

Bansidhar Vs. Xiith Additional District Judge and ors.

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Court : Allahabad

Decided On : Sep-24-2003

Reported in : 2004(2)AWC1016

Judge : N.K. Mehrotra, J.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1)

Appeal No. : Writ Petition No. 44(R/C) of 1998

Appellant : Bansidhar

Respondent : Xiith Additional District Judge and ors.

Advocate for Def. : Arun Khanna, ;Deepak Seth and ;U.K. Dhaon, Advs.

Advocate for Pet/Ap. : P.K. Khare, Adv.

Disposition : Petition dismissed

Judgement :

N.K. Mehrotra, J.

1. Petitioner/ tenant has filed this writ petition under Article 226 of the Constitution for issuing a writ of certiorari to quash the judgment dated 17.3.1997 passed by the Second Additional Civil Judge, Lucknow exercising the power of Prescribed

Authority under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction), Act, 1972 in P.A. Case Nos. 13/1991 and 14/1991 as contained in Annexure-2 and the judgment and order dated 26.3.1998 passed by the XIIIth Additional District Judge, Lucknow in the Rent Appeal Nos. 35 of 1997 and 36 of 1997.

2. It appears that the opposite party No. 3 had filed two applications under Section 21 (1) (a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'Act') for release of House No. 39/93 situated in Grain Market Narhi, P.S. Hazratganj, Lucknow. This application was registered as P.A. Case No. 13 of 1991. The opposite party No. 3 also moved another application under Section 21 (1) (a) of the Act, in respect of the shop situated in Building No. 39/93 Grain Market Narhi. This application was registered as P.A. No. 14/1991. The petitioner is tenant in both the accommodations for residential as well as for commercial purpose. The property detailed in the release application in P.A. Case No. 13 of 1991 was for residential purpose and the shop on the ground floor in the same accommodation was let out to the petitioner for commercial purpose.

3. The Prescribed Authority allowed both the applications and the appeal filed against the judgment of the prescribed authority was dismissed.

4. The writ petition has been filed against any judgment of the prescribed authority in P.A. Case Nos. 13 of 1991 and 14 of 1991.

5. At the time of admission of the writ petition the learned counsel for the petitioner conceded that he would not be able to press case of the petitioner/tenant with regard to residential portion in his accommodation and sought two months time to vacate the residential portion for which P.A. Case No. 13 of 1991 was registered. This Court permitted two months time for vacation of residential portion. At the time of argument it has been admitted by both the parties that the residential portion has been vacated by the petitioner. The learned counsel for the petitioner has not pressed the petition against the impugned judgment with regard to the residential portion, which was in the tenancy of the petitioner in House No. 113/93 situated at Grain Market Narhi. Therefore, the writ petition against the judgment of the prescribed authority in P.A. Case No. 13 of 1991 and the judgment in Appeal

No. 35 of 1997 is to be dismissed as not pressed.

6. The learned counsel for the petitioner has made submissions for issuing a writ for quashing the judgment in Prescribed Authority Case No. 14 of 1991 and the judgment passed in Rent Appeal No. 36 of 1997, therefore, in this writ petition the contention of the learned counsel for the petitioner with regard to the judgment in Prescribed Authority Case No. 14 of 1991 are to be looked into.

7. The release of the shop was sought on the ground that the opposite party No. 3 was doing the business of Electrical goods in a very small shop at Niyamat Ullah Road, Aminabad, Lucknow. He had engaged his two sons Shri Indra Mohan Agrawal and Krishna Mohan Agrawal in the said business. It was alleged that there was no other accommodation for the business of the opposite party No. 3, he wanted to settle the other two sons Manmohan Agrawal and Anil Kumar Agrawal who were not engaged in business and wanted them to start a business of Electrical goods in the shop in question. The petitioner filed written statement denying the bona fide need of opposite party No. 3. It was contended that besides the disputed shop there is one another shop in possession of landlord at Niyamat Ullah Road, Aminabad, Lucknow. Besides that shop there is another shop at 67 Gautam Budh Marg, Hewett Road in name and style of 'Bombay Agencies'. It was also alleged that the opposite party No. 3 has a flour Mill in Green Market, Lucknow. It was alleged that Manmohan Agrawal was carrying on business in the shop at Niyamat Ullah Road, Aminabad, Lucknow and Anil Kumar Agrawal was carrying on business at 67 Gautam Budh Marg. It was also alleged that the opposite party No. 3 himself mostly resided in Delhi and carried out his wholesale business from there. The family of opposite party No. 3 was joint. Earlier also a release application of opposite party No. 3 was dismissed on 30.10.1980. Later on the petitioner amended the written statement and pleaded that the opposite party No. 3 was carrying on manufacturing as well as selling in whole-sale and retail business of the electrical items and goods at 649/12 Gali Robin Cinema Old Sabzi Mandi, Delhi in the name and style of Godrej Industry. The case of the petitioner was that he was 73 years of age at the time of the filing of the release application and the petitioner does not have any other shop in the city of Lucknow. His another shop which was alleged to be in his possession in Bhoot Nath Market

Lucknow is being run by his son and there is no family business in that shop. The son of the petitioner is living separately. Another shop, which was alleged to be in his possession in Gandhi Market is not the shop but it is godown of the son of the petitioner, which is being used for godown purpose for his Kirana shop. It was also alleged that the business of opposite party No. 3 was spread over in such a scale that the entire family of opposite party No. 3 was fully engaged. The opposite party had taken a shop No. A-1 Kul Bhaskar Complex No. 78 Gautam Budh Marg, Lucknow.

8. The contention of the petitioner before this Court is that the learned prescribed authority has failed to consider the comparative hardship, which the petitioner would face at the age of 85 years at the time of releasing the shop in question,

9. The opposite party No. 3 filed counter-affidavit alleging therein that he has closed down the business in the rented shop No. 31, 1st Floor Prince Complex, Hazratganj, Lucknow. Shri Krishna Mohan one son of the opposite party No. 3 is doing partnership business at Delhi. It is denied that the opposite party No. 3 is carrying on business of electrical goods from the shop at Kul Bhaskar Commercial Complex Gautam Budh Marg, Lucknow. The said shop is in the possession of Shri Manmohan Agrawal and he is using the said shop as godown. The shop No. 167 Gautam Budh Marg is in the tenancy of Shri Sunil Kumar Agrawal the son of the respondent No. 3 and Shri Krishna Mohan Agrawal is tenant of shop No. A-1 Kul Bhaskar Commercial Complex No. 78 Gautam Budh Marg, Lucknow. It is also contended that two courts below after considering the entire evidence on record came to the conclusion that the need of the landlord in respect of the shop is more genuine and pressing and accordingly release application was allowed.

10. The learned Prescribed Authority recorded the findings that the opposite party No. 3 carries on business of electrical goods he has two shops in Lucknow. One shop is at Niyamat Ullah Road, Aminabad, Lucknow on which the opposite party is himself carrying on the business. His son Indra Mohan and Krishna Mohan help him in this shop. Another shop is- at 67 Gautam Budh Marg, which is rented shop in the name of Sunil Kumar son of opposite party No. 3. Sunil Kumar carries the shop in the name of 'Bombay Agencies'. The prescribed authority has also held

that the opposite party has a floor griller and not the floor Mill. He has no business at the large scale in Delhi and Gorakhpur. His son Krishna Mohan does not reside in Delhi. He has no business in Prince Complex Hazratganj, Lucknow at present and that shop has been closed. The business of Water Pump and parts is in the partnership of the son of the opposite party. The prescribed authority has held that the large scale business of the opposite party in Delhi is not proved, The Delhi business is being carried on by his son Krishna Mohan but for that also there is no evidence. Prescribed authority has further held that two sons Manmohan Agrawal and Anil Kumar Agrawal are married and the opposite party No. 3 has the bona fide need to settle his two sons separately in the business. The opposite party himself is carrying on the business from the shop at Niyamat Ullah Road, Aminabad, Lucknow and his son Man Mohan Agrawal assists him. After recording these findings the learned prescribed authority had admitted the bona fide need of opposite party/ landlord. The prescribed authority has discussed several decisions of the High Court referred by the opposite party. Thus, there is a clear finding that the two sons of the opposite party who are married have no separate business and his need for the business of two married sons is bona fide and genuine. Prescribed authority has further held that son of the opposite party Om Prakash has taken a shop at Bhoot Nath Complex in Indira Nagar and he carries on a Klrana Store in the shop. The prescribed authority has further held that Rajesh Agrawal who is the son of the petitioner has a shop in Indira Nagar on lease. The number of shop is 5/10. Om Prakash and Rajesh Agrawal are the son and grand son of the petitioner, both have shops in Indira Nagar. The prescribed authority has held that besides disputed shop the family member of the opposite party has two shops in Lucknow and on comparative hardship the prescribed authority has held that the need of the landlord is greater than the need of tenant-petitioner who is aged person and whose two sons are already carrying business separately in two shops in Lucknow.

11. The appellate authority has also confirmed these finding of facts.

12. In view of the decision of the Supreme Court in Smt. Savitra Bal Bhau Saheb Kevate and Ors. v. Rai Chandra Dhar Raj Lunja, 1998 (4) AWC 199 (SC) ; 1999 ACJ 771, the concurrent findings of two courts below based on the evidence

cannot be interfered in the writ jurisdiction. In *Bhajan Das v. Jiley Kaur*, AIR 1991 SC 266, the Supreme Court has also taken the same view that the finding of facts recorded by two courts below should not be interfered in the writ jurisdiction. In *Thakur Das v. XVth Additional District Judge, Agra*, 1997 (2) ARC 604 ; it was held by this Court that the reappraisal of the evidence is beyond the scope of the writ jurisdiction. In *Smt. Basanti Devi and Ors. v. District Judge, Kanpur and Ors.*, 1993 ARC 141, it was held by this Court that even if finding of fact was recorded by court below are wrong or incorrect appreciation of evidence, it is not open to correction in the writ jurisdiction.

13. Recently in *Surya Deo Rai v. Ram Chander Rai and Ors.*, JT 2003 (6) SC 465 ; the Supreme Court has held that either the writ of certiorari or the exercise of supervisory jurisdiction none is available to correct mere errors of fact or of law unless the two requirements are satisfied : (1) the error is manifest and apparent on the face of the proceedings, such as when it is based on clear ignorance or utter disregard of the provisions of law, and (2) the grave injustice or gross failure of justice has occasioned thereby.

14. In view of the aforesaid concurrent findings of the facts recorded by the two courts below in which I do not find patent error, the writ petition is dismissed. However, the petitioner is allowed six months time to vacate the shop.

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