

Ashok Kumar Vs. Viith Additional District Judge, Muzaffarnagar and Others

Ashok Kumar Vs. Viith Additional District Judge, Muzaffarnagar and Others

SooperKanoon Citation : sooperkanoon.com/482462

Court : Allahabad

Decided On : Aug-11-1998

Reported in : 1998(3)AWC2187

Judge : J.C. Gupta, J.

Acts : Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1) and 22; Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 16 (2); Constituion of India - Articles 226, 227

Appeal No. : C.M.W.P. No. 14835 of 1996

Appellant : Ashok Kumar

Respondent : Viith Additional District Judge, Muzaffarnagar and Others

Advocate for Def. : S.C. and ;Nalin Kumar Sharma, Adv.

Advocate for Pet/Ap. : Promod Kumar Jain, Adv.

Judgement :

ORDER

J.C. Gupta, J.

- 1 This writ petition is directed against the order dated 9.2.1996 passed by respondent No. 1 allowing the appeal filed by respondent Nos. 2 and 3.
2. The dispute relates to a shop situated in Gandhi Colony, North Pachenda Road. Muzaffarnagar, wherein the petitioner, as a tenant of respondent Nos. 2 and 3, is carrying on business of cycle repairing, etc., for the last more than 22-23 years. Respondent Nos. 2 and 3 moved an application under Section 21 (1) (a) of the U. P. Act No. XIII of 1972 (hereinafter to be described as the 'Act'), against the petitioner for the release of the disputed shop alleging therein that the husband of respondent No. 3. Sri Khem Chand, was going to retire shortly on 30.9.1993 from Government service as Tehsildar and after his retirement, he would involve himself in business activity with his son Raj Kumar who was aged about 23 years and was yet unemployed. They both desired to set up the business of motor parts and since no other accommodation was available, the disputed shop was bona fide and genuinely required for that purpose. It was also pleaded that since the tenant has available with him other alternative accommodation, he would not suffer any hardship if he vacated the disputed shop.
3. The petitioner contested the release application on a number of grounds, the main defence being that both Khem Chand and his son Raj Kumar were already engaged in a flourishing business of 'DAIRY' and the respondents were having other accommodations also where their family members were carrying on business. Thus, according to the tenant-petitioner, the need set up in the release application was not real but only a fanciful wish.
4. The Prescribed Authority by the order dated 10.1.1995 rejected the release application holding that the need shown therein was not honest and bona fide. Both Khem Chand and Raj Kumar were wholeheartedly carrying on the business of Dairy and were not unemployed. The appeal filed by the respondent Nos. 2 and 3 against the judgment of the Prescribed Authority has, however, been allowed by respondent No. 1 by the impugned order, which has been challenged by the tenant in the instant writ petition.
5. Learned counsel for the petitioner vehemently contended that when the Prescribed Authority has categorically found that both Khem Chand and Raj

Kumar for whose requirement the shop in question was asked for, were engaged in the flourishing business of Dairy, the lower appellate court without touching that finding has committed a gross error of law in reversing the order of the Prescribed Authority and therefore the judgment of the Appellate Authority should be quashed. Learned counsel for the contesting respondents on the other hand supported by order of the Appellate Authority by contending that since the judgment contains findings on both the relevant issues of bona fide need and comparative hardship, and such findings being of fact, this Court should not interfere while exercising writ jurisdiction. He argued that in matters like the present one, where this Court is called upon to examine the judgment of the Court below, the powers of this Court are only supervisory in nature and it cannot examine the evidence and re-appraise it to disturb a finding of fact recorded by the fact finding authority.

6. It is true that the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India in rent control matters where the orders of the Rent Control Authorities are challenged is of supervisory nature only, as a finality is attached to the order of the Appellate Authority made under Section 22 of the Act because no second appeal or revision is provided under the Statute against the said order. The High Court while exercising powers in such matters cannot sit as a Court of appeal when called upon to examine the correctness or validity of the order of the Rent Control Authorities and it will not take upon itself, the task to re-appraise the evidence for substituting its own findings of fact in place of findings reached by the fact finding authorities. The power is one of judicial review, which is a basic feature of the Constitution. The parameters of judicial review are now well-settled as a result of a series of pronouncements of Supreme Court and the High Courts, wherein it has been laid down that judicial review is not concerned with the merits of the decision, but with the manner in which the decision is taken, thus in a sense the jurisdiction is very limited but howsoever limited it may be, the Court will not shut its eyes and uphold every judgment based on findings of fact merely on the supposition that interference in such findings is not permissible. Interference will be fully justified where the Court finds that the finding is manifestly erroneous and unjust. In the case of *M/s. Variety Emporium v. V.R.M. Mohammad Ibrahim Narain*, 1985 SC and FB Cases 52, the Apex Court made interference in the

concurrent findings of fact on the ground that injustice should not be allowed to perpetuate.

7. In another decision in the case of Chandravarkar Sita Ratna Rao v. Ashalata S. Guram, 1986 (4) SCC 447, it has been held that in exercise of jurisdiction under Article 227 of the Constitution, the High Court can go into the question of fact or look into the evidence if justice so requires it. But it should decline to exercise that jurisdiction in the absence of clear cut down reasons where the question depends upon the appreciation of evidence. It also should not interfere with a finding within the jurisdiction of the inferior tribunal or Court except where the finding is perverse in law in the sense that no reasonable person properly instructed in law could have come to such a finding or there is mis-direction in law or a view of fact has been taken in the teeth of preponderance of evidence or the finding is not based on any material evidence or it has resulted in manifest injustice. Except to that limited extent the High Court has no jurisdiction.

8. It is also well-settled that the High Court in its supervisory jurisdiction will not upset a conclusion of fact arrived at by the inferior authorities even where the High Court may be inclined to take a different view on the evidence on record.

9. In the backdrop of these settled principles, it has to be examined and find out whether the impugned order requires interference by this Court in these proceedings.

10. In the present case, the release of the disputed shop was claimed for the requirement of Khem Chand and Raj Kumar, the husband and son of respondent No. 3 respectively for settling them in a new business venture as both of them were doing no business and were unemployed. The tenant's specific defence was that both these persons were already engaged in a flourishing business of 'DAIRY' in their own premises and there was no requirement of any other accommodation to start the alleged business of motor parts. He also adduced evidence both oral and documentary in support of his case. The Prescribed Authority while deciding the question of bona fide need, recorded a categorical finding that the landlord's assertion that Khem Chand and Raj Kumar were sitting idle and were not doing any business was false as from the evidence on record, it was established that

both these persons were doing 'DAIRY' business in their own premises and their alleged need for the shop in question was not bona fide. In coming to this conclusion, the Prescribed Authority took into consideration along with other evidence, the affidavit of the tenant and the documents annexed therewith so also the affidavit of a customer who stated to have purchased milk from the 'DAIRY' run by Khem Chand and Raj Kumar. The Appellate Authority while reversing the judgment of the Prescribed Authority has not touched that finding and it has nowhere been held by him that no 'DAIRY' business was being carried on by the aforesaid persons, instead he has observed that the tenant has not produced any evidence to indicate that the husband and the son of the landlady were doing any business. This observation of the Appellate Authority is wholly against the record as evidence to the effect that they were doing DAIRY business has been brought on record by the tenant and even believed and relied upon by the Prescribed Authority while answering the question of bona fide need. The Appellate Authority has, thus, totally ignoring that material piece of evidence and without touching the aforesaid finding of the Prescribed Authority, reversed the conclusion of fact recorded by the Prescribed Authority on the issue of bona fide need. A manifest error has, thus, been committed by the lower appellate court and the judgment impugned is vitiated in law.

11. It is well-established principle that where the Appellate Authority records a finding of reversal, a duty is imposed upon him to take into consideration all the relevant facts and factors which had weighed with the Prescribed Authority in reaching to a particular conclusion of fact and also to meet out the reasonings assigned in support thereof. As for authorities for this proposition, a reference may be made to the following cases :

(1) Mahabir Jain v. 1st Additional District Judge, Jhansi and others, 1985 (1) ARC 368.

(2) Ram Niwas Pandey v. VIIIth Additional District Judge, Kanpur and others, 1982 (1) ARC 246.

(3) Ramesh Chandra v. IIInd Additional District Judge, Allahabad and others, 1996 (2) ARC 617.

(4) Daya Kishan Pandey v. IInd Additional District Judge, Nainital and others, 1996 (2) ARC 426.

12. In all these cases referred to above, it has been held that it is open for the High Court in exercise of its writ jurisdiction to quash the order of the Appellate Authority whereby the order of the Prescribed Authority has been reversed without an examination of the finding recorded by the Prescribed Authority critically and the evidence and material relied upon and the reasons recorded in support of the conclusion arrived at, with the result that the finding remained untouched and was not specifically reversed.

13. The impugned order of the Appellate Authority, respondent No. 1, in the present case for the reasons as have been stated already suffers from arbitrariness and is manifestly erroneous and cannot be sustained. It is, therefore, necessary that the entire matter is examined afresh by the Appellate Authority according to law.

14. Learned counsel for the contesting respondent Shri S.S. Tyagi vehemently argued that since tenant-petitioner has available with him alternative accommodation, he had no right to raise objection against the release application. It is well-settled law that even where the tenant may be having another alternative accommodation, the landlord is not relieved of the burden of proving that the need set up by him is genuine and bona fide. The attention of the Court was also invited to Rule 16 (2) (b) which says that where the tenant has available with him suitable accommodation to which he can shift his business without substantial loss, there shall be greater justification for allowing the application. On the basis of this sub-rule, it was argued by the learned counsel for the respondents that since the petitioner-tenant has available with him suitable accommodation for shifting his business, the release application has rightly been allowed and, therefore, this Court should not make interference in the order of the Appellate Authority. It may be relevant to mention here that Rule 16 provides guidelines which are to be considered by the concerned authorities while making comparison of hardship of the parties. The landlord is first to prove and establish his bona fide need for the disputed accommodation. In any view of the matter, merely on the ground that

some other accommodation is available to the tenant. Rule 16 (2) (b) cannot be attracted. For attracting Rule 16 (2) (b), the following conditions are essential :

- (a) that another accommodation is available to the tenant for shifting his business ;
- (b) that such an accommodation is suitable for his business ; and
- (c) that the shifting of business in that accommodation will be without any substantial to his business.

15. In the case in hand, the lower appellate authority has not recorded specific findings that the alleged alternative accommodation is suitable for the tenant's business and his shifting therein will be without substantial loss to him. In the absence of these essential findings, Rule 16 (2) (b) cannot be applied to.

16. For the reasons stated above, the impugned order dated 9.2.1996 of the lower appellate court cannot be sustained and the same is quashed. The case is sent back to the lower appellate court for a fresh decision in accordance with law and in the light of observations made in the body of this judgment.

17. Since the matter has become old, the lower appellate court is directed to decide the appeal expeditiously preferably within a period of two months from the date a certified copy of this order is produced.

The writ petition is, accordingly, allowed. Parties are directed to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com