

Munna Lal Vs. Special Judge (Anti Corruption) and ors.

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Court : Allahabad

Decided On : Feb-19-2007

Reported in : 2007(78)AWC2261

Judge : Anjani Kumar, J.

Appellant : Munna Lal

Respondent : Special Judge (Anti Corruption) and ors.

Disposition : Petition allowed

Judgement :

Anjani Kumar, J.

1. By means of present writ petition under Article 226 of the Constitution of India, the petitioner has challenged the orders passed by the prescribed authority as well as by the appellate authority under the provisions of the U.P. Act No. XIII of 1972, which shall here-in-after referred to as 'the Act'.

2. The brief facts of the present case are that contesting respondent-landlord filed an application on 28th August, 1995 purporting to be an application under Section 21(1)(a) of 'the Act' for the release of the accommodation in question in which the shop in dispute is situated on the ground of bona fide requirement. This application under Section 21(1)(a) of 'the Act' filed by the respondent-landlord was contested

by the petitioner-tenant denying the need set up by the landlord. The prescribed authority vide order dated 20th January, 1997 allowed the release application filed by the respondent-landlord holding that the need of the landlord is bona fide and in comparison to that of the petitioner-tenant is more pressing.

3. Aggrieved by the order passed by the prescribed authority dated 20th January, 1997, the petitioner filed an appeal on 14th February, 1997 under Section 22 of 'the Act' before the appellate authority. During the pendency of appeal before the appellate authority, the petitioner filed an application on 14th May, 1998 with the prayer that accompanying affidavit be accepted as additional evidence on behalf of the petitioner-tenant. The affidavit which is said to be brought on record by the tenant was to the effect that during the pendency of the appeal many facts have been changed, which were not existing earlier at the time when the application under Section 21(1)(a) of 'the Act' was filed and the application was decided and were also not in the knowledge of the petitioner-tenant. It is further asserted in the aforesaid affidavit that the landlord's son Sandeep got married and started living at New Delhi where he is carrying on his business, therefore the need set up by the landlord for his son Sandeep is no more in existence and shall not be taken into consideration in view of the changed circumstances and facts. It has further been brought on record by the petitioner-tenant in the aforesaid affidavit that first floor shop in which M/s. Sun Sales Corporation, which is situated above the shop in dispute, has been closed and the shop has been let out to Savey Dryers and Dry Cleaners in which business of dry cleans has been started with effect from 7th December, 1997, i.e., after the decision of the application by the prescribed authority. The appellate authority vide order dated 5th March, 1999 dismissed the petitioner's aforesaid application numbered as 14Ga. Thereafter the petitioner-tenant filed an application on 13th May, 1999, which has been numbered as 20 Ga2 to recall the order dated 5th March, 1999. The appellate authority vide order dated 4th September, 1999 rejected the recall application filed by the petitioner-tenant.

4. Aggrieved by the order dated 5th March, 1999 and 4th September, 1999, passed by the appellate authority, the petitioner filed writ petition being Civil Misc. Writ Petition No. 54617 of 2000 before this Court. This Court vide judgment and

order dated 25th February, 2002 dismissed the writ petition filed by the petitioner with the observation, which is reproduced below:

Heard learned Counsel for the parties. This writ petition is directed against the order of the appellate authority thereby refusing to accept the additional evidence sought to be brought on record of the appeal at the appellate stage by the petitioner-tenant. Without entering into the merits of the order passed by the appellate authority, since the petitioner-tenant will have an opportunity to challenge the order impugned in the present writ petition and also in case this appeal is ultimately decided against him by the appellate authority. In this view of the matter, without entering into the merits of the case this writ petition is dismissed at this stage. However, it will always be open to the petitioner-tenant to raise such of the objections as are open to him under law before the appellate authority. There will be no order as to costs.

5. Pursuant to the direction issued by this Court, the matter was reopened before the appellate authority. When the matter was reopened before the appellate authority under the order of this Court in Writ Petition No. 54617 of 2000, the petitioner prayed before the appellate authority that the changed facts and circumstances which the petitioner-tenant brought by means of affidavit paper No. 14G, may be taken into consideration and if the same is taken into consideration, the finding recorded by the prescribed authority regarding bona fide need of the respondent-landlord deserves to be set aside. The appellate authority while dealing with the appeal after remand by this Court dealt with this aspect of the matter and observed that 'I have gone through the orders of Hon'ble High Court and I am convinced that the intention of the Hon'ble High Court was not to permit, the filing of aforesaid papers at appellate stage, otherwise the Hon'ble High Court would not have dismissed the writ petition. Hon'ble High Court merely allowed the appellant/tenant to raise all legal plea as are open to him under law. But as far as papers, sought to be introduced at the appellate stage are concerned, they cannot be taken into consideration under the aforesaid order of my learned predecessor, as well as directions given by the Hon'ble High Court.' Ultimately the appellate authority vide order dated 24th November, 2003 dismissed the appeal filed by the petitioner-tenant. Thus, this writ petition.

6. Learned Counsel for the petitioner-tenant submitted that in view of the order passed by this Court in Writ Petition No. 54617 of 2000, since the appellate authority has dismissed the appeal filed by the petitioner-tenant, he may be permitted to challenge the order passed by the appellate authority refusing to accept the additional evidence at the appellate stage whereby the petitioner prayed for brining certain new facts which have come to the existence only during the pendency of the appeal before the appellate authority. This Court vide order dated 25th February, 2002 has observed 'without entering into the merits of the order passed by the appellate authority, since the petitioner-tenant will have an opportunity to challenge the order impugned in the present writ petition and also in case this appeal is ultimately decided against him by the appellate authority. In this view of the matter, without entering into the merits of the case this writ petition is dismissed at this stage. However, it will always be open to the petitioner-tenant to raise such of the objections as are open to him under law before the appellate authority.' Thus, the main point to be decided by this Court at this stage as to whether the appellate authority was justified in refusing to accept the additional evidence sought to be brought on record regarding certain new facts which have come into existence during the pendency of the appeal before the appellate authority. Learned Counsel for the petitioner with regard to this aspect of the matter has relied upon decision of Apex Court in Kedar Nath Agrawal (Dead) and Anr. v. Dhanrjji Devi (Dead) by L.Rs. and Anr. 2004 (4) AWC 3709 (SC), wherein the Apex Court has held as. under:

16. In our opinion, by not taking into account the subsequent event, the High Court has committed an error of law and also an error of jurisdiction. In our judgment, the law is well settled on the point and it is this : The basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit or proceedings and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. This, however, does not mean that events happening after institution of a suit/proceeding, cannot be considered at all. It is the power and duty of the Court to consider changed circumstances. A court of law may take into account subsequent events, inter alia, in the following circumstances:

(i) The relief claimed originally has, by reason of subsequent change of circumstances, become inappropriate; or

(ii) It is necessary to take notice of subsequent events in order to shorten litigation ; or

(iii) It is necessary to do so in order to do complete Justice between the parties.

Re, Shikharchand Jain v. Digamber Jain Praband Kanni Sabha and Ors. : [1974]3SCR101 .

7. In paragraph 30 of Kedar Nath Agrawal's case (supra), the Apex Court has observed as under:

30. We must now refer to Hasmat Rat As already noted, notice was issued by this Court on October 29, 1999, in view of the decision of this Court in Hasmat Rai. In the said decision, three Judge Bench of this Court held that when eviction was sought on the ground of personal requirement of landlord, such requirement must continue to exist till the final determination of the case. Following the ratio laid down in Pasupuleti Venkateswarlu, Desai, J. stated : 'It is now convertible that where possession is sought for personal requirement, it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but also subsist till the final decree or order for eviction is made. If in the meantime, events have crept up which would show that the requirement of the landlord is wholly satisfied, then in that case, his action must fail and in such a situation, it is not incorrect to say that such decree or order for eviction is passed against the tenant, he cannot invite the court to take into consideration the subsequent events.

8. In reply to the aforesaid arguments and the decision relied upon by learned Counsel for the petitioner-tenant, learned Counsel for the respondent-landlord relied upon the Judgment of the Apex Court in the case of Gaya Prasad v. Pradeep Srivastava : [2001]1SCR923 , wherein the Apex Court has observed as under:

9. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for Judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground her/his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.

9. Learned Counsel for the landlord relying upon the decision in the case of Gaya Prasad (supra) submitted that the need set up by the landlord is bona fide requirement has to be considered on the date when the application was filed, therefore the orders passed by the appellate authority in refusing to accept the evidence with regard to the subsequent facts which have come into existence during the pendency of the appeal are wholly irrelevant. In my opinion, since the Apex Court while deciding the case of Kedar Nath's case (supra) has taken into consideration the case of Gaya Prasad (supra) and has relied upon three Judges Bench decision in the case of Hasmat Rai and Anr. v. Raghunath Prasad : [1981]3SCR605 .

10. In view of the decision in the case of Kedar Nath (supra), in paragraph 32, which is reproduced below, the order passed by the appellate authority refusing to accept the additional evidence-deserves to be quashed.

32. There is yet another reason on which the order passed by the High Court is liable to be set aside. As stated earlier, notice was issued by this Court on October 29, 1999, in view of provisions of Sub-section (7) of Section 21 of the Act. Sub-section (1) of the said Section enables the landlord to get possession of the tenanted property on certain grounds. One of such grounds is bona fide requirement by the landlord for residential purposes or for purposes of any profession, trade or calling. Sub-section (1) has to be read with Sub-section (7) of Section 21. The relevant part of Section 21 reads as under:

21. Proceedings for release of building under occupation of tenant. -- (1) The Prescribed Authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely:

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any members of his family, or any person whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;

(7) Where during the pendency of an application under Clause (a) of Sub-section (1), the landlord dies, his legal representatives shall be entitled to prosecute such application further on the basis of their own need in substitution of the need of the deceased.

11. In view of above, without entering into further merits and arguments advanced on behalf of rival parties, the orders passed by the appellate authority are quashed. The matter will go back to the appellate authority who will decide the same within a period of three months' from the date of presentation of a certified copy of this order before it in the light of the observations made in this judgment and in accordance with law after considering the facts stated in the application and

the affidavits filed before the appellate authority whereby the facts which have come into existence during the pendency of the appeal before the appellate authority.

12. In view of what has been stated above, this writ petition succeeds and is allowed. The orders passed by the appellate authority dated 5th March, 1999, 4th September, 1999 and 24th November, 2003 Annexures-'13' '16' and '19', respectively to the writ petition are quashed. The matter will go back to the appellate authority who will decide the same within a period of three months' from the date of presentation of a certified copy of this order before it in the light of the observations made in this judgment and in accordance with law after considering the facts stated in the application and the affidavits filed before the appellate authority whereby the facts which have come into existence during the pendency of the appeal before the appellate authority. However, there shall be no order as to costs.