Mohammad MatIn Vs. the Additional District Judge, Kanpur and ors.

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Court : Allahabad

Decided On : Mar-13-1975

Reported in : AIR1975All390

Judge : Gopi Nath, J.

Acts : Uttar Pradesh Urban Buildings Regulation of Letting, Rent and Eviction Act, 1972 - Sections 21 and 23; Uttar Prades (Temporary) Control of Rent and Eviction Act, 1947 - Sections 3, 3(2), 21(1), 21(2) and 43; Constitution of India - Article 226; Uttar Pradesh Urban Buildings Regulation of Letting, Rent and Eviction Rules, 1972 - Rule 16

Appeal No. : Civil Misc. Writ No. 2951 of 1973

Appellant : Mohammad Matin

Respondent : The Additional District Judge, Kanpur and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : R.R. Agarwal and ;A. Rathore, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

Gopi Nath, J.

1. This is a petition under Article 226 of the Constitution. It challenges the order of respondent No. 1 dated 27-4-1973 allowing a revision in a proceeding under Section 3 of the U. P. (Temporary) Control of Rent and Eviction Act (Act No. III of 1947), hereinafter referred to as the old Act. By the impugned order the revising authority released the accommodation in dispute in favour of respondent No. 3 the landlady.

2. The tenant is the petitioner and the dispute relates to house No. 98/29, Bekanganj, Kanpur. The accommodation is sufficiently big and was let out to the petitioner in the year 1951. He subsequently started a business in it. In 1962 he purchased a house No. 98/157 in the same locality and shifted in it. Since then he has been using the accommodation in dispute only for purposes of business. The respondent No. 3, the landlady, has a large family and her source of livelihood has been income from zamindari property and some rents from houses. Her husband, it is stated, is diabetic and suffers from anginal troubles also. The application for permission was filed on the ground that the family being big, the income was insufficient to maintain it; one of her sons having come of age she wanted to put him in business and start one in the accommodation in dispute. Since the business contemplated was of sale of building materials which involved stocking in sufficient quantity materials like sand, Lime, Surkhi and other such materials, a spacious accommodation was required for the purpose. The house in dispute was the only suitable accommodation available. The application stated that the petitioner owned House No. 98/157. Bekanganj, Kanpur which was very big and where he had shifted his business; and the premises in dispute were not needed by him any longer; besides, the petitioner owned a large track of land at Jajmau having a godown. shed and store which was another alternative accommodation available for his business. The need of the landlady was thus pressing while the tenant had two sufficiently big alternative accommodations available to him for the purposes of his business. It was stated that he had already shifted his business to premises No, 98/157, but even if he had not done so, he could do so either in those premises or in the premises at Jai-mau.

3. The petitioner contested the application on the allegations that respondent No. 3 did not genuinely need the accommodation in dispute; that the application was filed with a view to getting the rent enhanced; that the contesting respondent owned several other houses; that accommodation was available in those houses for the business proposed; that the petitioner had been carrying on the business of hides and skins in the premises in dispute since 1951; that the business carried on in premises No. 98/157 was a different business run in partnership by him; that the plot at Jajmau was not suitable for the business of raw hides and skins. The application in the circumstances deserved to be rejected.

4. The Rent Control and Eviction Officer dismissed the application on the findings that the petitioner was carrying on the business of raw hides and skins in the premises in dispute since 1951; that in premises No. 98/157, owned by the petitioner another business was being carried on by a partnership firm of seven partners of which the petitioner was one besides the petitioner was also living in a portion of it; that the stock of raw hides and skins required sufficient space and could not conveniently be shifted to premises No. 98/157; that Bekanganj was a market area for hides and skins and the petitioner had established a good will, that the accommodation at Jajmau was not suitable for the business of hides and skins that even though the landlady had no other suitable accommodation available to her for the business, the permission praved for could not be granted in the circumstances of the case.

5. On revision the Additional District Judge set aside the order of the Rent Control and Eviction Officer and released the house in dispute in favour of respondent No. 3. The Additional District Judge on a comparison of the needs of the parties held that the need of the landlady was greater and the petitioner was not likely to suffer any hardship by the release as he had suitable alternative accommodation available to him. He held that the landlady had only one house in her name viz. the one in dispute; that the application for permission was not filed with a view to enhancing the rent; that the accommodation was genuinely needed for carrying on the business of building materials; that the petitioner's house No. 98/157 was a very big one and there was sufficient vacant accommodation consisting of rooms and covered sheds and varandas available for the purposes of the petitioner's

business. He has given details of the vacant space. This building according to the learned Judge was a big mansion and can easily accommodate the Detitioner's business in a portion of it. Besides the tract of land at Jaimau with a godown, store and shed was another suitable alternative accommodation available to the petitioner. He thus concluded that the need of the landlady was genuine; and that the petitioner was not likely to suffer from the release. He accordingly, ordered release.

6. The order has been challenged on the grounds---

'(i) that the learned Judge had no jurisdiction to pass an order of release in a proceeding under Section 3 of the U P. (Temporary) Control of Rent and Eviction Act, 1947;

(ii) that the comparative need of the parties had not been properly considered, as the directive principles laid down under the Rule 16 of U. P. Urban Buildings Regulation of Letting Rent and Eviction Act, 1972 were not applied; and

(iii) that the finding as to need, was vitiated on the ground of irrelevant considerations influencing the learned Judge.'

7. I shall deal with these paints seriatim.

8. Learned counsel contended that the revision filed had to be decided in accordance with the provisions of the Old Act, which permitted no release. Learned Judge was consequently wrong in taking into account the provisions of Section 21 of the new Act, viz., U. P. Urban Buildings Regulation of Letting Rent and Eviction Act, and passing an order of release. We have, however, to consider the true scope and effect of the order passed and then see whether it deserves quashing. Under Section 43 (m) of the new Act revisions under Section 3 (2) of the Old Act pending at the commencement of the new Act stood transferred to the District Judge, who had to decide them on considerations relevant to the old Act. But since no remedy has been left open for enforcing a permission to evict on grounds other than those contemplated by Section 21 (1) and (21 of the New Act the revisional authority has to refuse permission if it is sought on a ground not

covered by that Section and has to grant it if it is covered. On the permission being granted the landlord has to apply to the Prescribed Authority under Section 21 and make further proceedings under Section 23 of the New Act. The premis-sion in the instant case was sought on the ground of bona fide need -- a ground covered by Section 21 of the new Act Suitable orders could, accordingly, be passed by the learned Judge. The question is whether in passing an order of release he has misdirected himself and the same deserves to be quashed. In Sibte Hasan v. State of U P., 1974 All LJ 7 = (AIR 1974 All 86) the revising authority directed eviction instead of granting permission to sue in a revision under Section 3 (2) of the old Act. The revising authority observed in that case that the application would be deemed to be one under Section 21 of the New Act. It was urged that the result of the order of the revising authority was to allow the landlord to straightway take recourse to Section 23 of the New Act and evict the tenant. The Bench observed that the operative order showed a slight confusion. The application never lost its character as one under Section 3 of the old Act and that 'on the basis of the order of the learned Additional Dist. Judge, the landlord shall be required to apply to the Prescribed Authority under Section 21 of the Act and having obtained an appropriate order shall have to move, if necessary, for a proceeding under Section 23 of the Act. The observation, to which reference has been made above, does not, to our mind, in any manner affect the decision of the learned Additional District Judge on merits'. The petition was rejected.

9. The direction for release in the instant case, in view of the observations in Sibte Hasan (supra) will enable the landlady to take appropriate proceedings under the new Act for the eviction of the petitioner. The order on merits is not liable to be quashed on the ground raised.

10. It was then urged that the learned Judge did not assess the comparative needs in accordance with law. The application was moved on the ground of bona fide need a ground falling under both the Acts. The learned Judge compared the needs of the parties. According to him the need of the landlady was greater. She stood in need of augmenting her income. She genuinely intended to start a business. The premises were the only available premises she could apply for. She reasonably required the same. As compared to this the tenant had two alternative

accommodations at his disposal- House No. 98/157 was in the same locality. It had sufficient accommodation to accommodate the petitioner's business. The assessment of the learned Judge on this part, it seems to me, is not open to scrutiny -- the question involved being one qf fact. He then held that the plot at Jaimau was another alternative accommodation at the disposal of the tenant. The tenant was thus to suffer no hardship if he had to vacate premises No. 98/29. There seems to be no misdirection made by the learned Judge in assessing the needs. It is true that a desire is not a requirement and A formal requirement may not be a pressing need. But a reasonable requirement is a bona fide need, and an assessment of that question by an appel-late or revising authority becomes con-cluded by a finding of fact, not open to challenge in a writ petition See Mittu-lal v. Radhe Lal, AIR 1974 SC 1596 and Phirose Bamanji Desai v. Chandrakant M. Patel, AIR 1974 SC 1059. 1 thus find no ground for interference in the finding regarding the naed of the landlady, recorded by the learned Judge.

11. Learned Counsel for the petitioner urged that the directive principle underlying Rule 16 of the new Act had been ignored by the learned Judge in that the likely hardship of the tenant with reference to the period of his existing business was not taken into account.

12. The argument has no force. The case being one under the Old Act, the provisions of the new Act do not strictly apply. See Sibte Hasan v. State of U. P., 1974 All LJ 7 = (AIR 1974 All 86) and Inderjeet Singh v State of U. P., 1974 All LJ 86 = (AIR 1974 All 240). In Inderjeet Singh (supra) it was held that the vires of Rule 16 did not require consideration as the case being under the old Act, the question of the vires of that Rule did not arise.

13. Further, the learned Judge was alive to the question of hardship as the alternative accommodations according to him sufficiently met with the need of the tenant, particularly when house No. 98/157 was in the same locality. No dislocation of his business was thus involved and he was not likely to suffer any hardship.

14. Learned Counsel invited my attention to Civil Misc Writ No. 1575 of 1971, decided on 13-9-1874 (All) and urged that the authority below erred in not

considering the question of good will of the petitioner's business and the likely hardship ensuing on its disturbance. As observed earlier no dislocation of the petitioner's business could be said to be involved if it was shifted to premises No. 98/157.

15. It was then urged that the order was vitiated on the ground of an irrelevant consideration having influenced the learned Judge viz., that the land at Jajmau constituted a suitable alternative accommodation for the business of the petitioner. The contention is not sound.

16. In the instant case the revising authority took two alternative accommodation into consideration. House No. 93/157 was good enough by itself. The question as to whether it was vacant or not is a question depending on the assessment of evidence. The learned Judge examined the material on record and reached a conclusion in favour of respondent No. 3. The evidence cannot be re-asses-ed. If that house furnished an alternative accommodation, the plot at Jajmau need not have been considered at all. Learned Judge found it as an additional accommodation. It could not be held to be wholly irrelevant as well. It was an alternative accommodation, but whether it was suitable for the business of the petitioner was a matter which might have required closer scrutiny if no other accommodation was available to the petitioner. The Judge, in my opinion, did not go wrong in taking this accommodation also into consideration while deciding the respondent's revision. Even if he had erred there, that would not vitiate the order.

17. It is well settled that a finding based on objective tests is net vitiated if there is legal evidence to support the conclusion, notwithstanding that some of the reasons given turn out to be irrelevant. See Zora Singh v. J. M, Tandon. AIR 1971 SC 1537, State of Maharashtra v. Babulal Kriparam Takkamore, AIR 1967 SC 1353 and Dwarka Das Bhatia v. The State of Jammu and Kashmir, AIR 1957 SC 164. It is not a case of subjective satisfaction where one irrelevant ground out of many valid ones supporting the conclusion, may vitiate the order.

18. In the result the petition fails and is dismissed with costs.