

Dinesh Kumar Vs. Ivth Additional District Judge and ors.

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Court : Allahabad

Decided On : May-28-2004

Reported in : 2004(3)AWC2361

Judge : Tarun Agarwala, J.

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

Appeal No. : Writ Petition No. 11072 of 1984

Appellant : Dinesh Kumar

Respondent : ivth Additional District Judge and ors.

Advocate for Def. : Ajeet Kumar, S.C.

Advocate for Pet/Ap. : V.K. Singh and ;A.K. Goyal, Advs.

Disposition : Writ petition allowed

Judgement :

Tarun Agarwala, J.

1. By means of this petition, the petitioner has challenged the order dated 8.9.1982 passed by the prescribed authority as well as the appellate order dated 1.5.1984 passed by the 4th Additional District Judge, Bulandshahr whereby, the petitioner's

application under Section 21(1) (a) of U. P. Act No. 13 of 1972 was rejected.

2. The brief facts leading to the writ petition are that the petitioner is the owner and landlord of the shop in question and respondent No. 3 is the tenant in question and is doing the business under the name and style of 'Gandhi Ashram'. The petitioner moved an application under Section 21 (1) (a) of U. P. Act No. 13 of 1972 for the release of the shop in question on the ground that the shop was required for his son. The petitioner alleged that his son Dinesh Kumar was 25 years old and had passed his Intermediate Examination and had obtained training of Radio Electricity and Motor Winding and wanted to start his own business, but has no place to set up his business and therefore, required the shop in question to enable his son to start his business. The petitioner further contended that he had no other accommodation available with him. The petitioner further contended that he has two other sons who are doing independent business. The petitioner contended that on account of not doing any business and being unemployed the petitioner was finding it difficult to get his son married off. The petitioner prayed that the need for his son was bona fide and genuine and prayed that the shop may be released. The petitioner further alleged that there are several other shops available where the tenant could easily shift his business and therefore, the tenant would not suffer any irreparable loss.

3. The respondent No. 3 contested the matter and contended that the petitioner was carrying on the business of Iron and cloth and that his son could also be engaged in the said business. The tenant further contended that the petitioner had two other shops, which could be released. The tenant further contended that the application was mala fide and the same had been filed only to enhance the rent. The tenant also stated that the petitioner's son was residing in Aligarh where he was carrying on his business and therefore, there was no bona fide need of the petitioner. The tenant further contended that over the period of time, the tenant had earned a good will and therefore, the shop should not be released.

4. The prescribed authority dismissed the release application holding that if the application was allowed and respondent No. 3 was evicted it would shatter the dream of Mahatama Gandhi who started this novel scheme. The prescribed

authority held that if the tenant was evicted, the business of Gandhi Ashram would come to an end in the town of Anoopshahr and its employees would become unemployed. The prescribed authority, on these reasoning, held, that the eviction of respondent No. 3 could not be justified. The prescribed authority further held, that the son of the petitioner could easily be absorbed in the petitioner's business.

5. Aggrieved by the order of the prescribed authority, the petitioner filed an appeal, which was also dismissed. The appellate court held that the petitioner had failed to prove that the disputed shop was required for his son with a bona fide intention. Based upon the affidavits of Lalta Prasad, Chandra Shekhar Sharma and Suresli Chand, the appellate court came to the conclusion that the petitioner's son was living at Aligarh, and that he does not know anything about Radio or Motor Winding business and therefore, was incompetent to do this kind of business and therefore, the need was not genuine. The appellate court held that the certificate given by Delhi Wireless Institute could not be relied upon as the same was filed belatedly and that this fact ought to have been mentioned in the release application. On this basis, the appellate court held that the need of the petitioner was not bona fide or genuine.

6. On comparative hardship, the appellate court found that the petitioner had not given any details of a vacant shop in which the tenant could shift and therefore, held that the assertion made by the petitioner that there are other shops available was vague and unreliable. The appellate court further held that if the petitioner's son had to start his business, he could do the business with his brothers or with his father. The appellate court held, that on the other hand, the tenant would suffer a lot of hardship in case the tenant was evicted. The appellate court further held that the tenant who was dealing in, the business of Khadi, on the basis of a dream of Mahatama Gandhi, would be ruined and would be in trouble to find an alternate accommodation and therefore, came to the conclusion that the hardship of the tenant was greater than that of the landlord.

7. I have heard Sri. A. K. Goel, the learned counsel for the petitioner and Sri Ajit Kumar, the learned counsel for the respondent tenant.

8. In my view, the orders of the prescribed authority as well as the appellate authority are patently erroneous and based upon surmises and conjectures and are liable to be quashed. Both the courts below have been swayed by the fact that the tenant is doing the business of selling Khadi cloth under the name of 'Gandhi Ashram' and that if the tenant is evicted, the dream of Mahatma Gandhi would be shattered. Both the courts below have concentrated on the bona fide need of the tenant rather than considering the bona fide need of the petitioner.

9. Section 21 of the Act contemplates the regulating of the eviction of a tenant from a building under a tenancy when the same is bona fide required by the landlord for his own occupation or by any member of his family. The prescribed authority has to consider the bona fide need of the landlord and is also required to compare the hardship of the landlord and the tenant. The prescribed authority is not required to consider the bona fide need of the tenant.

10. The expression 'bona fide need' or 'requirement' has to be construed meaningfully. In *Ram Das v. Ishwar Chander*, AIR 1988 SC 1422, the Supreme Court held :

'Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to the satisfaction of certain statutory conditions. One of them is the bona fide requirement of the landlord, variously described in the statutes as 'bona fide requirement', 'reasonable requirement', 'bona fide and reasonable requirement' or, as in the case of the present statute, merely referred to as 'landlord requires for his own use'. But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the Court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that, that desire to become a 'requirement' in law must have the objective element of a 'need'. It must also be such that the Court considers it reasonable and, therefore, eligible to be gratified. In doing so, the Court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down.'

11. In *Bega Begum v. Abdul Ahad Khan*, AIR 1979 SC 272, the Supreme Court held :

"Reasonable requirement* which undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term 'need' or 'requirement' should not be artificially extended nor its language so unduly stretched or strained so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds.'

12. Thus, the words 'building is bona fide required' suggests some need and not a mere desire. The landlord must show that he genuinely requires the premises in question for his personal use or for any member of his family. The onus is upon the landlord to satisfy the prescribed authority about his bona fide need. Where the landlord's need is found to be bona fide, he should be permitted to occupy it. The requirement of the landlord should be reasonable and not absolute. The word, 'bona fide' is opposed to mala fide. Therefore, if the landlord's application is not mala fide, in which case, it must be allowed.

13. In the present case, the landlord has clearly specified the need of the shop for his son Dinesh Kumar, who is unemployed and has obtained training in Radio Electricity and Motor Winding and wants to set up his business. The landlord has further stated that since his son is unemployed, he is unable to get any marriage proposal for his son. These averments have been supported by the affidavit of the landlord. The son has also filed his affidavit stating therein, that he is unemployed and has done his training of the Radio Electricity, etc. and wants to set up his own business. He has further stated that he is not living in Aligarh, but is living in Anoopshahr. These affidavits have been completely overlooked by the prescribed authority as well as by the appellate court. The appellate court has relied upon the affidavit of the tenant in coming to the conclusion that the son does not know anything about Radio Electricity and that he is living in Aligarh. In my view, the

appellate court has committed an error in accepting the affidavit of the tenant and discarding the affidavits of the landlord and his son without assigning any reasons. The affidavits of the tenant that the son is residing at Aligarh and that he does not know about Radio Electricity, etc. is not supported by any evidence. Merely by making an allegation does not mean that it is the gospel truth. When the landlord and his son have stated categorically on affidavits that the son is unemployed and is living at Anoopshahr, it was open to the tenant to prove by evidence that the son was staying at Aligarh and was doing his business at Aligarh. Merely by denying the contents of the affidavits given by the landlord or his son does not make their affidavits unreliable.

14. The contention of the tenant, that the son of the landlord does not know anything about Radio Electricity, etc. and therefore, he does not have any need for the shop in question is devoid of any merit. The mere fact that the son does not know anything about Radio Electricity does not mean he does not have a bona fide need for the shop in question. Section 21 of the Act contemplates that the building is bona fide required for the purposes of any profession, trade or calling. Section 21 of the Act does not contemplate that a person should be qualified for a particular trade in order to show his bona fide need. All that is required to show that his need was bona fide and genuine and not mala fide.

15. In *Mansa Ram v. A.D.J., Ghaziabad, 1980 ARC 104*, the tenant took a plea that the landlord who was previously doing milk business but had closed the same and had applied for the release of the building for starting Arhat business had no previous experience of the business, hence his need could not be regarded as genuine. This contention was negated and it was held that the absence of previous experience of Arhat business cannot be conclusive that the need was not genuine. Thus, the finding of the court below that the need of the shop for the son was not genuine as he does not know anything about the Radio Electricity, etc., is wholly erroneous and unsustainable.

16. The finding of the court below that the landlord could easily absorb the son in his business or the son could join the business of his brothers is also devoid of any merit. It may be stated here that every adult member has a right to do his own

business and cannot be forced to join the business of his father or brothers. A person has a right to his own independent business and cannot be subjected to the mercy of his brothers or father.

17. In *N.S. Datta v. VIIth Additional District Judge, Allahabad*, 1984 (1) ARC 113, this Court held that the son is entitled to engage himself in an independent business and could not be forced to join his father's business.

18. In *Anand Babu v. IIIrd Additional District Judge, Jalaun*, 2000 (1) AWC 832 : 2000 (1) ARC 405, it was held that a landlord is entitled to establish his son in an independent business. The landlord may be carrying on the business, but if his son wants to carry on an independent business, he is entitled to carry on his business.

19. Similar view was again reiterated in *Sanjay Kumar and Ors. v. Subodh Kumar and Ors.*, 2004 (1) ARC 148.

20. In *Deep Chand Nem Chand Jain and Ors. v. Prescribed Authority and Ors.*, 1980 ARC 479, it was held that the need of an unemployed member could not be dismissed by telling him that he must follow the line or profession of the other members of the family or try to get absorbed in the business already carried on by the family.

21. The finding of the appellate court that the certificate produced by the landlord showing that his son had underwent training in Radio Electricity could not be considered or relied upon as the same was not reflected in the release application is wholly untenable. Order VI, Rule 2, C.P.C. provides that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim, but not the evidence by which they are to be proved. The landlord in his application under Section 21 had specifically stated that his son had done training in Radio electricity, etc. and that the shop is required in order to set up the business for his son. The landlord is not required to give the evidence in his application.

22. In support of his pleadings the landlord filed his affidavit and of his son annexing the certificate as proof of the fact alleged in his application. The court below, in my view, committed an error in discarding this evidence.

23. In so far as the findings given by the court below, that the dream of Mahatma Gandhi would be shattered and his novel scheme of Khadi business would come to an end if the tenant was evicted, I find, that the view taken by the courts below is not sustainable. These findings are based on surmises and conjectures. In the first instance, Mahatma Gandhi never evolved or started the scheme of doing business in Khadi. Gandhiji protested against the idea of buying cloth, which was being manufactured by the English people, which the Indians were forced to buy. Gandhiji desired that every Indian should spin the yarn and manufacture the cloth so that the British cloth was not purchased. Over a period of time, and after independence, manufacturing of Khadi cloth became a cottage industry, with the Government promoted by setting up Gandhi Ashrams all over the country. Gandhi Ashram is doing a commercial business like any other business. They cannot be given preferential treatment merely because they are doing the business in Khadi. In my view, eviction of the tenant who is doing the business of selling Khadi cloth will neither shatter the dream of Gandhiji nor his scheme would come to an end.

24. In so far as comparative hardship is concerned, I find that the court below has overlooked Rule 16 (2) (d) of the Rules, which reads as under :

'Where a son or unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant of the landlord has, after the building was originally let out, completed his or her technical education and is not employed in Government service, and wants to engage in self-employment, his or her need shall be given due consideration.'

25. In the present case, this aspect has not been considered by the courts below. The mere fact, that the tenant would be thrown on the street if he was evicted cannot be ground for rejecting the application of the landlord for the release of the shop in question. In every case of eviction, the tenant will have to suffer some hardship. The burden is upon the tenant to prove that he will suffer greater hardship if he is evicted. Nothing has been shown by the tenant as to how he will

suffer greater hardship than the landlord.

26. It may be stated here that during the pendency of the writ petition, the tenant has purchased another shop in the same city. A copy of the sale deed has been filed which has not been denied by the tenant. Therefore, in view of this subsequent fact, the tenant will not suffer any hardship if he is evicted. The tenant can easily shift his business to the new premises, which he has purchased. On the other hand, the son is still unemployed and has no place to do his business. The father, i.e., the original landlord has died and left a registered Will wherein, he has given the disputed property to his son Dinesh Kumar. Other properties have been given to the other sons of the landlord.

27. In view of the aforesaid, the judgments given by the courts below are wholly unsustainable and are quashed. Normally this Court would have remanded the matter back to the prescribed authority to consider the matter afresh. The release application was filed in the year 1981 and now 23 years have elapsed. Remanding the matter back would entail another round of litigation and cause further anguish and harassment to the son of the landlord.

28. Further, I find from the record, that the need for the son has been fully established and that the requirement of the shop was bona fide and genuine and was not mala fide. On the other hand the tenant has already purchased a shop in the same city and therefore, the tenant could easily shift his business, and would not suffer any great hardship.

29. In view of the aforesaid, the writ petition is allowed, and the order dated 8.9.1982 passed by the prescribed authority and the appellate order dated 1.5.1984 passed by the 4th Additional District Judge, Bulandshahr are quashed. The shop in question is released in favour of the petitioner. The tenant is granted three months' time to vacate the premises in question and hand over vacant possession to the petitioner provided the tenant pays a sum of Rs. 10,000 as cost to the petitioner within one month from today failing which the petitioner could take steps for eviction of the tenant immediately after the expiry of one month.

