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Court : Allahabad

Decided On : Aug-12-1998

Reported in : 1998(3)AWC2309

Judge : J.C. Gupta, J

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 2(1), 20(2), 21(1) and 22

Appeal No. : C.M.W.P. No. 39789 of 1996

Appellant : G.K. Maini

Respondent : Xth Additional District Judge, Allahabad and Another

Advocate for Def. : S.C and ;B.B. Paul, Adv.

Advocate for Pet/Ap. : Rajesh Tandon, Adv.

Judgement :

J.C. Gupta, J.

1. This is tenant's writ petition which is directed against the judgment and order of respondent No. 1, the Appellate Authority, whereby the appeal filed by landlord-respondent No. 2 has been allowed.

2. The dispute relates to a shop situated at 6, Johnstenganj, Allahabad, wherein undisputedly the petitioner has been carrying on business under the name and style of 'Bharat Opticians' for the last about 50 years as tenant of respondent No. 2. The landlord moved an application before the Prescribed Authority under Section 21 (1) (a) of the U. P. Act No. 13 of 1972 (hereinafter referred to as 'the Act'). The need shown therein was that one of the grandsons of the landlord, namely, Sumit Sachdeva was doing his M.B.B.S. course in a medical college at Mangalore and after completing the said course, he would set up his clinic in the disputed shop, and since landlord has not in his occupation any vacant accommodation, his requirement for the disputed shop was genuine and pressing. The release application was contested by the petitioner, inter alia, on a number of grounds. It was pleaded that the landlord, being a big landlord, has extensive properties in his occupation in Johnstenganj as well as in other areas of Allahabad city. It was also stated that the landlord's grandson. Dr. Sumit Sachdeva had no intention to settle down at Allahabad for doing medical practice here and in any case, his future need could not be a ground for releasing the shop in favour of the landlord. He also pleaded that he has earned a goodwill in the disputed shop and would suffer irreparable injury in case he is ousted from the shop. Undisputedly during the pendency of the proceedings, after completing course at Mangalore, Dr. Sumit Sachdeva had left for America and when this fact was brought to the notice of the authorities below, the landlord came up with the case that Dr. Sumit Sachdeva has gone there only for further studies, while according to the tenant-petitioner, he has settled down there permanently with his uncle and aunt who were already engaged there in medical profession. It was further pointed out by the tenant that the landlord and his son (father of Sumit Sachdeva) were already engaged in flourishing business of hotel and restaurant and there was no requirement for them of any additional business.

3. The Prescribed Authority by the order dated 28.8.1993 (Annexure-13 to the writ petition) rejected the landlord's application on the ground that there were 19 rooms in 'Raj Hotel' and space was also available in 'Ginza Restaurant' in the ground floor which was not being used as part of restaurant. Therefore, if the landlord really needed any space for the purpose of establishing clinic for his grandson, the said, accommodations could well be utilized for that purpose without disrupting the

occupation of the petitioner from the tenanted shop it was further found that as per the own case of the landlord, the hotel and restaurant business of 'Koko Hotel' and 'Novelty Restaurant' had been closed long back and, therefore, those premises were also available to the landlord for satisfying the alleged need of his grandson for opening a clinic. The Prescribed Authority further held that upto the date of decision of the application, Sumit Sachdeva had not come back to India and, therefore, his future need could not be relevant while considering the application for release moved under Section 21 (1) (a) of the Act.

4. Aggrieved by the order of the Prescribed Authority, the landlord filed an appeal under Section 22 of the Act which has been allowed under the impugned judgment by the respondent No. 1. While allowing the release application of the landlord, the learned Additional District Judge, who decided the appeal, has come to the conclusion that Sumit Sachdeva has gone to America only for further studies and since he was entitled to practise in India, he was likely to come back in near future and, therefore, his need for opening a clinic for himself was bona fide. It also recorded a finding that the landlord has not available with him any other accommodation in which the clinic for his grand son could be established. On the question of comperative hardship also finding has been recorded in favour of the landlord.

5. Shri Rajesh Tandon, learned counsel for the petitioner and Shri B.B. Paul, learned counsel for the contesting respondent have been heard at length and record has also been perused.

6. Learned counsel for the petitioner contended that when the case was decided by the Appellate Authority even by that time landlord's grandson Dr. Sumit Sachdeva had not come back to India and the situation remained the same as was prevailing when the release application was rejected by the Prescribed Authority and the Appellate Authority has committed a gross error in taking into account future need of the landlord's grandson on mere ipse dixit of the landlord that his son was likely to come back to India in near future. It has been urged by the learned counsel for the respondent that since undisputedly Dr. Sumit Sachdeva now has returned to India and intends to settle down in his private medical

profession in Johnstenganj area, therefore, for that purpose the requirement of the disputed shop is most genuine. Shri Rajesh Tandon, learned counsel for the petitioner, argued that with a view to settle permanently in America, Dr. Sumit Sachdeva pursued further studies there and obtained a certificate which entitled him to practise in America. If in fact he had any intention of coming back to India for doing his practice here, there was no sense in going for that certificate and this itself shows that Dr. Sumit Sachdeva has actually decided to settle down permanently in America where he has better prospects to carry on his profession with his aunt and uncle who are already well-settled in medical profession in America. But this important aspect of the matter has not been enquired into by the Appellate Authority. It is apparent from the judgment of the Appellate Authority that upto the time the appeal was decided, Dr. Sumit Sachdeva had not come back to India and the Appellate Authority proceeded to allow the release application of the landlord on the assumption that Dr. Sumit Sachdeva was likely to come back to India in near future and his need for having an accommodation for his clinic was bona fide. However, whilerecording the said finding, the appellate court did not examine the matter as to with what end in view Dr. Sachdeva continued his further studies for obtaining a certificate entitling him to practice in America, as without that certificate medical profession could not be carried out in America but no such certificate is essential in India for doing medical practice. It was a material factor having a bearing on the question of bona fide need and non-consideration of the same had materially affected the decision.

7. Shri Rajesh Tandon, learned counsel for the petitioner, further argued that the judgment of the Appellate Authority suffers from another manifest error of law inasmuch as while recording the order of reversal, the respondent No. 1 has not examined the findings recorded by the Prescribed Authority, critically. He pointed out that the Prescribed Authority while answering the question of bona fide need of the landlord doubted the landlord's bona fide by recording a positive finding that as per the landlord's own case 'Koko Hotel' and 'Novelty Restaurant' had been closed since long and, therefore, these premises were available to the landlord in case clinic for his grandson was really to be established. The Appellate Authority, however, has not discussed this aspect while answering the question of bona fide need. A perusal of the judgment shows that while making discussion on the

question of comparative hardship of the parties, the Appellate Authority observed that since flourishing business was being carried on in the premises where Novelty Restaurant and Koko Hotel are situated, the landlord could not be compelled to close down his running business in order to make way for establishment of clinic for his grandson. This finding of the Appellate Authority is wholly against the record inasmuch as it was the own case of the landlord that no business in the aforesaid premises was being transacted since long and the Prescribed Authority had acted upon this admission of the landlord. It is well-settled that an admission is the best evidence against the person making the same and when the Prescribed Authority had recorded a positive and categorical finding that the landlord as per his own admission had with him spaces in the aforesaid premises for establishing his grandson, it was incumbent upon the Appellate Authority to examine the said finding critically as also the evidence and material relied upon by the Prescribed Authority and the reasons recorded by him for the conclusion arrived at.

8. It is well-settled law that where the Appellate Authority docs not examine the findings recorded by the Prescribed Authority critically and the evidence and material relied upon by the Prescribed Authority and the reasons recorded in support of conclusion arrived at remain untouched, this Court in exercise of its writ jurisdiction is entitled to interfere, because such an order of the Appellate Authority is vitiated in law. For this proposition, a reference may be made to the cases of Mohd. Nanhe Mian v. IVth Addi District Judge. Aligarh and others, 1982 (2) ARC 527 ; Mahavir Jain v. Ist Addl. District Judge, Jhansi and others, 1985 (1) ARC 368 and Ramesh Chandra v. IInd A.D.J., Allahabad and others, 1996 (2) ARC 617.

9. It is true that the Appellate Authority exercising powers under the Rent Control Act is also a fact-finding authority and has the jurisdiction to set aside the finding even of fact recorded by the Prescribed Authority but where it proceeds to set aside such findings arbitrarily and without critically examining them and without taking into account the relevant factors and evidence which were taken into consideration and relied upon by the Prescribed Authority, the order of the Appellate Authority is not sustainable as he is bound to record his own reasons specifically for upsetting the findings of the Prescribed Authority and for substituting his own findings of fact.

10. In the light of this legal position, the impugned judgment of respondent No. 1 cannot be sustained. The Prescribed Authority recorded aclear and specific finding that the landlord has available with him enough accommodation in the premises of 'Novelty Restaurant' and 'Koko Hotel' for satisfying the alleged need as set up in the release application because of the closure of business long back which was being carried therein and in recording the said finding, the Prescribed Authority in addition to other evidence placed implicit reliance on the own admission of the landlord but the lower Appellate Authority while answering the question of bona fide need did not take into account the said admission and the reasons advanced by the Prescribed Authority in support of his finding have been left untouched. It is true that even an admission can be satisfactorily explained and if it is so done, the admission may loose its binding effect. However, in the present case, the Appellate Authority while answering the vital question whether or not the landlord has available with him any other accommodation, proceeded on wrong premises that the landlord could not be compelled to close down his running business totally ignoring the own admission of the landlord and other evidence relied upon by the Prescribed Authority that the business in the aforesaid premises of 'Novelty Restaurant' and 'Koko Hotel' had been closed long back. The said premises could not have been left out from consideration for the reasons as assigned by the Appellate Authority.

11. Shri B.B. Paul, learned counsel for the respondent, however, contended that the aforesaid premises are in occupation of the landlord as a tenant of a trust and, therefore, the landlord of the present case has no right to open a clinic in the aforesaid premises for establishing his grandson in the medical profession as the same would amount to a change of user which may make him liable for eviction under clause (d) of Section 20 (2) of the Act. It may not be out of place to mention here that no such case was either pleaded or urged before the Appellate Authority and there is also no finding to that effect by the Appellate Authority. There is also no finding of the Appellate Authority that the aforesaid premises of Novelty Restaurant and Koko Hotel were not suitable to the landlord for establishing his son in medical profession. It is not disputed that the aforesaid premises also lie in the same area of Johnstenganj, where the disputed shop is situated, being placed just opposite to each other. It was, therefore, necessary for the Appellate Authority

to have enquired into whether the aforesaid premises were available to the landlord for the purpose for which the disputed shop was sought to be released and to have examined critically the finding of the Prescribed Authority recorded in this regard. If those premises were available, it was further incumbent upon the Appellate Authority to have enquired into the question whether or not they were suitable for the purpose for which the disputed shop is being asked for.

12. For the reasons stated above, this Court finds that the judgment and order of the Appellate Authority suffers from manifest error of law inasmuch as it is based upon misreading of evidence and is also perverse and the same cannot be sustained and, therefore, this writ petition is allowed and the impugned order dated 16.11.1996 (Annexure-17 to the writ petition) is set aside and the case is sent back to the lower appellate court to decide the appeal afresh in accordance with law and, in the light of observations made above in the body of this judgment and also taking into consideration subsequent events which may have developed by this time.

13. Since the matter has become quite old, the appeal shall be heard and disposed of expeditiously, on day to day basis, preferably within two months from the date a certified copy of this order is produced.

14. In the circumstances, the parties are directed to bear their own costs.

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