

Praphulla Kumar Sharma Vs. Indra Dutt Sharma and ors.

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Court : Allahabad

Decided On : Aug-10-2009

Reported in : 2009(4)AWC4086

Judge : Poonam Srivastav, J.

Appellant : Praphulla Kumar Sharma

Respondent : indra Dutt Sharma and ors.

Advocate for Def. : Shri. S. N. Gupta

Advocate for Pet/Ap. : Shri. P. K. Jain

Judgement :

Poonam Srivastav, J.

1. Heard Shri P. K. Jain counsel for the tenant-petitioner and Shri S. N. Gupta counsel for the respondents.

2. The landlord filed release application on 4.10.1995, under Section 21(1)(a) of U.P. Act No. 13 of 1972 (in short referred to as the Act) in respect of House No. 271 Chaukey Gate Firozabad, which was let out to the petitioner on monthly rent of Rs. 15. The release application was contested by the tenant. The written statement was filed on 23.2.1998, The objection of the tenant petitioner is that the accommodation in question was not required bona fidely as the release was

sought to sell the accommodation in question. However, on perusal of the release application, it transpires that the applicant No. 1 who is legal practitioner, is living in rented accommodation at Kanpur and the applicant No. 2 is an employee of Indian Railways (Northern Eastern Railways) and working as Chief Draftsman in the office of Chief Engineer, Gorakhpur. The applicant No. 3 is serving in a Post Graduate College as a head of Psychology Department at Orai district Jalaun, and the applicant No. 4 is serving in Krishi Utpadan Mandi Samiti, Konch district Jalaun. The residential accommodation at Gorakhpur being premises No. 676-K Dairy Colony Gorakhpur, was occupied by the landlord by virtue of his employment in North Eastern Railways and his retirement was due at the time of institution of release application in the year 1995 and, therefore, the accommodation in dispute was required for his own residence as he has no other residential accommodation after his retirement and he will not be able to pay prevalent exorbitant rate of rent. The release application was hotly contested by the tenant and was rejected by the prescribed authority on the finding that the need of the landlord is not bona fide and in fact the landlord was trying to sell the disputed property. The affidavits of Vishnu Chand Digharra and Thakur Lokendra Singh were filed in support of this contention. The release application was rejected by the prescribed authority vide order dated 20.3.2001, which was challenged in rent appeal which stood allowed vide judgment and order dated 21.12.2004 by the appellate authority. This judgment is under challenge in the instant writ petition.

3. The submission of Shri P. K. Jain counsel for the petitioner is that the applicant No. 1 who is an advocate in Kanpur, will not start practice elsewhere. Since he is practicing in Kanpur since quite a considerable length, the need set up is illusory and cannot be said to be bona fide by any stretch of imagination. So far as the applicant No. 2 is concerned he is residing at present at Gorakhpur in a rented accommodation even after his retirement, there is absolutely no justification to come to the conclusion that the accommodation is required by the landlord for his own house.

4. I have heard the respective counsels for the parties at length and perused the impugned judgment passed by the appellate court. While recording finding that the accommodation is genuinely and bona fide required by the landlord after his

retirement is on the basis of a certificate issued by the Senior Engineer Design N. E. Railway. Gorakhpur, certifying that Shri Narendra Dutt Sharma has retired on 30th September, 1996. The said certificate is dated 8th June, 2001 which is annexed with the affidavit as Annexure-8 to the writ petition. On perusal of the impugned judgment I am of the considered view that since the landlord has retired in the year 1996 and is residing in a rented accommodation at Gorakhpur, despite his urgent requirement to settle in his own house. He has been compelled to reside elsewhere only because the accommodation is not released and tenant is using the disputed accommodation on a meagre rate of rent at Rs. 15 per month. Learned Addl. District Judge has recorded categorical finding that since the tenant who has come up with the suggestion that the accommodation in dispute is not worth status of landlord appellant, has rejected this contention on the basis of a consideration that the tenant has six family members and residing in the house in question whereas the landlord who is now retired from service of Railways, has only three members. Since he has no accommodation, he is compelled to live in a house on rent which is paid from his pension. The finding of bona fide need has specifically been recorded on the basis of evidence and other documents brought on record and also finding that comparative hardship is in favour of the landlord. Besides, the appellate court has taken into consideration that no effort has been made to search alternative accommodation during continuation of proceedings before the courts below. The tenant also did not try for allotment of some other accommodation during the continuation of the proceedings before the courts below whereas he could very well get preference on priority basis in allotment.

5. In the case of *Badri Narain Chunni Lal Bhulade v. Govind Ram Ram Gopal Mundada* : AIR 2003 SC 2713 it has been held that failure of the tenant to search alternative accommodation after institution of the release application is sufficient to decide the question of comparative hardship against the tenant.

6. In the case of *Siddalingama v. M. Shenoy* : AIR 2001 SC 2896, the Apex Court has held that the Rent Control Acts are basically made for the benefit of the tenant and provision of release on the ground of bona fide need is the only provision in the Act which treats the landlord with some sympathy. This view is also followed by this Court in the decisions of *Joginder Singh Bajaj and Ors. v. 4th A.D.J.*,

Saharanpur and Anr. : 2005 (1) ARC 394; Heera Lal v. Vth A.D.J.. Bareilly and Ors. 2006 (1) ARC 142. There are number of other decisions in which courts have refused to grant any relief to the tenant on the basis of consideration that no effort was made by the tenant to look for an alternative arrangement and thereby refused to consider the hardship of tenant while recording finding against him while making a comparison of respective hardships.

7. In the circumstances, I am of the considered view that the judgment of the learned Additional District Judge, dated 21.12.2004 is on question of fact and cannot be quashed in exercise of powers under Article 226 of the Constitution of India and no reappraisal of the evidence be made, There is no force in the writ petition and it is accordingly dismissed.

8. In the end, Shri P. K. Jain learned Counsel for the petitioner has made a request that the tenant may be allowed one year time to vacate the accommodation in question which has been objected by the learned Counsel appearing on behalf of respondents.

9. Considering the fact that now-a-days, it is not easy to get a house on rent the petitioner is granted six months' time to vacate the accommodation in question provided he continues to pay damages at the rate of Rs. 1,000 per month from the month of July, 2009, till he vacates the premises in question and files an undertaking on affidavit alongwith certified copy of this order before the court concerned within three months from today that he will vacate the premises in question on or before 28.2.2010 and pays the damages as directed above. The landlord will be entitled to withdraw the amount so deposited by the tenant.