12.1999. This Court has directed in the order of admission itself that on the next date, i.e. February, 2000, this writ petition itself may be finally disposed of.

2. An appearance has been put in by one Sri K. P. Tripathi on behalf of the respondents, whose name has been shown in the cause list. It is noteworthy that since 1999, this case has been listed on several dates, but till date, no counteraffidavit has been filed. On 4.7.2008, following order was passed by the Court:

"List revised.

None is present for the opposite parties. However, learned counsel for the petitioner is present.

Learned counsel for the petitioner states that none appears on behalf of the respondents on any of the dates, hence the ex parte arguments may be heard

List in the week commencing 18th August, 2008 for ex parte hearing."

3. This case was again listed on 18th August, 2008 and 1st September, 2008 and finally, the same has come up for hearing today, i.e., 8.9.2008.

4. As per learned counsel for the petitioner, no interim order has been passed in this case and the respondent-tenant is enjoying the shop for a petty amount of Rs.15/ per month situated at Railway Ganj in the city of Hardoi. Even a cycle stand, situate at Railway Ganj in Hardoi area, is charging Rs.5/ for parking a Scooter for Rs. Two hours and Rs.2/ for a Cycle. Here is a proper shop situate on the main road of Railway Ganj in the city of Hardoi.

5. Since no counteraffidavit has been filed for the last nine years, this Court has no option except to proceed with the matter and deliver its verdict. In the absence of counteraffidavit, the Court feels that the submissions made by the learned counsel for the petitioner in the writ petition stands unrebutted. Further, this Court has specifically mentioned in the order dated 22.12.1999 that the case shall itself be disposed on the next date, i.e. in the month of February, 2000 and even in the last order dated 4.7.2008 that the case shall be heard ex parte, if the learned counsel for the respondents does not appear.

6. Since no counter affidavit has been filed, this Court is treating the averments made in the writ petition as uncontroverted in view of the decisions of Hon''ble the Supreme Court in Choksi Tube Company Limited Vs. Union of India 1997 (11) SCC 179 and Naseem Bano Vs. State of U.P. and others 1993 (22) ALR 307 (SC) : AIR 1993 SC 2592, wherein the Apex Court has laid down the law that where a plea taken is not controverted in reply, it amounts to admission of the plea.

7. It emerges from the record that the aforementioned shop was rented out to one late Shiv Sevak Tripathi at a meagre rent of Rs.15/ per month. The petitioner has purchased this premises alongwith the shop in the year 1987 and stepped into the shoes of the landlord. The rent is being received by the petitioner, as such, he can be defined as "landlord" as per the relevant provisions of Act 13 of 1972. The petitioner, in view of his growing family, having three sons, wanted to settle them in life as all the three major sons were unemployed. They wanted to set up their own business in the shop. A formal release application was moved in the year 1991, which was allowed by the Prescribed Authority on 13.10.1992. The tenant being aggrieved by the Release Order, had preferred an appeal, which was registered as Rent Appeal No. 12 of 1992. The appeal was disposed of after a period of seven years, i.e. 29.9.1999, reversing the order passed by the Prescribed Authority.

8. Learned counsel for the petitioner has assailed the order of the Appellate Authority on several grounds indicated in the writ petition. According to him, the Appellate Court has ignored the bona fide need of the landlord, that her three grownup sons were unemployed, while the tenant's two sons were engaged in gainful employment. Ramesh Chandra Tripathi, Respondent No.1 was in Government Service, whereas the other son was a Compounder in a Doctor's Clinic, dispensing medicines.

9. As per the report of the Commissioner, which was on record of the Appellate

Authority, there was meagre stock of pattals, match boxes, beedies, weighing machine and few containers. In fact, the shop used to remain locked and as there was no substantial stock of goods, it can be said that regular trading activities were not going on from the rented shop. It was highlighted by the learned counsel for the petitioner that the original tenant Shiv Sevak Tripathi had died much before filing of the appeal and the appeal was persuaded by his elder son Ramesh Chandra Tripathi, who was at the time of seeking release order in Government Service and during seven years proceedings of appeal, he resigned from the service and started to continue to retain the shop as tenant.

10. In the written statement, Shiv Sewak Tripathi had pleaded that he requires the shop for himself but has not mentioned that the shops are required by him in order to his two sons, who are in Government Service or working in the Doctor's Clinic as a Compounder. These two sons had entered into the litigation of the original tenant transgressing the rights of three sons of landlord, who were awaiting the release of the rented premises.

11. The Appellate Court has ignored the most important fact that the landlords wanted to establish his three sons in business and The appellate authority has also ignored the finding of the learned prescribed authority that the landlord has a right to use the premises for expanding his business and augment his income (vide *Gaya Prasad Vs. Pradeep Srivastava*, 2001 (42) ALR 685 (SC) : [2001] 2 SCC 604). The Hon''ble Supreme Court in another judgment reported in *Ragavendra Kumar Vs. Firm Prem Machinery & Co.*, 2000 (38) ALR 458 (SC) : (2000) 1 SCC 679 has held that it is a settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter.

12. Learned counsel for the petitioner has further submitted that the tenant had his own house on the main street, i.e. Railway Ganj in the City of Hardoi and he could have used the lower portion of his premises to run a shop or keep his pattals, bidies and etc.

13. Having considered the submission of the learned counsel for the petitioner and perusing the record, there is sufficient force in the arguments of the learned counsel for the petitioner. The Appellate Court has recorded findings, without considering the evidence brought on record by the petitioner. It has misdirected itself in reversing the findings recorded by the appellate Court. The Appellate Court has not discussed and recorded its own findings, giving reasoning as to why he disagreed with the findings recorded and the conclusions drawn by the Prescribed Authority.

14. At the time of seeking release, one cannot imagine what would be the future and career of a tenant's children. The order is based on conjectures and surmises. The law is crystallized now that a tenant cannot dictate the landlord as to what business his children would do and in what manner the property of the landlord shall be utilized.

15. The landlord has established his bonafide need by producing sufficient material on record and the facts and law both are in his favour. It is always open for the landlord to live comfortably in his own house according to his requirements and the tenant cannot dictate terms to landlord and advise him what he should do and what he should not. The present case is squarely covered by the latest decisions of the Hon"ble Supreme Court of India as reported in (2005) 8 SCC 252, Sait Nagjee Purshotham & Co. Ltd. Vs. Vimalabai Prabhulal and others, 2005 (59) ALR 764 (SC) = 2005 (30) AIC 83 : (2005) 5 SCC 375 Kailash Chand and another Vs. Dharam Dass, (2005) 8 SCC 504 Rakesh Vij Vs. Dr. Raminder Pal Singh Sethi and others and JT 2000 (1) SC 127 Smt. G.Kaushalya Devi Vs. Ghanshyamdas.

16. On the point of comparative hardship, learned counsel for the petitioner has relied upon Bachhu Lal Versus X A.D.J. Kanpur Nagar 2006 (64) ALR 1 : [(2006) 2 ARC 439] and Smt. Tahmina Habib Versus A.D.J./Special Judge (E.C. Act) , Banda and others 2006 (62) ALR 905 : [(2006) 2 ARC 464].

17. In this case, the Court has found that the release application was submitted in the year 1991 and it has not come on record as to what efforts were made by the tenant Shiv Sevak Tripathi or his three sons to find out alternative accommodation in the City of Hardoi for settling their alleged business. Nothing has been pleaded before the Courts below. Law is already settled that once release application is submitted before the Prescribed Authority, it is the duty of the tenant to look for alternative accommodation. These days several shopping malls are coming in the urban areas of Uttar Pradesh. Several shopping areas have been earmarked by the local bodies where such tenants can find alternative accommodation and settle their business. This approach of land and shop grabbing cannot be permitted.

18. To strengthen his submissions regarding bona fide need of the accommodation and settling the business of his sons, he has relied upon the citations of Raja Ram and others Versus II A.D.J. Farrukhabad and others [(2006) 1 ARC 610], Shyama Devi Versus IV A.D.J. Varanasi and others 2006 (63) ALR 558 : [(2006) 1 ARC 829], Ram Sewak Versus Special Judge (E.C. Act), Jhansi 2006 (62) ALR 116 : [(2006) 2 ARC 418], and Rishi Kumar Govil Versus Maqsoodan and others 2007 (53) AIC 30 (SC) = 2007 (67) ALR 774 = [(2007) 4 Supreme Court Cases 465].

19. This Court has also found from record that the tenant has made no efforts for searching alternative accommodation after the release application was submitted by the landlord before the prescribed authority in the year 2003. The Hon"ble Supreme Court of India in 2006 (63) ALR 438 (SC) : AIR 2003 SC 2713 : 2005 (2) ARC 899 B.C.Bhutada Vs. G.R.Mundada and this Court in recent decisions of this Court as reported in 2005 (1) ARC 394 : 2005 (1) ARC 394 Jogendra Singh Bajaj (Dr.) and others Vs. IVth Additional Disdtrict Judge, Saharanpur and another, 2004 (56) ALR 823 : 2005 (1) ARC 37 Radhey Shyam Shukla Vs. VIIth Additional District Judge, Kanpur and another, 2006 (1) ARC 65 : 2006 (1) ARC

65 Hashmat Ali Vs. Vith A.D.J., Kanpur Nagar and others and 2006 (1) ARC 93 : 2006 (1) ARC 93 Braham Kumar and others Vs. Raja Ram and others following the principles of law laid down in the said case, have held that in respect of comparative hardships, if the tenant did not show what efforts he made to search an alternative accommodation after filing of the release applications, this fact was sufficient to tilt the balance of hardship against him.

20. In view of above, the writ petition is allowed. The judgement and order of the lower appellate court dated 29.9.1999 is set aside. The judgement and order of the prescribed authority dated 13.10.1992 allowing the release application filed by the landlord and ordering eviction of the tenant is upheld. This order shall be complied with within six weeks from the date of presentation of the certified copy of the order before the appropriate Court.

21. Taking into account the special circumstances of the case, the opposite parties are directed to hand over the vacant and peaceful possession of shop situate at Railway Ganj, Hardoi to the petitionerlandlord within one month from today. It is also clarified that the rent of Rs. 15/ per month, which the opposite parties were paying for the abovesaid premises, is too meagre and is virtually no rent in the eyes of law, this Court directs that the respondentstenants shall pay the rent at the rate of Rs.300/ per month to the landlord with effect from 13.10.1992, the date of judgment and order passed by the prescribed authority under the Act and Rs.25,000/ as costs of litigation pursuing the legal remedies for about 17 years. The arrears of rent uptodate shall be paid after deducting the amount of rent already paid by the tenant to the petitioner landlord within two months from today.