

Raghubar Dayal Vs. the Xth Additional District and Sessions Judge and anr.

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Court : Allahabad

Decided On : Mar-03-2008

Reported in : 2008(227)ELT198(All)

Judge : Dilip Gupta, J.

Appellant : Raghubar Dayal

Respondent : The Xth Additional District and Sessions Judge and anr.

Disposition : Petition allowed

Judgement :

Dilip Gupta, J.

1. The landlord has filed this petition for setting aside the judgment and order dated 10th April, 1991 by which the Appeal filed by the tenant for setting aside the order passed by the Prescribed Authority was allowed.

2. The petitioner filed an application dated 9th October, 1986 under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter referred to as the 'Act') after retirement from Government Service for eviction of the tenant from the shop in dispute stating that he bona fide required it for himself and his family members; that the shop measuring 13' 9' x 8' was let out to the tenant about 20 years back when the applicant was in

government service in Defence Department and his sons were minors; that the applicant retired from service w.e.f. 1st August, 1985; that the applicant had four grown-up sons; that the eldest son Yogendra Kumar Sharma was in service at Lucknow and was living separately; that the second son Ravindra Sharma had done his M.B.B.S. Examination and was about to complete his M.S. in General Surgery from S.N. Medical College, Agra and, therefore, required accommodation for consultation after obtaining his Masters Degree; that the third son Tarlok Kumar Sharma had obtained M.A. degree in Drawing and Painting from Agra College, Agra and had taken admission in Ph.D. in Drawing and Painting; that the fourth son Gajendra Sharma was about 10 years and was studying in class 6th; that the applicant was getting meager pension of Rs. 449/- per month and, therefore, was finding it very difficult to maintain his family and even his third son Tarlok Kumar Sharma was not getting any service; that the applicant bona fide required the shop for carrying on the business of painting in which he was temporarily engaged from his residence; that he needed the shop to augment his income which was highly insufficient to cater to the needs of the family; that the tenants were rich persons and could take up any other shop in the newly constructed market where several shops were lying vacant; that the tenant also had accommodation available with him just opposite to the shop in dispute and that the landlord was likely to suffer greater hardship in the event the application is rejected.

3. A Written Statement was filed by the tenant. It was stated that the applicant was doing painting work from his residence and his second son Dr. Ravindra Sharma has his clinic in the another part of the same building and his third son Tarlok Kumar Sharma was employed in S.N. Medical College, Agra where he was also doing his Ph.D. in Drawing and Painting. It was, therefore, stated that the shop was not required bona fide by the landlord and that even though the applicant did not require the shop yet comparative hardship was in favour of the tenant.

4. The Prescribed Authority by the order dated 18th July, 1989 allowed the application filed by the landlord and directed the tenant to handover possession of the shop to the landlord within three months. It was found that the applicant bona fide required the shop and that the landlord was likely to suffer greater hardship in

the event the application is rejected. The tenant filed an Appeal under Section 22 of the Act which was allowed by the judgment and order dated 10th April, 1991 and the order passed by the Prescribed Authority was set aside.

5. I have heard learned Counsel for the petitioner and Sri B.D. Mandhyan, learned Senior Counsel appearing for the tenant and have perused the material available on record.

6. Learned Counsel for the petitioner submitted that on proper appraisal of evidence the Prescribed Authority had recorded findings that the landlord bona fide required the shop and that the landlord was likely to suffer greater hardship in the event the application was rejected but the Appellate Court in an arbitrary and illegal manner has reversed these findings and rejected the application filed by the landlord. He submitted that in the facts and circumstances of the case, the Appellate Court was not justified in law in holding that the landlord did not bona fide require the shop in dispute and he was not likely to suffer greater hardship in the event the application was rejected.

7. Learned Senior Counsel for the respondent-tenant, however, submitted that there is no infirmity in the order passed by the Appellate Court and the petition is liable to be dismissed.

8. It is not in dispute that the landlord retired from Government service on 1st August, 1985 and the application under Section 21(1)(a) of the Act for release of the shop in dispute was filed on 9th October, 1986. It is also not in dispute that the landlord has four sons and the eldest son is living separately in Lucknow.

9. In the application, the landlord had come out with a categorical case that the pension which he was receiving was very meager and that he was carrying out the business of painting from his residence in order to augment his income but he was finding it very difficult to do so because the residential accommodation was highly insufficient. He had also set up the need for the other sons and his daughter-in-law as according to the landlord his second son Dr. Ravindra Sharma required a consultation chamber and his third son Tarlok Kumar Sharma was also unemployed and his daughter-in-law also needed a chamber for consultation.

10. The Prescribed Authority found that the residential accommodation available with the landlord was insufficient and that the opposite party apart from the tenanted shop also had a huge building and his financial position was also very strong. The Prescribed Authority rejected the contention of the tenant that the landlord did not bona fide require the shop as the landlord, his third son and daughter-in-law were all doing their work from the residence. The Prescribed Authority came to the conclusion that the landlord bona fide required the shop for his own self to carry on the business of painting and he also required the shop for his third son who could carry on his business of painting even if he was engaged in service and that the daughter in law who was a doctor also needed some space for consultation chamber.

11. In respect of the comparative hardship, the Prescribed Authority found that the tenant possessed a big building and his financial position was also so strong that he could acquire any other shop. The Prescribed Authority also found that even though the landlord had mentioned about the various vacant shops in the newly constructed market and the tenant had not made any effort to obtain any of these shops but the tenant had merely stated that he was running a good business from this tenanted shop and had earned a goodwill and would face difficulty if he was asked to shift the business. In such circumstances, the Prescribed Authority found that the landlord was likely to suffer greater hardship in the event the application was rejected.

12. The Appellate Court rejected the bona fide need of the landlord for doing business of painting and drawing from the shop in dispute merely on the ground that the landlord was already doing this business from the residence and he had even put up the Board of 'Raghu Painting' at his residence. The Appellate Court also rejected the bona fide need of the second son Dr. Ravindra Sharma as he was in government service. The need of the third son Tarlok Kumar Sharma was also rejected since his need had not been set up in the application filed by the landlord in view of the affidavit the affidavit (paper No. 29-Ga) filed by the landlord in which it was stated that the landlord did not require the tenanted shop for the need of Tarlok Kumar Sharma and Dr. Ravindra Sharma. In so far as the tenant is concerned, the Appellate Court found that the medicine shop was having a

goodwill and he cannot be asked to carry on the said business from the residential building which he owned. It also found that the landlord had not pointed out any specific shop in the application that was filed and, therefore, if the tenant was asked to vacate the shop, he would face difficulty. The Appellate Court, therefore, found that comparative hardship would not tilt in favour of the landlord even if the tenant did not make any effort to find out any alternative accommodation since after giving of the notice by the landlord, the tenant had raised the rent to Rs. 100/- per month and so it was not necessary for the tenant to find out an alternative accommodation.

13. The reason given by the Appellate Court for rejecting the bona fide need of the landlord for doing the business of painting and drawing from the tenanted shop cannot be accepted. It is true that the landlord was doing his business from the residence and this is what was also even by the landlord in the application filed by him under Section 21(1)(a) of the Act, but the bona fide need of the landlord cannot be discarded merely because he was doing some business from his residence. The need of the landlord to do his business from the shop is clearly justified particularly when the landlord had stated that the residential accommodation was highly insufficient. The Supreme Court in *Ramkubai v. H.D. Chandak* : AIR 1999 SC3089 clearly observed that if for want of proper accommodation to start the business, the landlord or any of his family members engages himself in temporary and casual duties, it would not substantially mitigate his need.

14. In *Siddalingamma and Anr. v. Mamtha Shenoy* : AIR 2001 SC2896 the Supreme Court observed that the concept of bona fide need needs a practical approach and in each case it has to be seen whether from the materials on record, the need to occupy the premises is real sincere and honest. The relevant observations are quoted below:

Rent Control Legislation generally leans in favour of tenant, it is only the provision for seeking eviction of the tenant on the ground of bona fide requirement of landlord for his own occupation or use of the tenanted accommodation which treats the landlord with some sympathy. In *Shiv Samp Gupta v. Dr. Mahesh Chand*

Gupta : [1999]3SCR1260 this Court has held that a bona fide requirement must be an outcome of a sincere, honest desire in contra-distinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. The question to be asked by a judge of facts, by placing himself in the place of the landlord is, whether in the given facts proved by material on record the need to occupy the premises can be said to be natural, real, sincere honest? If the answer be in the positive the need is bona fide. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself dwell into lesser premises so as to protect the tenant's continued occupation in tenancy premises.

15. The Supreme Court in *Sarla Ahuja v. United India Insurance Co. Ltd.* : AIR 1999 SC100 , also observed:..When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

16. The Supreme Court in *Ragavendra Kumar v. Firm Prem Machinery and Co.* : [2000]1SCR77 made similar observations:..It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter....

17. As noticed above, the landlord had retired from government service and he needed the accommodation to do his business and augment the income to meet

the family requirements. It has, therefore, to be held that the landlord bona fide required the premises for himself.

18. The bona fide need of the third son Tarlok Kumar Sharma was also discarded by the Appellate Court because of the averments made in paragraph 23 of the affidavit (paper No. 29-Ga) filed by the landlord. What was stated by the landlord in paragraph 23 of the affidavit is as follows:..It is wrong that the deponent was doing painting work from the house in question even when he was in service or deponent does not need the shop in dispute or any business accommodation either for Sri Tirlok Kumar Sharma or for Sri Yogender Kumar Sharma and it is therefore irrelevant to mention any thing about them. Moreover Sri Tarlok Kumar Sharma is in temporary clerical job of painting posters/preparing posters in S.N. Medical College, Agra which type of service does not suit for such a qualified person. He has hardly earning Rs. 600/- per month which is not even sufficient for his own expenses in these hard days....

19. A perusal of the aforesaid averments clearly show that the landlord had denied that he does not need the shop in dispute for business accommodation either for Tarlok Kumar Sharma or for Yogendra Kumar Sharma. The Appellate Court has drawn an inference from this statement that the landlord does not require the shop for Tarlok Kumar Sharma and Yogendra Kumar Sharma. Thus, the need of Tarlok Kumar Sharma was wrongly discarded by the Appellate Court. Tarlok Kumar Sharma had done his M.A. in Drawing and Painting and bona fide required the shop in dispute to do the business of drawing and painting even if he was engaged in some temporary job in the College where he was doing his Ph.D. The need of Tarlok Kumar Sharma to start his independent business is bona fide as was observed by the Supreme Court in *Sushila v. IInd Additional District Judge, Banda and Ors.* : AIR 2003 SC780 .

20. Likewise the need for the daughter-in-law (wife of Dr. Ravindra Sharma) was also bona fide as she also required space for consultation chamber.

21. In such circumstances the landlord bona fide required the job in dispute for establishing the business for himself, his third son and for his daughter-in-law and the Prescribed Authority had correctly come to this conclusion but the Appellate

Authority has reversed this finding on irrelevant considerations.

22. The Appellate Authority was also not justified in holding that the tenant was likely to suffer greater hardship in the event the application was rejected. In first instance the tenant had not made any effort to find out an alternative accommodation. This itself was a ground to tilt the hardship in favour of the landlord as was observed by the Supreme Court in *B.C. Bhutada v. G.R. Mundada* : [2003]1SCR329 . The Appellate Court has rejected this contention merely on the ground that the tenant had enhanced the monthly rent from Rs. 75/- to Rs. 100/- after receipt of the notice. This, in my opinion, cannot be a ground for rejecting this contention. As noticed above, the tenant had a huge building and on the ground floor, the landlord had suggested that he could carry on the business of selling medicines. The Appellate Court has rejected this contention merely on the ground that the building was not situated in a market area. However, as seen above, the landlord did not have available with him any shop from where he could establish himself or his third son in business or set up a consultation chamber for his daughter-in-law. Thus, taking into account the overall facts of the case, it is clear that the Prescribed Authority was justified in holding that the landlord was likely to suffer greater hardship in the event the application was rejected and the Appellate Court clearly fell in error in taking a contrary view.

23. For all the reasons stated above, the order dated 10th April, 1991 passed by the Appellate Court cannot be sustained and is accordingly set aside and the order passed by the Prescribed Authority is restored. The writ petition is, accordingly, allowed.

24. However, learned Counsel appearing for the respondent-tenant submitted that six months may be given to the respondent-tenant to handover peaceful possession of the shop to the landlord.

25. Learned Counsel appearing for the landlord submitted that the Court may grant the aforesaid time provided the tenant gives the usual undertaking within three weeks from today before the Court below.

26. The tenant shall not be ejected from the premises in dispute for a period of six months from today provided he gives the following undertaking before the Court below within four weeks from today.

1. That the tenant shall pay damages at the rate of Rs. 1000/- per month beginning from March, 2008 up to the date he hands-over the possession of the shop to the landlord.

2. That the tenant shall not induct any other person in the premises.

3. That the tenant shall handover peaceful possession of the premises to the landlord on or before the expiry of six months.

27. It is made clear that in the event the tenant fails to give the undertaking within the aforesaid period or fails to comply with any of the terms of the undertaking, then in that case, it will be open to the landlord to get the decree executed.

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