

Bans Gopal Vs. Additional District Judge, Court No. 1 and ors.

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Court : Allahabad

Decided On : May-13-2008

Reported in : 2008(4)AWC3480

Judge : A.N. Varma, J.

Appellant : Bans Gopal

Respondent : Additional District Judge, Court No. 1 and ors.

Judgement :

A.N. Varma, J.

1. The dispute in the present writ petition pertains to a shop measuring 10' x 5' situate on the main road, Tharbaranganj, Lakhimpur Kheri of which the petitioner is the tenant on a monthly rent of Rs. 55 and opposite parties No. 3 and 4 its landlords. Adjacent to the shop in question, two other shops exist, one occupied by Jamuna Prasad and the other by Neethu Sethi, who were also tenants at the same rate, but subsequently they vacated the same. Opposite parties No. 3 and 4, i.e., the landlords, preferred an application under Section 21(1)(a) of U.P. Act No. 13 of 1972 for release of the building occupied by all the three tenants for establishing Mudit, son of opposite party No. 3, who had completed his studies, having passed B. Com. examination and not intending to continue further studies. The shops were required for personal occupation for establishing said Mudit in ready-made garment business. Adjacent to the said shops, the landlords are

running a sweetmeat business under the name and style of 'mitaiwala'. The case of the opposite parties was that since their need in respect of the shop in question was bona fide and genuine, therefore, the Same be released in their favour for establishing their son in garment business. It was also alleged that greater hardship would occasion to the landlords in the event the application is refused in compared to the tenants if the application is allowed.

2. All the tenants occupying the said three shops including the petitioner, contested the application for release by filing joint written statement. The case set up by the tenants was that the need of the landlords was not bona fide and genuine and it was only with an intention to evict them that an application for release had been preferred solely with an ulterior motive. It was further alleged that the landlords had ample accommodation under their occupation as such the son could be conveniently settled in business in the accommodation available with the landlords. It was also the case of the tenants that said son was not well versed in running the garment business, therefore, too it was not justifiable to allow him to occupy the building under the tenancy of the tenants after evicting them. According to the petitioner a multi-stoned complex had also been built by the landlords, wherein several shops were available and the son could easily establish and carry on his business in one of the shops in the complex. It was also the case of the tenants that U.P. Act No. 13 of 1972 was not applicable, as such, the application for release could not proceed and deserved to be thrown out at the thresh-hold. In support of their cases, the petitioner as well as opposite parties No. 3 and 4 filed affidavits.

3. The Prescribed Authority vide its judgment and order dated 24.2.2005 allowed the application of the landlord for release of the building. It opined that the need of the landlord was genuine and bona fide and the building was required for establishing the son in garment business. On question of comparative hardship, it held that in the event the application for release is disallowed greater hardship will occasion to landlords in compared to the tenant in case the same was allowed.

4. Being aggrieved against the judgment and order passed by the Prescribed Authority the petitioner filed an appeal under Section 22 of the Act, the other two

tenants also filed separate appeals. During the pendency of the appeal, Jamuna Prasad as well as Neetu Sethi, the other two tenants vacated the shops under their tenancy and handed over vacant possession of the same to the landlords. The petitioner alone contested his appeal.

5. The opposite party No. 1 vide its judgment and order dated 10.4.2008 dismissed the appeal and confirmed the findings arrived at by the Prescribed Authority. The petitioner by means of the present petition has challenged the judgment and order passed by the Appellate Authority as well as by the Prescribed Authority.

6. I have heard Sri Mohd. Arif Khan, learned senior advocate in support of the petition as well as Sri S.M.K. Choudhary, who has put in appearance on behalf of the opposite parties No. 3 and 4, in opposition.

7. Learned Counsel for the petitioner vehemently argued that the judgment and orders passed by the Prescribed Authority as well as by the Appellate Authority are manifestly illegal and suffer from errors apparent on the face of the record. According to him the findings arrived at on the question of bona fide requirement as well as comparative hardship are vitiated as the same having been recorded without considering the material on record in right perspective. He further argued that in 1995, under a compromise, portion of shops under the tenancy of all three tenants was vacated and the same were reconstructed. As per the agreement arrived at there was no clause with regard to the ejection of the petitioner, therefore, application under Section 21(1)(a) of the Act No. 13 of 1972 was not maintainable as such the courts below ought not to have proceeded with the application for release. The learned Counsel further argued that while the matter was pending in appeal, the landlords included a portion of the shop vacated by one of the tenant in the shop in which sweetmeat business was carried on. An application was preferred for issuance of a Commission to which objections were also filed. The said application was, however, not adjudicated upon. On the said premise, the learned Counsel submitted that in fact the landlords wanted to include the shops under the tenancy of the tenants in the sweetmeat shop and the so called need of the son was only a device to evict the petitioner which in no

circumstances can be termed as genuine and bona fide. According to him if the son intended to start garment business the same could have been established in the multi-storied complex which had been raised recently by the landlords.

8. In opposition Sri Choudhary submitted that the findings arrived at by the Prescribed Authority as well as by the Appellate Authority on the question of bona fide requirement as well as comparative hardship are findings of facts and therefore, same having been recorded after considering the entire material on record, as such they are not to be interfered with in exercise of powers under writ jurisdiction. According to him the son of opposite party No. 3 having completed his studies and having acquired sufficient experience in garment business intending to establish himself in a business for which the shop in question was required, his need could not be said to be mala fide. He further argued that during the pendency of appeal before the Appellate Authority an alternative accommodation was offered to the petitioner, which offer was refused and an application for release having been allowed, question of comparative hardship having been considered in accordance with law, the petitioner is not entitled for any relief. The learned Counsel specifically denied that no portion of the shop vacated by the said two tenants had been included in the sweetmeat shop, as such there was no occasion for issuance of a Commission. He further submitted that to the said application, the landlords filed an objection, but since the petitioner did not press the same, therefore, it was not adjudicated upon. It was also asserted that more than five years have elapsed since moving of the application for release and the petitioner did not make any effort to search out an alternative accommodation as such, he is not entitled to any relief in the instant petition.

9. So far as the question of compromise in suit for ejectment on the ground of arrears of rent and ejectment is concerned, the same is not binding on the parties while considering an application under Section 21(1)(a) of U.P. Act No. 13 of 1972 is concerned. An application for release is to be scrutinised on the basis of a bona fide need of the landlord. Where it is established that the landlords bona fide require any accommodation for personal use and occupation then it cannot be objected upon on the ground that some compromise had taken place in past in a suit for ejectment. Moreover, the said compromise did not contain any clause

which stipulated that the petitioner shall not be evicted. In view of the said position the claim of the tenant for release of the building on the ground of bona fide requirement cannot be negated.

10. On the question of bona fide need it is not disputed that the son of opposite party No. 3 had completed his studies having passed B. Com. He also acquired sufficient experience in business of ready-made garment, having worked for about three years with one Rajendra Sahu, who also was carrying on the same business of ready-made garment. Every individual has a right to establish himself or herself in a vocation of his own choice. He or she also has a right to augment his/her income. It is also settled proposition that it is the landlord who has to decide as to which accommodation he requires and what is suitable for a particular business. The tenant in no circumstances can dictate terms to the landlord so as to suggest as to which accommodation is suitable for his business. The Prescribed Authority took into account, while considering the application for release, all the surrounding circumstances which lead to the conclusion of establishing bona fide need, there is no illegality or infirmity on the question of bona fide need as considered by the Prescribed Authority. The Appellate Authority also rightly dismissed the appeal, affirming the findings of the Prescribed Authority.

11. So far as the question of comparative hardship is concerned the Prescribed Authority has considered in detail all the factors and has rightly come to the conclusion that greater hardship would occasion to the landlords in case their application for release was rejected in compared to the tenant in the event the application was allowed. So far as the question of non-applicability of U.P. Act No. 13 of 1972 is concerned, according to the learned Counsel for the petitioner, since the construction was of year 1995 as such, U.P. Act No. 13 of 1972 had no application. No such ground has been raised in the petition on the non-applicability of U.P. Act No. 13 of 1972, as such the same cannot be agitated. The Prescribed Authority also observed that the petitioner for all the years for which the application for release was pending, did not make any effort to search but alternative accommodation.

12. During the pendency of the appeal an alternative accommodation was offered to the petitioner in the shopping/business complex, which offer was not accepted by the tenant. The appellate court thus dismissed the appeal.

The appeal decided by the opposite party No. 1 upholding the findings recorded by the Prescribed Authority thus suffer from no infirmity. Since both the Prescribed Authority as well as the Appellate Authority have, upon consideration of material on record arrived at a finding on the question of bona fide requirement as well as comparative hardship, which findings are findings of fact, the same cannot be interfered with under writ jurisdiction. The writ petition, thus being devoid of merit is hereby dismissed.

13. Sri Choudhary, learned Counsel for the landlords, has fairly stated before this Court that the option given to the petitioner during the proceedings in appeal regarding an alternative accommodation in the shopping complex is still open and the landlords are ready and willing to provide him an accommodation in the said complex.

14. In view of the said statement the opposite parties No. 3 and 4 shall provide a shop to the petitioner in the shopping complex within a month at the existing rates prevailing in the locality. Sri Choudhary further gave an undertaking that the petitioner after having occupied the shop shall not be evicted from the same, otherwise than in due course of law.