Smt. Ram Devi Vs. Viiith Additional District Judge, Kanpur and Others

Smt. Ram Devi Vs. Viiith Additional District Judge, Kanpur and Others

SooperKanoon Citation : sooperkanoon.com/456044

Court : Allahabad

Decided On : Oct-13-1998

Reported in : 1999(1)AWC424

Judge : J.C. Gupta, J.

Acts : Uttar Pradesh Buildings (Regulation of Letting and Rent and Eviction) Act, 1972 - Sections 3 and 21(1); Constitution of India - Articles 226 and 227

Appeal No. : C.M.W.P. No. 9518 of 1981

Appellant : Smt. Ram Devi

Respondent : Viiith Additional District Judge, Kanpur and Others

Advocate for Def. : S.C. and ;Vinod Misra, Adv.

Advocate for Pet/Ap. : Sheo Kumar Singh, Adv.

Judgement :

J.C. Gupta, J.

1. This landlady's petition,

2. The dispute relates to a portion of residential house No. 118/500. Kaushalpuri, Kanpur which is in occupation of respondent No. 3 as tenant on behalf of the petitioner-landlady. The landlady moved an application under Section 21 (1) (a) of

the U. P. Act No. 13 of 1972, (hereinafter referred to as the Act), against respondent No. 3 for releasing the said accommodation in her favour on the ground that she was in dire need of additional accommodation because the accommodation already in her occupation was not sufficient to cater the need of her family members which consisted of herself, three marriedsons their wives and grandchildren, it was further alleged that her mother-in-law Smt. Ram Dulari was also living with her. The landlady has in her occupation only two rooms measuring 8' x 8 a 'Kothari' measuring 6' x 3' and a verandah, whereas the family of the tenant consisted of himself, his wife and two children. Therefore, the landlady would suffer a greater hardship than that of the tenant in case the application was rejected. The application was contested by the tenant on a number of grounds. It was alleged that one of the sons of the landlady has taken up his residence in Vijay Nagar Colony and her grandchildren were all minors and that she was comfortably living in the portion occupied by her and her need for additional requirement was not bona fide inasmuch as she simply wanted to oust the tenant as she has done with other tenants. The Prescribed Authority rejected the release application and the appeal filed by the landlady has also been dismissed. Both the orders have been challenged in this writ petition.

3. I have heard Sri S. K. Singh, learned counsel for the petitioner and Shrt Vtnod Mishra, learned counsel for the respondent and have also gone through the record.

4. Learned counsel for the petitioner submitted that the authorities below have rejected the claim of the petitioner on wrong parameters of law inasmuch as they have erroneously excluded from consideration the requirement of the mother-in-law of the petitioner who was undisputedly living with the petitioner merely on the ground that she was not a member of 'family' as defined under the Act. It was also argued that the findings of the Courts below are vitiated as the question of bona fide need of the landlady has been answered on misreading of evidence and further that the rejoinder-affidavit filed on behalf of the landlady before the Prescribed Authority has not been taken into account which explained the position with regard to the allegation of thetenant about the petitioner's son having another house in his occupation- On the other hand, learned counsel for the respondent

contended that both the Courts below have recorded concurrent findings of fact on the question of bona fide need of the petitioner and, therefore, this Court should not intervene.

5. It is true that this Court while exercising powers under Article 226/227 of the Constitution of India does not act as a court of appeal and the powers are of judicial review only. It is also well settled that this Court in exercise of powers of judicial review does not ordinarily interfere with the concurrent findings of fact recorded by the Courts below on appraisal of evidence but that does not mean that in no case this Court will intervene. When can Interference be made in writ jurisdiction in such cases, has been explained by the Supreme Court in the case of M/s. Variety Emporium v. V. R. M. Mohd. Ibrahim Naina. 1985 (I) SCC 251. In that case, the Apex Court made interference on the ground that injustice should not be allowed to be perpetuated.

6. Even in those cases wherethis Court in it s writ jurisdiction isfaced with concurrent decisions, it isthe duty of the Court to examine thematerial and do justice between theparties and it will be a denial ofJustice if the Court acts on acomputerised system ofadministration of justice by justaffixing a rubber stamp of approvalon the concurrent decisions merely on the ground that they are based onfindings of fact. I do not feel that thelitigant public should be given amessage that concurrent findingshowsoever erroneous may be, cannotin any circumstance be questioned inwrit jurisdiction. Where the case of aparty has been accepted without anobjective test and careful assessmentof evidence on record, intervention bythis Court becomes necessary fordoing justice between the parties.

7. In the case of Chandravarkar Sita Ratna Rao v.Ashalata S. Guram, (1986) 4 SCC 447. It was held by the Apex Court that inexercise of jurisdiction under Article 227 of the Constitution, the High Court can go into the question of facts or look into the evidence if justice so requires. But it should decline to exercise that jurisdiction in the absence of clear cut down reasons where the question depends upon the appreciation of evidence. It also should not interfere with a finding within the jurisdiction of the inferior Tribunal or Court except where the finding is perverse in law in the sense that no reasonable person properly instructed could have come to

such a finding or there is misdirection in law or a view of fact has been taken in the teeth of preponderance of evidence or the finding is not based on any material evidence or it has resulted in manifest injustice. Except to that limited extent the High Court has no jurisdiction.

8. In the case of Smt. Nirmala Tandon v. Xth Additional District Judge. Kanpur. 1996 (2) ARC 409. It was held this Court that the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India in rent control matters is supervisory in nature and it does not sit as a court of appeal when called upon to judge the findings of the competent authorities, viz., bona fide need of the landlord and comparative hardship of the parties. The Court would not embark upon reappraisal of the evidence or substitute its own findings of fact in place of findings reached by the fact finding authorities. It is clearly outside the Court and ambit of the judicial review. However, findings of fact may be interfered with when they are based on account of wrong application of principle of law relevant thereto or relevant material has not been taken into consideration or a finding is otherwise arbitrary or perverse.

9. The Supreme Court in Damadi Lal and others v. Paras Ram and others. Civil Appeal No. 884 of 1968, held that the finding of fact arrived at ignoring important and relevant evidence is bad in law and could be set aside by the High Court in exercise of powers under Article 226/227.

10. It is true that the remedy under Article 226/227 to seek judicial review is not by way of appeal but is only a review of the manner in which the decisions have been made. The parameters of judicial review in such matters are well settled as a result of various pronouncements, both of the Supreme Court and the High Courts. The High Court examines only the reasonableness of the finding. If the finding is found to be rational based on evidence and the decision is one which any reasonable minded person acting on such evidence would have arrived at, then judicial review is exhausted. The High Court cannot correct or reverse such a finding of fact even though the same may not be to the liking of the Court, The Court can interfere when the finding is found to be manifestly erroneous and arbitrary.

11. While deciding the case of Jai Bhagwan Goel v. XVIth Additional District Judge. Muzaffarnagar and others, 1998 (3) AWC 1601. It has been held by me that that the duty to appreciate the evidence is exclusively assigned by law to the Prescribed Authority and the appellate authority under the Act and the findings of fact recorded by the Courts below will not be vitiated if there is legal evidence to support them, notwithstanding that some of the reasons given in support thereof are not very convincing. It is also well established that while exercising powers in writ proceedings, a finding of fact recorded by the Courts below cannot be substituted by the High Court by its own finding of fact even on the ground that another more convincing view is possible from the evidence on record. It has to be shown that such findings suffer from manifest error of law before this Court is called upon to make interference in those findings.

12. In the backdrop of the above legal principles and on examination of the impugned decisions of the authorities below, this Court finds that the order of the appellate authority cannot be sustained because the said authority has answered the question of bonafide need on a wrong assumption of legal position inasmuch as the requirement of the mother-in-law of the petitioner has been excluded from consideration merely on the ground that she does not fall within the definition of 'family' as given in clause (g) of Section 3 of the Act. It is true that mother-in-law does not strictly fall within the definition of 'family' as defined under the aforesaid clause but that does not mean that even if she is found to be living with the landlady as a member of family still her requirement is not to be looked into at all.

13. The words 'for occupation by himself or any member of his family' used in clause (a) of Section 21 (1) of the Act came up for consideration before this Court in the Case of Thakur Deen v. Heero Devi, 1964 ALJ 787, and it was held therein that the word 'occupation' in the expression 'for occupation by himself or any member of his family' in the context in which it is placed in Section 21 (1) (a) means occupation by the landlord or the members of his family along with those persons who would normally reside with him. It does not mean that the landlord or a member of the family of the landlord, must need the accommodation for his occupation alone in the sense that he cannot bring with him any other person who would normally live with him. The landlord's need for occupation of the demised

premises would, therefore, include the need for occupation of persons permanently residing with him even though they are not members of his family within the meaning of Section 3 (g) of the Act.

14. There is yet another decision in the case of Smt. Kamla Ahuja v. VIth Additional District Judge, 1981 ALJ 611, to which a reference may be made. In that decision, Hon'ble S. D. Agarwal, J.. following his own earlier decision in Smt. Rani Chaturvedi v. Shiv Narain and others, 1979 ARC 479, held that even though a person may not come in the definition of the word 'family' defined under the Act but if the said relation is staying with the landlordpermanently, the need of the landlord will be there to accommodate the person and, therefore, while considering the need of the landlady the need of the mother-in-law of the landlady has also to be considered.

15. In the case of Keshaw Narain Sharma v. 1st Additional District Judge. Lucknow and others, 1981 ARC 627. It was held that it is true that the nephew and nephew's wife and children would not be members of landlord's family as defined in the Act but the landlord being a bachelor, there was nothing unusual about his taking other close relatives to live with him for his company and comfort. Their living with him was part of his own personal need.

16. In yet another decision in the case of Misri Lal v. Special Judge, Gorakhpur and others, 1998 (2) ARC 430, the question which arose for consideration was whether application filed by the landlord for the need of his married daughter was maintainable in law? The Hon'ble Judge who decided the said case was of the view that expression 'for occupation by himself' used in clause (a) of sub-section (1) of Section 21 of the Act cannot be construed very narrowly to mean that the landlord should live in isolation or by himself only. In other words, the expression within its ambit includes the personal requirement of the landlord. It may include landlord's servant, some other person or persons who look after him and take care and whose company and assistance is or has become necessary though technically they may not be members of his family as defined in the Act.

17. While considering the question of the need of the landlord, the fact that the relations of the landlord are permanently residing with him is a relevant

consideration as their requirement should be included in the need of the landlord and the same has also to be taken into consideration. The matter was exhaustively examined by Hon'ble S. R. Singh. J.. In a recent decision of this Court in Chandra Pal Singh Parihar v. Additional District Judgeand others. 1992 ACJ 1128, and it was held that if a landlord moved by social rules and moral principles, sentiments of love and affection, sympathy and compassion, permanently accommodates with him a person related to him by marriage or birth, directly or indirectly, who is in distress, the need of occupation for the purposes of residence of such a person may be taken as the need of the landlord himself notwithstanding the fact that such person is not a member of the landlord's family within the meaning of the term as defined in Section 3 (g) and the landlord also does not require such person for any assistance, personal or professional. Reason being the fulfilment of landlord's social and moral need. The Hon'ble Judge observed 'the authorities under the Act must, therefore, scrupulously examine that the professed need of the landlord is bona fide and genuine and must see whether the person for whom he needs an extra accommodation is permanently residing with him not as a separate unit but as a member of his family in the sense of the term used in common parlance. This is in my opinion is the broad principle according to which need of a person being not a member of the landlord's family and also not being required by him for any personal or professional assistance, may be treated as the need of the landlord himself for the purpose of Section 21 (1) (a) of the Act'.

18. Concept of joint family and joint living is well known in our society. Where the property is owned by a woman, often her father-in-law, mother-in-law, brother-in-law (Devar) and sister-in-law (Nanad) live jointly as a single unit though strictly speaking they do not fall within the definition of 'family' as defined under the Act yet to exclude them from consideration while considering the requirement of the landlady would be against the true intent and spirit of the law makers. In such cases requirements of such persons cannot be overlooked while considering the need of the landlady for additional space to cater the need of her family members. The law does not envisagethat the landlady before she could ask for additional space should first ask for mother-in-law, etc. to make their own arrangements elsewhere,

19. In the present case, the mind of the authorities below appears to have been swayed away on a wrong legal assumption that since the mother-in-law of the petitioner was not included in the definition of family' under the Act, her requirement for some space could not be taken into account. This approach of the authorities below was manifestly erroneous and the same has materially affected the decision of the case on the question of the need of the landlady for additional requirement.

20. There is yet another reason for not sustaining the order of the appellate authority. All the three sons of the landlady were undisputedly married and there are number of grandchildren and with the passage of time, they must have been grown up and the landlady came with the case that she has in her occupation only two rooms measuring 8' x 8' but while considering her need for additional requirement, the appellate authority has misread the evidence and considered the question of the need of the landlady on the assumption that she has in her occupation' three rooms. The 'Kothari' which measured 6' x 3' could not have been treated as a living room and the whole approach of the authorities below while judging bona fide need has been wrong as they appear to have acted as rationing authorities. There is no strail-jacket formula for distribution of accommodation simply on the basis of the number of family members. The landlord who has a high status in the society and has been used to a high standard of living may be allowed to have a spacious accommodation as compared to a person of lower status. The question as to the requirement of additional accommodation, therefore, is not to be answered solely by counting the number of family members alone and while answering such a question, the authorities are required to take into consideration each and every relevantfact and factor such as status of the landlord, his life style of living, the social obligations etc. It is true that the need cannot be considered to be bona fide merely on the ipso dixit of the landlord or on his whims only and it is only on the analysis of the entire facts and circumstances appearing in the case that a Court should record a clear cut finding of bona fide need. The lower appellate authority has not examined the matter with this point of view.

21. It has also been rightly pointed out by the learned counsel for the petitioner that the Prescribed Authority wrongly did not take on record the rejoinder-affidavit of the landlord-petitioner which was an important piece of evidence and in any view of the matter, though the said rejoinder-affidavit has been taken into consideration by the lower appellate authority, yet the finding is vitiated on the ground that the said document has been misread and the facts stated therein have not been considered in their right perspective inasmuch as it was the definite case of the landlady that her son Om Prakash has shifted back to her house and the house which was in occupation of his son was no longer available for him for residential purpose. No finding has been recorded as to whether or not Om Prakash has actually shifted back to the portion in occupation of the landlady. If he has come back with his wife and children, some space would definitely be needed for them which would have a long bearing on the question of need of the landlady for additional accommodation. All these aspects of the case have not been duly considered by the Appellate Authority and, therefore, findings on the relevant questions are vitiated in law.

22. In the circumstances and, for the reasons stated above, the order of the appellate authority cannot be sustained and the case needs to be remanded back to the appellate authority for a fresh decision both on the question of bona fide need and on comparative hardship.

23. Learned counsel for the respondent urged that during this long period, some important subsequent events have also occurred such as the landlady has come in occupation of other accommodations, which have been vacated by other tenants and in this view of the matter, the need of the landlady, if any, stands satisfied. Since the case is being remanded back to the appellate authority, it shall be open for the respondent-tenant to bring to the notice of the appellate authority any such subsequent events which may be having direct bearing on the question of bona fide need of the landlady and if such facts are brought on record, the appellate authority shall duly consider them also in accordance with law.

24. For the reasons stated above, this writ petition is allowed. The order of the Appellate Authority dated 15.4.1981 is set aside and the said authority is directed

to decide the appeal afresh in accordance with law and in the light of the observations made above. The appeal shall be heard and decided expeditiously, preferably within a period of three months from the date of production of certified copy of this order.

25. In the circumstances parties shall bear their own costs.