

Uma Shanker Vs. Xith Additional District Judge and ors.

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Court : Allahabad

Decided On : Nov-17-2003

Reported in : 2004(1)AWC432

Judge : S.U. Khan, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules - Rule 18(2)

Appeal No. : C.M.W.P. No. 7135 of 1993

Appellant : Uma Shanker

Respondent : Xith Additional District Judge and ors.

Advocate for Def. : M.K. Gupta and ;V.K. Gupta, Adv. and ;S.C.

Advocate for Pet/Ap. : A.K. Gupta, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.U. Khan, J.

1. This is tenant's writ petition arising out of eviction/release proceedings initiated by landlord respondent No. 3 under Section 21 of the U.P. Act No. 13 of 1972, on the ground of bona fide need. Release application numbered as U.P. U. B. Case No. 18 of 1981, was dismissed by prescribed authority/Munsif, Koil. Aligarh through judgment and order dated 12.12.1983, landlord respondent filed appeal against the said order under Section 22 of the Act being U.P. U.B. Appeal No. 5 of 1984. The appeal was allowed by XIth Additional District Judge. Aligarh, through judgment and order dated 12.2.1993. The appellate court reversed the judgment of the prescribed authority and allowed the release application of the landlord. This writ petition is directed against the aforesaid judgment passed by the appellate court.

2. The only point argued and required to be decided in this case is as to what would be the effect of dismissal of earlier release application, filed by landlord respondent No. 3, against the tenant petitioner.

3. Initially, under old Rent Control Act, landlord filed application for permission to file suit against the tenant, which was rejected by District Magistrate, in the year 1966 and revision filed by the landlord against the same before the State Government was also dismissed in the same year. Thereafter in the year 1975 landlord respondent No. 3 filed release application under Section 21 of U.P. Act No. 13 of 1972, which was registered as P.A. Case No. 86 of 1975 and was rejected by prescribed authority by an order dated 5.5.1976 (Annexure-4 to the writ petition). Appeal against the same being appeal No. 74 of 1976 was also dismissed on 17.10.1977 (Annexure-5 to the writ petition). In the earlier release application, the case set up was that there was a family partition in which shop in dispute fell in the share of landlord Rishi Kumar who needed the shop for starting his own business. The earlier release application was rejected on the following grounds :

(i) Landlord had no experience of the business of selling ready-made garments and general merchandise.

(ii) Landlord was carrying on a business of commission agency.

(iii) Family partition was recognised and effected through court decree, however, in spite of that family remained joint or at least they carried jointly their business.

4. Regarding comparative hardship the appellate court in the earlier judgment dated 17.10.1977, held that even if the tenant was doing some of his business from his house and keeping the shop in question locked for the time being it would not necessarily follow that he should be directed to vacate the same in favour of the landlord. In the earlier release proceedings no finding was recorded to the effect that the family partition was sham and fictitious,

5. The Supreme Court in AIR 1997 SC 998 has held that tenant cannot challenge the family partition amongst the landlords except to show that it was entered into in order to make out a ground for ejection under relevant Rent Control Act.

6. Helping or participating in joint family business is no ground to reject the release application for starting independent business (vide AIR 2003 SC 532).

7. Under Rule 18 (2) of the Rules framed under U.P. Act No. 13 of 1972, it is provided that :

'Where an application of landlord against a tenant under Section 21 for the release of any building or any specific part thereof or any surplus land impertinent to such building is rejected on merit and a fresh application on the same ground is made within a period of one year from that decision. The prescribed authority shall accept the findings in those proceedings as conclusive.'

8. In the instant case, second release application, i.e., release application giving rise to the instant writ petition (Annexure-6 to the writ petition) was filed in January, 1981, i.e., after more than three years from the date of decision of appeal arising out of the first release application, hence by virtue of Rule 18, findings recorded in the earlier application could not be taken as conclusive by prescribed authority (vide 1984 (1) ARC 67 ; 1986 (2) ARC 49 ; 1999 (2) ARC 22 and 2000 (1) ARC 328).

9. The findings of bona fide need and comparative hardship recorded by lower appellate court in favour of the landlord do not suffer from any error moreover

those findings were not challenged during the argument.

10. Accordingly, the writ petition is dismissed.

11. However, the tenant petitioner is granted six month's time to vacate provided that within one month from today he files an undertaking before the prescribed authority to the effect that within the aforesaid period of six months he will willingly vacate and hand over the possession of the shop in dispute to the landlord respondent No. 3.

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