

Anand Babu @ Anand Swaroop Vs. IInd Additional District Judge, Jalaun and Others

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Court : Allahabad

Decided On : Feb-08-2000

Reported in : 2000(1)AWC832

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972
- Sections 21(1)

Appeal No. : C.M.W.P. No. 2481 of 1990

Appellant : Anand Babu @ Anand Swaroop

Respondent : IInd Additional District Judge, Jalaun and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : V.K. Tiwari and ;U.K. Saxena, Advs.

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the order dated 21.12.1989, passed by respondent No. 1. allowing the appeal and rejecting the application filed by the

petitioner for release of the disputed shop.

2. Briefly stated the facts are that the petitioner is landlord of the shop in question situate in Mohalla Baldeo Chowk, Town Oral, district Jataun of which respondent No. 3 was tenant who has died during the pendency of the writ petition and his heirs have been substituted. He filed application for release of the disputed shop against respondent No. 3 under Section 21 (1) (a) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972 (fn short the Act) with the allegations that his family consists of himself, his wife, three sons and two daughters. His eldest son Pramod Kumar Gupta is unemployed and requires the disputed shop for opening a general merchant shop. The tenant-respondent owns a big double storied house situate in Mohalla Gopalganj at a distance of about 100 metres where he has three shops on the ground floor and could establish his business there. This application was contested, denying that Pramod Kumar was unemployed. The petitioner-landlord has already a book seller shop and is also carrying on lending business and his son Pramod Kumar Gupta is already engaged with him. It was stated that he is carrying on Sarafa business in the shop and would suffer greater hardship in case he is evicted. The Prescribed Authority allowed the application on the finding that the need of the petitioner to establish his son Pramod Kumar Gupta in business is bona fide and he would suffer greater hardship in case his application is rejected. The tenant preferred an appeal. The appeal has been allowed by respondent No. 1 on 21.12.1989 and the release application filed by the petitioner has been rejected.

3. I have heard learned counsel for the parties.

4. Respondent No. 1 took the view that the petitioner has three shops. One shop is under the tenancy of one Durga Prasad and in another one he has a book shop and in the third shop his business was being carried on in the name of Sangam Ink Industry. This business has been closed and, therefore, a third shop is available to the petitioner to establish his son in any business. This finding has been challenged in the present petition.

5. Respondent No. 1 relied upon the extract of the Municipal Assessment filed as paper No. 45-C. This only refers to premises Nos. 132/1, 132/2 and 132/3. A copy

of this document has been filed as Annexure-7 to the writ petition. This is an extract of Municipal assessment for the year 1977-78 to 1981-82. In column No. 5, it does not clearly specify the name of the tenant and exact portion in occupation of the tenant.

6. The contention of the petitioner is that there is only two shops, one is already in the tenancy of another tenant and in the remaining portion the business of book selling is being carried on by the petitioner. This fact was to be ascertained by appointing an Advocate Commissioner as to what is the extent of the shop in possession of the petitioner and whether on the spot there are two shops. The inference as to number of shops and their extent cannot be ascertained from paper No. 45-C.

7. Learned counsel for the respondent contended that in fact, son of the petitioner had started his business in the name 'Sangam InkIndustry' and once that industry has been closed that indicates that he does not require the shop in question. A landlord is entitled to establish his son in independent business. The landlord may be carrying on the business but if his son wants to carry on an independent business irrespective of the income of the father, he is entitled to carry on his business as held in *N.S. Datta and others v. VIIth Additional District Judge. Allahabad and others*, 1984 (1) ARC 113. Secondly, even assuming that his son is carrying on some business, till he gets some independent business, that will not deprive him to get a separate accommodation for carrying on independent business. In *Smt. Ramka Bai v. Hazari Mal Dholak Chandak*, AIR 1999 SC 3089, where the landlady required the premises to set up one of her sons in grocery business but subsequently his son started work of contractor. It was held that his need did not extinguish merely because he started some work. His son cannot be expected to remain unemployed till the suit is finally decided.

8. Lastly, it was urged by learned counsel for the respondent that the tenant will suffer a greater hardship. Admittedly, the tenant owns three shops besides the disputed shop which he has taken on rent. In one of the shops he has printing business, the other two shops are alleged to be on rent. In *Bega Begum v. Abdul Ahad Khan*, AIR 1979 SC 272. it has been held that the comparative hardship is to

be considered keeping in view all the facts and circumstances of the case. The mere fact that the tenant is to be evicted itself is no ground to hold that the application is to be rejected. On the one hand, his son requires to set up his independent business and on the other hand, the tenant has sufficient financial status. The matter is to be examined keeping in view all these facts.

9. In view of the above the writ petition is allowed. The impugned order dated 21.12.1989 is hereby quashed. Respondent No. 1 is directed to decide the appeal afresh, keeping in view the above observation and in accordance with law within three months from the date of production of a certified copy of this order before him.

10. The parties shall bear their own costs.

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