

Smt. Munni Devi Vs. Xith Addl. District Judge, Kanpur Nagar and Another

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Court : Allahabad

Decided On : Jul-06-2001

Reported in : 2001(3)AWC2218

Judge : U.S. Tripathi, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1), 12 and 21; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 40670 of 1998

Appellant : Smt. Munni Devi

Respondent : Xith Addl. District Judge, Kanpur Nagar and Another

Advocate for Def. : S.C. and ;K.K. Tripathi, Adv.

Advocate for Pet/Ap. : A.N. Sinha, Adv.

Disposition : Petition dismissed

Judgement :

U.S. Tripathi, J.

1. This writ petition under Article 226 of the [Constitution of India](#) has been filed for Issuing of writ, order or direction in the nature of certiorari to quash the order dated 12.11.1998 passed by respondent No. 1 to issue a writ ordirection in the nature of

mandamus directing the respondent No. 2 to deliver the vacant possession of the portion of premises in suit and to pass any other further order which the Court may deem fit and proper.

2. The petitioner is owner landlady of premises No. 108/129, Sisamau Bazar, Gandhi Nagar, Kanpur Nagar. The husband of respondent No. 2 was a tenant in one room and one kothari of the said house on monthly rental of Rs. 15.65 p. The petitioner moved an application under Section 21 (1) (b) of U. P. Act No. 13 of 1972 (hereinafter called the Act) against Ram Dhani Mishra, husband of respondent No. 2, for release of the premises in his tenancy for her personal need on the ground that he was running Ayurvedic Medicine shop in the room in question. He was aged about 65 years and was unable to do the said business. Sri Ram Dhani Mishra died on 29.9.1991 and respondent No. 2 was impleaded, being his widow and legal representative. It was further alleged that the respondent No. 2 was not doing any business in the room in question and was using the same for her residence. Manoj Kumar, the grandson of the petitioner was unemployed and had no proper accommodation for running his business. The petitioner, therefore, heeded the premises in question under occupation of respondent No. 2 for settling her grandson Manoj Kumar in business. She was also ready to remit two years rent in favour of respondent No. 2. The petitioner, therefore, bona fide and genuinely needed the premises in question for her personal need and balance of hardship was also in her favour.

3. The respondent No. 2 contested the above application mainly on the ground that the petitioner alone was not owner landlady of premises in question and she had only half share in it. The remaining half share belonged to Parmanand, the real brother of Jagnath Prasad, husband of the petitioner, who had adopted one Pankaj. The petitioner wrongly got the premises in question mutated in her name exclusively. The appeal filed by Pankaj was pending in the Court of Judge Small Causes Court. It was further contended that there were other three shops in the premises in question which the petitioner got vacated from Mahendra and grandson of the petitioner was also running shop in the premises in question. Manoj Kumar did not need any other shop and true need of petitioner was not bona fide and genuine.

4. The learned prescribed authority on considering the evidence of the parties held that the petitioner was the sole landlady owner of the premises in question and relationship of landlord and tenant existed between the parties. The premises in question in occupation of respondent No. 2 was being used for commercial purpose and not for residential purpose. Only one shop was got vacated from Mahendra in which the petitioner was running shop in the name and style of M/s. Manoj Traders. Manoj has no separate shop and, therefore, he needed another shop for his business. The need of landlady was bona fide and genuine and balance of hardship also lies in favour of the petitioner. With these findings, the learned prescribed authority allowed the application and released the premises in question in favour of the petitioner vide judgment and order dated 6.4.1996.

5. The respondent No. 2. the tenant challenged the above Judgment and order of prescribed authority in Rent Appeal No. 84 of 1996. The appellate authority, on re-appraisal of the evidence of the parties held, that premises in question was being used by husband of respondent No. 2 for residential purpose and not for commercial purpose. Another shop on the ground floor in the premises in question which was got vacated from Mahendra was available. The need of landlady was not bona fide and genuine. The respondent No. 2 was a widow of 70 years old and had no alternative accommodation. Therefore, her hardship was greater than that of landlady. With these findings, the appellate authority allowed the appeal, set aside the judgment and order of the prescribed authority and dismissed the application of the petitioner.

6. The petitioner has challenged the above order of the appellate authority in this writ petition.

7. Heard Sri A. N. Sinha, learned counsel for the petitioner and Sri K. K. Tripathi, learned counsel for the respondent No. 2 and perused the record.

8. Parties have exchanged the affidavits and the writ petition is being finally disposed of at the stage of admission.

9. The release of the premises in question was sought on the ground of personal need of the landlady and also on the ground that it was let out for commercial

purpose. The contention of the learned counsel for the respondent No. 2 was that the premises in question was let out and was being used for residential purpose and cannot be got released for commercial purpose in view of prohibition contained in 2nd proviso to Section 21 of the Act. The prescribed authority held that premises in question was being used for commercial purpose. The appellate authority on re-appraisal of evidence of the parties as well as on proper scrutiny of the quinquennial assessment for the years 1968-73, 1992. the order of the Rent Control and Eviction Officer in Case No. 99 of 1991 under Section 12 of the Act as well as the report of the Commissioner recorded a finding of fact that premises in question was let out and was being used for residential purpose. The above finding of fact is based on evidence on record as well as report of the Commissioner and. therefore, cannot be Interfered with in this writ petition.

10. The learned prescribed authority further held that the petitioner got vacated only one shop from previous tenant Mahendra in which she herself runs business in the name and style of M/s. Manoj Traders and her grandson Manoj Kumar had no concern with the said business. The appellate authority onre-appraisal of the evidence on record again recorded a finding of fact that there is another vacant shop on the ground floor which can be used for business by Manoj Kumar as it was found vacant at the time of visit of the Commissioner and only 4 bags, some tins and 2-3 patra were found laying In it. The above shop was on the ground floor abutting to road and was suitable for business. This is also a pure finding of fact and cannot be interfered with in this writ petition.

11. The learned counsel for the petitioner relying on decision of this Court in Fahimuddin v. XIth Additional District Judge, Meerut and another, 1995 (2) ARC 306. contended that in case Manoj Kumar was found sitting at the shop of the petitioner and helping her in her business, it cannot be said that he had no need for separate shop. The appellate authority has not held that need of landlady was not bona fide and genuine because Manoj Kumar was helping in business of the petitioner. but it recorded a finding of fact that another shop on the ground floor abutting the road was available to the petitioner in which she could engage her grandson in business. Therefore, above contention has no force.

12. It was further contended by learned counsel for the petitioner that landlord cannot be compelled to use the portion of residential accommodation for business to reduce the availability of residential accommodation. In support of above contention, he placed reliance on decision of this Court in the case of Jagdtsh Prasad v. IXth Addi District Judge, Kanpur and others, 1993 (2) ARC 63. The above decision also does not help the petitioner as there is no finding of fact of the appellate authority that the room available on the ground floor was being used for residential purpose and it held that the landlady contended that the above room was being used as store, i.e., for commercial purpose and. therefore, there is nothing on record to show that the appellate authority has held that the room available on the ground floor was being used for residential purpose.

13. Lastly it was contended by learned counsel for the petitioner that Court has no power to dictate landlord against his choice to shift in alternative accommodation, unless found suitable and cannot preclude order for release. In support of his above contention he relied on the decision of this Court in Satish Kumar v. IXth Additional District Judge, Bulandshahr and others, 1997 (1) ARC 121. The facts of the present case are totally different. The appellate authority has observed that adjacent to the shop in which the petitioner was running shop in the name and style of M/s. Manoj Traders, there was another shop in which 2-3 tins and 3-4 bags etc. were found by the Commissioner which was in fact vacant and. therefore, it cannot be said that above shop on the ground floor was not suitable for the business of her grandson. The room in occupation of respondent No. 2 was situated on first floor in the premises in question, therefore, the above vacant room on the ground floor abutting the road was more suitable for running the business than the room in occupation of respondent No. 2.

14. In this way. there appears no ground for interference in the findings recorded by the appellate authority in exercise of jurisdiction under Article 226 of the Constitution. The petition having no force is liable to be dismissed.

15. The petition is. accordingly. dismissed.