

(2009) 11 AHC CK 0309

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 58972 of 2007

Vrindavan Lal and Others

APPELLANT

Vs

Roopkishor Singhal and Another

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

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

Citation : (2009) 11 AHC CK 0309

Hon'ble Judges : Shishir Kumar, J

Judgement

Shishir Kumar, J.—Heard Sri M.K. Gupta, assisted by Sri Parvez Alam, learned.

Counsel for the petitioners and Sri K.K. Tripathi, learned Counsel for respondents.

2. This writ petition has been filed for quashing the orders dated 25.8.2007 and 20.1.2007 passed by the Additional District Judge as well as the Prescribed Authority, (Annexures 8 and 5 to writ petition).

3. The petitioners being tenant have filed this writ petition on the ground that the Courts below have not considered the offer made by the petitioners regarding availability of various other shops and accommodations belonging to the respondent landlord. The petitioners have been tenants of the disputed shops No. 2 to 5, Main Bazar, Fatehpur Sikri for the last 35 years. The landlord respondent filed an application under section 21 (1) (a) of Act No. 13 of 1972 for release of the said shop to establish his son Lokendra Singhal, who is unemployed. It was pleaded in the application that rent of shop is Rs. 500/and tenancy of the shop is not prior to 1986. A written statement was filed denying allegations made in the application and it was specifically stated in the written statement that various other shops are available and the petitioners are carrying on the business jointly in the shop in question and there are 25 members in the family. The learned lower Court after hearing both the parties and, after considering the comparative hardship and bona fide need allowed the application. The appeal filed by petitioners has also been dismissed.

4. Sri M. K. Gupta, learned Counsel for petitioners submitted that the hardship and bona fide need have not been considered by the authorities below because there are two shops available in the Jai Devi market and that were being closed and if it is needed for his elder son, the same can be utilised. Further the Courts below have not considered that an offer was made by the petitioners that as the respondent was having various accommodations and one of the accommodations may be given to the petitioner for running his shop for the purpose of livelihood but the Courts below have not considered the same and have dismissed the claim of the petitioners holding therein that the need of the respondent is more genuine and bona fide. It was specifically mentioned that various other shops and accommodations are available and therefore, in view of Rule 16 (2) (c) of the Rules, the prescribed authority should have considered the application in that light that in case, it was not suitable for the landlord for the purpose of business, that may serve the purpose of tenant, then in that case the landlord should let out that accommodation to the tenant on a fair rent to be fixed by the prescribed authority.

5. Sri M. K. Gupta, learned Counsel for petitioners states that the Courts below have not considered this aspect of the matter in view of Rule 16 (2) (c) of the Rules of 1972. Therefore, the matter needs reconsideration. Further submission has been made that admittedly two shops are belonging to the mother of respondent and after the death of the mother have developed on the respondents landlords. Therefore, it can safely be presumed that there is an availability of the alternative accommodation to the landlord for the purpose of establishing his son.

6. On the other hand, Sri K. K. Tripathi, learned Counsel for respondents submits that all these things have been considered by the Courts below and the Courts below have considered this aspect of the matter that the need of the respondent is more bona fide and genuine therefore, this Court cannot interfere in the matter.

7. I have considered the submissions made on behalf of the parties and have perused the record. From the findings recorded by the prescribed authority as well as by the appellate authority, it appears that a finding has been recorded that in the Jai Devi market there are shops but that is in the back side and that is being used for store purpose. They are not vacant. A finding has also been recorded that there is a plot available in the Gurmandi. Further an offer was made by the petitioners that if the shop situated in the back side of the Jai Devi market is given to the petitioners that will satisfy the need and this shop in which the petitioners are in possession, the requirement of the landlord will also be satisfied. But this fact has not been considered which is necessary in view of Rule 16 of the Rules.

8. In view of the aforesaid fact, I am of opinion that the matter needs reconsideration in the light of Rule 16 (2) (c) of the Rules. In view of the above fact, the power passed by the Appellate Authority dated 25.7.2005 in Misc. Case No. 23 of 2007 (Annexure 8 to writ petition) is quashed and the matter is

remanded back to appellate authority to consider the claim of parties strictly in accordance with law and in view of the observations made above as well as in view of Rule 16 (2) (c) of the Rules of 1972.

9. The writ petition is disposed of accordingly.

10. No order is passed as to costs.

11. As the matter is very old, it should be decided by the Appellate Authority within six months from the date of production of a certified copy of this order before him. It is open to the parties to lead fresh evidence.