

Vijay Kumar Vs. Additional District Judge, Bijnor and Others

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Court : Allahabad

Decided On : May-25-2001

Reported in : 2001(3)AWC1874

Judge : B.K. Rathi, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21 and 21(1); [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 20848 of 2001

Appellant : Vijay Kumar

Respondent : Additional District Judge, Bijnor and Others

Advocate for Def. : S.C., Sankatha Rai, ;Vinod Kumar Rai and ;Ajay Kumar Sharma, Advs.

Advocate for Pet/Ap. : M.K. Gautam, Adv.

Disposition : Petition dismissed

Judgement :

B.K. Rathi, J.

1. The opposite party No. 3 filed an application for release under Section 21 (a) of U. P. Act No. XIII of 1972, being P.A. Case No. 7 of 1998 before the prescribed

authority. Bijnor. The premises in dispute is a shop In Sadar Bazar, Bijnor. The application for release was allowed by the prescribed authority. Bijnor on 18.1.2001, by judgment. Annexure-19 to the petition. Against that order, the petitioner filed Appeal No. 3 of 2001. The appeal has also been dismissed on 23.3.2001, by judgment, Annexure-20 to the petition. The petitioner, therefore, has preferred this petition invoking extraordinary jurisdiction of this Court under Article 226 of the [Constitution of India](#) with the request that both the above orders be quashed and the application for release be dismissed.

2. I have heard Sri M.K. Gautam, learned counsel for the petitioner and Sri Sankatha Rai and Sri Vinod Kumar Rai, learned counsel for the respondent No. 3.

3. It is contended that the need alleged is for settling the respondent No. 3 in the business. It is also alleged that he is without any work and is 29 years of age. It has been argued by the learned counsel for the petitioner that the business intended to be started in the shop has not been disclosed In the application for release or in the affidavits. That the opposite party No. 3 has also applied for service and got himself registered in the Employment Office. That, therefore, he intends to Join service. It is further contended that in the appellate court. It was for the first time disclosed that respondent No. 3 wants to run the business of P.C.O. It has been argued that even if the need is held to be bonafide, the half of the shop is sufficient for the proposed business of P.C.O. and. therefore, only half of the shop may be released.

4. I have considered the arguments. It is not alleged that respondent No. 3 has got some employment. A person, without employment, may make all efforts to get some employment or to start some business, so that he may earn his livelihood. Therefore, the need cannot be deemed for the reason that opposite party No. 3 has got himself registered in the employment office. It has been held by both the courts below that opposite party No. 3 is still unemployed.

5. As regards the release of half of the shop, it may be mentioned that the size of the shop has not been disclosed, therefore, it cannot be accepted that half of the shop will serve the need of respondent No. 3.

6. The arguments of the learned counsel for the petitioner are, therefore, without merits. There are concurrent findings of both the courts below regarding the bonafide need of the respondent No. 3 and that balance of hardship is also in his favour. The concurrent findings of the courts below cannot be disturbed in this petition in exercise of jurisdiction under Article 226 of the [Constitution of India](#), as has been held in the case of Kamla Sarin v. Shyam Lal and others. 1984 (2), All RC 344.

7. In view of the firm legal position as laid down in the aforesaid mentioned decision and the concurrent findings of fact arrived at by both the courts below, I find that the petition is without merit and is, accordingly, dismissed.

8. After dismissal of the petition, the learned counsel for the petitioner made a request for one year time to vacate the premises. It is contended that he has to shift his business to some other place for which reasonable time is required.

9. With a view to balance the rights of the parties and to mitigate the hardship, which occasions due to the shifting by an order of release. I feel that it would be just and proper to allow reasonable time to vacate the premises to the petitioner. Accordingly, the petitioner is allowed time up to 31.3.2002 to vacate the premises and I direct that the order of release shall be kept in abeyance and shall not be executed upto 31.3.2002, provided the petitioner fulfils the following two conditions :

1. he deposits in advance the amount of rent due and further rent upto 31.3.2002 before the prescribed authority within six weeks from today which shall be paid to the respondent No. 3.

2. he files an undertaking on affidavit within six weeks from today before the prescribed authority that he shall hand over the vacant possession in a peaceful manner to the landlord respondent on or before the expiry of 31.3.2002.

In case of failure of the petitioner to abide by any one of the above two conditions within the time specified above, the release order may be executed.

