
(2009) 09 AHC CK 0043
In the Allahabad High Court

Yogendra Kumar Agarwal

APPELLANT

Vs

Smt. Sushma Devi and Others

RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2009) 4 AWC 3945

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—Heard Sri Siddhartha Verma, learned Counsel for the petitioner/tenant and Sri Rahul Sahai, advocate for the contesting respondents.

2. The prayer in the instant writ petition is for quashing the judgment and order dated 29.1.2009, passed by the Additional District and Session Judge, Court No. 10, Badaun in Rent Appeal No. 24 of 2006, Yogendra Kumar Agarwal v. Smt. Sushma Gupta preferred against the judgment and order in Rent Case No. 2 of 2002 dated 28.4.2006, passed by the Prescribed Authority/Civil Judge (Senior Division), Badaun. An application was filed by landlady for release of the disputed shop to settle her two sons namely Mohit and Rohit in business, u/s 21 (1)(a) of the U.P. Act No. 13 of 1972 (hereinafter referred as the Act). The application was filed by Smt. Sushma Devi wife of Rajendra Kumar Agarwal. The petitioner filed objection to the said release application pleading that the shop in question was only source of his livelihood and he will face greater hardship than the applicant-respondent-landlord who has already 10 shops at the disposal at Bareilly from which the sons of the landlady can start their business. The tenant-petitioner replied the objections and also affidavits which is part of the record. Evidence in form of affidavits were controverted by the landlady by filing counter-affidavits of herself, Rajendra Kumar, Prem Narain Gupta, Mohit Kumar and Giriraj Kishore

Pandey. A Commission was issued by the Prescribed Authority on application 33-C and a report was called for from the Amin who submitted his report on 2.2.2004. Objection to the said report was also filed by the tenant. The Prescribed Authority recorded its finding that the need of the landlady is bona fide and that she will suffer greater hardship in the event of refusal of release and allowed the application u/s 21 (1)(a) of the Act vide judgment and order dated 28.4.2006 which is Annexure-13 to the writ petition.

3. Learned Counsel for the petitioner while commencing on the findings arrived at by the Prescribed Authority has tried to draw my attention that situation and condition existing at the time of institution of the release application has undergone a sea change when it was finally decided by the Prescribed Authority. The petitioner filed an amendment application after the death of Prem Narain Gupta, father-in-law of the landlady and also mother-in-law Smt. Ganga Devi who died in April, 2004. A Will was executed by Smt. Ganga Devi in respect of the property situated in City of Bareilly creating a right and title in Durga Market, Bareilly. Three shops were bequeathed to Smt. Sunita wife of Ravindra, three other shops were given to the respondent-landlady Smt. Sushma and one shop each to her four daughters. Admittedly the shops are situated in Durga Market, Katra Man Rai, Bareilly, three other shops in Surkha Chhawani out of which 1 1/2 shop to Smt. Sushma Devi and remaining to her sister-in-law Smt. Sunita wife of Ravindra. The amendment application was rejected by the appellate court. However, the amendment was filed in the writ petition which was allowed by this Court on 27.2.2009 and the said amendment has been incorporated. After rejection of the amendment application, the petitioner preferred a writ petition vide Civil Misc. Writ Petition No. 60261 of 2008 which was disposed of on 25.11.2008 with an observation and liberty given to the tenant to bring additional facts and subsequent event by means of affidavit during course of argument and also he was granted liberty to advance argument on the question that the need of the respondent landlady now ceases to exist in the changed circumstances. Also that aforesaid affidavits as well as arguments shall be considered by the appellate authority with a further direction to decide the appeal expeditiously. The order of the High Court in the said writ petition is Annexure-15. Further grievance of the petitioner is that subsequent to the order of this Court, an application for issuing a fresh Commission was moved which was disposed of in a cursory manner. The affidavits were filed on 25.11.2008 and 18.12.2008 in the pending appeal consequent to the order of this Court but the same have not been taken into consideration. The appellate court did not rely on the affidavits and the appeal was dismissed.

4. Specific contention raised by the counsel for the petitioner is that after the death of Sri Prem Narain and Smt. Ganga Devi, a number of shops were available to the landlady and she could very well settle her sons in these shops. Besides, business carried out by Sri Prem Narain was also at the disposal of two sons of the landlady after his death in February, 2007 and thus her need set up in the release application did not exist on the date when the appeal was decided

but no weightage was given to the additional facts, consequently it has resulted in miscarriage of justice and liable to be interfered by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

5. Sri Rahul Sahai has disputed the arguments advanced by Sri Siddharth Verma specifically bringing to my notice that all the shops suggested and pointed out by the tenant which has come in the ownership of the landlady are all let out to the tenants and none of them are vacant and at the disposal of the landlady. It is settled law that the accommodations at the disposal of landlord which are in occupation of tenants cannot be taken into consideration while deciding a release application u/s 21 (1)(a) of the Act.

6. I have carefully gone through the two judgments, report of the Commission and also written submissions placed before me. So far the first argument of Sri Siddhartha Verma regarding the fact that there was no pleading of the landlady after the death of Smt. Ganga Devi on 5.4.2004 and consequently she inherited certain shops by virtue of her Will, was not specifically mentioned in the release application and, therefore, the application could not be allowed on the basis of her wrong assertion. Assuming that even if she had led evidence in respect of the Will it will make no difference. The fact that the landlady has got ownership of certain accommodation during pendency of the proceeding. It is only such shops which are vacant and at the disposal of the landlord can be a good ground for refusal of a release application. In support of this argument, learned Counsel has placed two judgments of Apex Court; Mangal Sen Vs. Kanchhid Mal, and Maqboolunnisa v. Mohd. Saleha Quaraishi 1999 (1) ALR 131, that since the pleadings were not amended, the Will and other facts brought on affidavits subsequent to the death of Smt. Ganga Devi could not be read in evidence and findings recorded by the court below is without jurisdiction.

7. I do not agree with this submission because the case of the Apex Court Mangal Sen (supra) was one, a suit for eviction on the ground of arrears of rent and it relates to the pleading in respect of Section 20 (4) of the Act for relieving tenant against his liability for eviction u/s 20 (2)(a) of the Act as well as the question of waiver of notice etc. This case has no applicability to the facts of the present case. The next case relied upon by the counsel is also of no help for the reason that in an application u/s 21 (2)(a) of the Act, the landlord is required to establish that the need set up in the release application is bona fide one that is to say that it is not merely a "desire" or imaginary need but it should be genuine and bona fide". The next question is to be decided whether the landlord or tenant who will suffer greater hardship in the event of refusal or grant of release. Admittedly, these two questions have been pleaded and even certain facts have been brought on record by means of affidavit, it is not necessary that the pleadings are required to be amended. I cannot forget the fact that when the amendment application of the tenant was rejected by the appellate court in the pending appeal and the same was challenged in the writ petition and this Court while disposing of the writ petition had specifically permitted the parties to bring

additional facts and subsequent event which could be taken into consideration by the Court while deciding two material questions required in a release application u/s 21 (1)(a) and (b) of the Act. This finding is also applicable regarding the second argument of Sri Siddhartha Verma that the amendment application filed by the petitioner should have been allowed.

8. Learned Counsel has also raised his objection on the ground that issuance of Commission by the appellate court was rejected. In support of both the arguments, learned Counsel has cited a number of decisions; Harish Chandra Jauhari v. Sunti Bajpai and Anr. 2008 (3) ARC 171 and Krishna Deo Lal Srivastava v. Roohullah Marooti and Ors. 1997 (31) ALR 648. It is not a case where the subsequent events have not been considered and not taken into account. A clear finding has been recorded that all the shops which came in the ownership of the landlady are in occupation of the tenants and, therefore, cannot be taken into consideration. Learned Counsel for the petitioner has emphatically stated that he is fortified by a number of decisions on these questions; Dwarika Nath Soni v. Bhagwan Das Gupta 2003 (1) ARC 418 and Vijay Ratan Agarwal v. Additional District Judge IX, Allahabad and Ors. 1988 AWC 385.

9. The next submission is that at the time when the release order is passed, it is necessary to ensure that the bona fide requirement of the landlord is genuine and he has no other reasonably suitable accommodation at his disposal. This alone will disentitle the tenant and a finding recorded in favour of the landlord on the question of bona fide need. In support of this argument learned Counsel has cited following decisions; Amarjit Singh Vs. Smt. Khatoon Quamarain, and Ashok Kumar Vs. VIth Additional District Judge, Muzaffarnagar and others,

10. A number of other decisions have been cited which are on the same points as discussed above and by only multiplying the citations a contrary finding cannot be arrived at. The courts below have clearly accepted the fact that Smt. Ganga Devi died on 6.5.2004 which is also admitted by the petitioner-tenant and consequent inheritance by the landlady of some shops, but all those accommodations are admittedly let out to various tenants which is substantiated by a copy of notice as well as a number of rent receipts. This clearly establishes that all the shops in Durga Market which has been bequeathed to Smt. Sushma, Smt. Sunita and other four daughters by late Smt. Ganga Devi, mere ownership is devolved and cannot disentitle the landlady from getting a release order in her favour to settle her sons in an independent business. Admittedly, there is no such assertion on behalf of the tenant or any evidence even in shape of affidavits that sons have now been established in business and whatsoever need was in existence at the time of institution of release application stands now extinguished. In view of this requisite assertion, the findings of the courts below that the bona fide need of the landlady continues to exist and also on the question of hardship, are all concluded by finding of fact and cannot be taken into consideration. The landlady has placed reliance on a number of decisions; Govind Lal v. IInd Additional District Judge, Jhansi 2006 (1) ARC 213; Mohd. Arif

v. IIIrd Additional District Judge, Pilibhit 2005 (2) ARC 793 : 2006 (2) AWC 1075; Hari Shanker and Ors. v. VIth Additional District Judge and Ors. 2008 (3) ARC 178 and Alen Halwai and Ors. v. Additional District Judge, Pilibhit 2006 (1) ARC 809. In all these cases, this Court has categorically concluded that even if certain shops are owned by the landlord but the same are in tenancy of different tenants, this alone cannot constitute a ground that the bona fide need is not established.

11. Last submission of the learned Counsel for the petitioner is that the landlady is residing at Bareilly and the shop in question is situated at Badaun which is 50 kilometers away from the place of residence of the landlady and, therefore, this shop is eventually of no use to the sons.

12. Sri Rahul Sahai has specifically submitted that there is residential accommodation above the shop and the landlady's son proposes to stay in that accommodation and run his shop. Besides, there is no vacant shop at Bareilly as well and, therefore, the assertion and arguments cannot be a ground for coming to a conclusion that the need set up by the landlady is not bona fide and hardship already faced by sons who are not yet settled and have no independent income, stands fulfilled and the need if compared will that be of the tenant more than the landlord.

13. In view of the findings and conclusions arrived at, the writ petition lacks merit and is accordingly dismissed.

14. So far the question of compensation in view of the second proviso of Section 21(1)(a) of the Act No. 13 of 1972 is concerned, this can very well be rectified at this stage as well. Besides, the release application was allowed in the month of January, 2009 but the petitioner continues to be in occupation even today in the month of August. The landlady shall pay two months' rent by way of compensation as required under the Act. The landlady is entitled to get possession of the disputed accommodation to fulfil her requirement.