

Ram Kumar Vs. Ivth A.D.J. and ors.

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Court : Allahabad

Decided On : Jul-21-2004

Reported in : 2005(1)ARC682; 2004(4)AWC2883

Judge : Tarun Agarwala, J.

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

Appeal No. : C.M.W.P. No. 13551 of 1982

Appellant : Ram Kumar

Respondent : ivth A.D.J. and ors.

Advocate for Def. : S.M. Dayal, S.C.

Advocate for Pet/Ap. : S.N. Agrawal, ; R.K. Mishra, ; Neeraj Agrawal, ; J.N. Singh, ; N.K. Srivastava and ; A. Shukla, Advs.

Disposition : Petition allowed

Judgement :

Tarun Agarwala, J.

1. The etitioner is the landlord of the shop in question and has assailed the order of the revisional court rejecting the release application. The brief facts leading to

the filing of the writ petition is that the petitioner is the owner and landlord of the premises in question which is under the tenancy of respondent No. 2. The petitioner filed an application under Section 21 (1) (a) of U. P. Act No. 13 of 1972 for the release of the shop for one of his sons, namely, Ajai Kumar. The petitioner contended that his son Ajai Kumar had started a business in the manufacture of soap but he needs an outlet to sell his product and do business on a better scale and, therefore, requires the shop in question. The petitioner further alleged that the defendant was not carrying on any business from the premises in question and that he keeps the disputed shop locked most of the time and that he was doing his business from his residential house No. 2/140 Nawabganj, Kanpur.

2. The defendant contested the matter and submitted that he was carrying the business of cycle repairing etc. from the premises in question and denied that he was carrying on any business from his residential house. The tenant further contended that the landlord had several other houses and open plots in his possession which he could utilize in order to set up the business of his son. The defendant contended that the application of the petitioner was not bonafide and that it was mala fide and was liable to be rejected.

3. The prescribed authority by its judgment allowed the application of the petitioner and released the premises in question. The prescribed authority held that the petitioner's need for the shop in question was bona fide and genuine and that the shop was required in order to set up the business for the petitioner's son. The prescribed authority further found that the defendant had an alternative accommodation inasmuch as the tenant was doing business from one of the rooms in his residential house and, therefore, came to the conclusion that the need of the petitioner was greater than that of the tenant and that the tenant would not suffer hardship in the event he had to vacate the premises in question,

4. Aggrieved by the judgment and order of the prescribed authority, the tenant filed an appeal which was allowed and the order of the prescribed authority was set aside and the release application of the petitioner was rejected. The appellate court held that the release application of the petitioner was neither bona fide nor genuine inasmuch as there was no requirement of the shop to set up the business

of his son inasmuch as the son was already doing business and that the petitioner's case was not that his son had no place for doing his business. The appellate court further found that since the landlord had other properties he could make alternate arrangements for his son. The appellate court further found that the tenant was not carrying on any business from his residential portion.

5. Aggrieved by the order of the appellate court, the petitioner landlord has now filed the present writ petition.

6. Heard Sri R. K. Mishra, learned counsel holding the brief of Sri Neeraj Agarwal, for the petitioner. No one appeared for the respondent-tenants.

7. In my view, the writ petition is liable to be allowed and the appellate order is liable to be quashed. In my opinion, the appellate order is not based on any cogent evidence, rather is based on surmises and conjectures. The landlord's bona fide need has been belied by the following finding :

'The application of the landlord shows that his son Ajai Kumar had already started business in soap. It is not thus a case that AJai Kumar has no place for running business. The tenant has specifically alleged that the landlord owns five houses and also several plots. It is not a case where the landlord cannot arrange suitable accommodation for his son except by ousting the appellant. I do not find any force in the contention that the tenant has two alternate accommodations. The evidence on record clearly shows that the tenant-appellant is not carrying on any shop in his residential portion..... The son had already started business and he can carry on the same in the existing accommodation.'

8. The finding of the appellate court that since Ajai Kumar had already started business he can carry on his business from the said accommodation and that it was not a case that Ajai Kumar has no place for running the business, is patently erroneous and against the pleadings. The petitioner in paragraph 5 of his application under Section 21 has clearly stated that his son Ajai Kumar wants to do business in soap, which he has already started, but requires the shop in question in order to canvass and sell his products. It is, therefore, clear that a specific case was carved out by the petitioner requiring the shop for the business

for his son. The finding of the appellate court holding that the need of the petitioner is not bona fide is patently erroneous and this finding is liable to be set aside as being based on no evidence.

9. The finding of the appellate court that since the landlord had several other plots and buildings, he could easily accommodate his son in any of these buildings and plots, is patently erroneous and cannot be a ground for denying the relief claimed by the petitioner. It is settled law that if there are several buildings owned by the landlord, it is always open to the landlord to choose any building which he likes or which he thinks to be best for the business. The tenant cannot object nor can raise such a plea that the landlord has other accommodation from which he can do the business. Similar view was expressed by the Supreme Court in *M. M. Qasim v. Manohar Lal Sharma and Ors.*, 1981 (3) SCC 36, as well in *N. S. Dutta v. VIIIth Additional District Judge, Allahabad and Ors.*, 1984 ARC 113.

10. From the aforesaid it is clear that the release application cannot be rejected merely on the ground that the landlord has other buildings and plots available with him. In any case the petitioner had categorically denied that he has other vacant buildings or be no-order as to cost. plots available with him. This denial was made by the petitioner on an affidavit. The tenant has not given any evidence on this aspect. Thus, the finding of the appellate court on this aspect is based on surmises and conjectures.

11. The finding of the appellate court that the evidence on record indicates that the tenant is not carrying on business from his residential accommodation is again against the material evidence on record. The prescribed authority has given a finding that the tenant is carrying on business from one room of his residential accommodation at 2/140, Nawabganj, Kanpur, on the basis of an admission made by the tenant himself and also on the basis of the municipal assessment register which had been filed and which indicates that one room in the house was being used as a shop on the ground floor. Before the appellate court a commission was issued and the Commissioner's report also indicates that the tenant was doing business of soap also from the premises in question. Thus, the finding of the appellate court that the tenant was not carrying on any business from his

residential portion is based on no evidence.

12. In view of the aforesaid, I am unable to agree with the judgment of the appellate court and I find that the order of the appellate court cannot be sustained. Under these circumstances the order of the appellate court is set aside and I affirm the order of the prescribed authority and I hold that the release application of the landlord is bonafide and genuine and that his need is greater than that of the tenant.

13. In view of the aforesaid the writ petition is allowed. The order of the appellate court dated 29.7.1982, is set aside and the order of the prescribed authority is affirmed. In the circumstances of the case I direct the tenant to vacate the premises and hand over peaceful possession of the premises in question within three months from today. In the ; circumstances of the case, there shall be no order as to cost.

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