

Ram Narayan Singh Vs. Additional District Judge/Special Judge,

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Court : Allahabad

Decided On : Aug-26-2009

Reported in : 2010(1)AWC371

Judge : Poonam Srivastav, J.

Appellant : Ram Narayan Singh

Respondent : Additional District Judge/Special Judge, ;e.C. Act and anr.

Advocate for Pet/Ap. : Sri. Shesh Kumar

Judgement :

Poonam Srivastav, J.

1. Heard Sri Shesh Kumar, learned Counsel for the petitioner, Sri H.N. Singh advocate for the respondent No. 2.

2. The dispute arises from a proceeding under Section 21(1)(a) of U.P. Act No. 13 of 1972.(hereinafter referred to as the Act) on 15.3.2004 by the landlord. The release application was numbered as P.A. Case No. 8 of 2004, Murari Lal Srivastava v. Ram Narayan and the same was allowed on 14.5.2007 directing the tenant to vacate the house within a period of two months. This judgment and order was challenged in an appeal under Section 22 of the Act which was decided by the Additional District Judge/Special Judge (E.C. Act), Etawah on 28.7.2009 and

the judgment of the trial court was confirmed in appeal. Both the judgments are impugned in the instant writ petition.

3. The submission of the learned Counsel for the petitioner Sri Shesh Kumar is that the accommodation in question is a residential house. Initially the father of the contesting respondent was the tenant and after his death his sons stepped in shoes of their father and inherited the tenancy right. Immediately after their father's death, Civil Suit No. 545 of 1965 was instituted in the Court of Munsif, Etawah for eviction of the petitioner which was dismissed. Subsequently a release application was filed in which the landlord was not successful. During pendency of the previous Case No. 86 of 1975, a proceeding under Section 133, Cr.P.C. was also initiated before S.D.M. The order passed in the said proceeding was challenged in a criminal revision and finally in Writ Petition No. 676 of 1975 and the entire proceedings under Section 133, Cr.P.C. was quashed in the writ petition. The contention of Sri Shesh Kumar is that having lost from all the courts, the present proceedings were initiated. The instant release application was set up on the ground that the accommodation in question was required for his personal use. When the house was let out to the petitioner's father, the respondent-landlord was unmarried but at present he has five sons. Three sons are married and they are living together with their wives and children. Two sons are still to be married. The landlord also mentioned in his release application that one of the petitioner's brother Balram Singh is living at Lucknow. The petitioner is bus driver in U.P.S.R.T.C. and has constructed a house in Awanti Nagar, Civil Lines. The petitioner and all his brothers are joint tenants and they are still joint and living together in a new house. A written statement was filed by the tenant refuting the grounds of the release application. The claim of the landlord was that another house constructed in the same municipal area. This assertion was disputed since it was his brother who has shifted in the new house whereas the petitioner continued to occupy the accommodation in question in his own right as a tenant. It was strenuously contended by the tenant-petitioner that since all his previous attempts to oust the petitioner-tenant proved futile therefore, the present proceedings have been initiated as a last option.

4. Learned Counsel has tried to challenge the judgments also on the legal ground that the appellate court has failed to record any finding on the question of bona fide need and only recorded its finding on the question of comparative hardship. In the circumstances, the judgment of the appellate court is vitiated in law.

5. Sri H.N. Singh appearing for the landlord-respondent submits that it is a wrong assertion on the part of the petitioner that the present release application is only to vindicate the previous proceedings in which the landlord failed. Learned Counsel emphasized that the correct facts are that the petitioner is in occupation of two floors of the premises in question which is urgently required by the landlord to fulfil his needs. Besides the tenant is enjoying this accommodation almost free at the rent of Rs. 50 per month and admittedly it is impossible to get a house at this meagre rent and, therefore, the sole purpose of the petitioner is to retain possession of the disputed accommodation. He has also tried to place certain extracts of the appellate court judgment where findings have been recorded on the present requirement of the landlord and also the findings that the requirement of the landlord is apparently bona fide.

6. Sri H.N. Singh has also pointed out that this is an objection only with a view to delay the matter. In fact one of the brothers namely Balram Singh, who is admittedly living at Lucknow, had filed impleadment application in the court below which was numbered as Application No. 12C and the same was rejected by the court below which was challenged in a Writ Petition No. 69773 of 2005. This Court while dismissing the writ petition on 9.1.2006 observed that the prescribed authority had relied upon the decisions of the Apex Court while rejecting the impleadment application and holding that one of the joint tenants is sufficient for disposal of the release application. Thus, it is clear that the previous impleadment application was filed by the brother who is not even residing at Etawah.

7. After hearing the respective counsels at length, going through the two judgments and after giving a careful consideration to the facts and circumstances, I do not agree with the first objection raised by Sri Shesh Kumar that the release application itself was not maintainable since all the tenants have not been arrayed, only Ram Narayan Singh, one of the tenant is arrayed as a party and, therefore,

the release application itself was not maintainable. All the brothers who inherited the tenancy right in fact are tenants in common. One brother is living at Lucknow and according to the petitioner himself, the other brothers are living in his own house and as claimed by the petitioner-tenant that he is living with his family in the house in question, therefore, accepting his contention, I do not think that there was any illegality whatsoever if the petitioner alone was arrayed as one of the respondents. Besides, it is also right that all the tenants have a common interest and in case one of the brothers has been arrayed as respondent, it cannot be said that the release application was not maintainable. This preliminary objection was also raised before the court below and it was considered at length and on the basis of various decisions and principles laid down by this Court that since all the tenants are tenants in common, release application against one of the tenant is maintainable. There is no illegality in instituting the release application against one of them. Interest is common and they have inherited the tenancy of their father who was the actual tenant. So far the question of bona fide need is concerned, learned Counsel has placed reliance on a decision in the case of *Sudha Agarwal v. Additional District Judge 1999 (4) AWC 2825*. No doubt the courts below are required to give their findings on the question of 'bona fide need' as well as 'comparative hardship' and there is no two opinions about this principles laid down in various decisions. I agree that the courts below are required to consider the question of bona fide need and also in the event of release of accommodation, relative hardship that is likely to be suffered by landlord and tenant.

8. On a close scrutiny of two judgments, it is clear that the courts below have recorded a finding that there are married sons. They have their wives and children and also two unmarried brothers and the accommodation at their disposal with the amenities of latrine, bathroom etc. on top floor can hardly be said to be sufficient. The fact that Santosh Kumar Srivastava, Rajesh Kumar Srivastava and Shailesh Kumar Srivastava are married sons and their wives Seema, Sharda and Anita and their children Shalu, Bitto Devi, Seeba and Guddi are all living with the landlord and, therefore, the finding on the question of bona fide need was recorded by the two courts concurrently. Comparative hardship also dealt in detail and while considering comparative hardship, the Court had recorded a finding that another house in vacant state has come in possession of the tenant in respect of which

sufficient material was brought on record which was not disputed by the tenant. The only argument raised in respect of new accommodation in their possession is that it is his brother who has constructed the house and not the present petitioner and brother is not family member, therefore, the new house cannot be taken into consideration and Explanation to Section 21 of the Act is not attracted. I do not agree with the submission of Sri Shesh Kumar. However, assuming that this argument is correct, the new house has been constructed by his brother in Moholla Awanti Nagar, Civil Lines and not the present petitioner. Even the tenant has not been able to show whether any effort or attempt has been made on his part to get an alternative accommodation or he has tried to search or move allotment application. This alone deprives the tenant from any consideration on the question of comparative hardship.

9. The Apex Court has ruled on the question of comparative hardship in the case of *Badri Narayan Chuni Lal Bhutada v. Govindram Ram Gopal Mundada* : AIR 2003 SC 2713. Failure of the tenant to search an alternative accommodation after institution of the release application is good enough reason to decide the question of hardship against the tenant and refuse comparison of likely hardship on this ground alone. Similar view was adopted in the case of *Azamuddin v. Malika Bano (Smt)* 2008 (3) ARC 570. In the case of *Siddalingamma and Anr. v. Mamtha Shenoy* : AIR 2001 SC 2896, the Apex Court was of the view that since the Rent Control Act is basically meant for the benefit of the tenants and provisions of the release on the ground of bona fide need is the only provision which treats the landlord with some sympathy and, therefore, if the tenant is satisfied that the accommodation in which he is living since very long time thus it should not be released on the asking of the landlord. This leniency cannot be allowed. The Courts, if during the proceedings come to a conclusion that comparison of relative hardship caused to the landlord and tenant is a step-in-aid and beneficial to the tenant, therefore, comparison of hardship is necessary. However, if the tenant fails to establish its bona fide that during continuation of the proceedings the tenant did make an effort to search for an alternative accommodation but failed to do so only then a view in favour of the tenant is possible in such an event. If the tenant fails to establish this, the Courts are well within their rights to refuse comparison of hardship.

10. In view of what has been stated above and decisions of the Apex Court that the tenant is not entitled for any relief on the comparison of his hardship if he has not made any attempt to look for an alternative accommodation. I am of the view that tenant is not entitled to any benefit. On the basis of aforesaid findings as well as the fact that the question of comparative hardship and bona fide need are all findings of fact, there is no good ground for interference under Article 226 of the Constitution of India. The writ petition lacks merit and is accordingly dismissed.

11. In the end, Sri Suresh Kumar has made a request for granting some time to the petitioner to vacate the premises in question. Sri H.N. Singh though agreed to the request to allow some time but he did object to the rate of rent of Rs. 50 only. It is a fact that in a city like Etawah Rs. 50 can hardly be said to be sufficient or even appropriate rent.

12. Considering the submissions of both the counsels, I allow six months' time to the tenant-petitioner to vacate the house in question subject to an undertaking filed by the petitioner before the court below within three weeks from today that he will handover vacant possession on or before 27.2.2010 and also make payment of rent at the rate of Rs. 1,000, w.e.f. 28.7.2009. In the event, the petitioner continues to pay Rs. 1,000 from July, 2009 up till date or he vacates the premises in question and also file an undertaking in the form of affidavit, he shall not be evicted for a period of six months. In the event of default, this liberty shall stand discharged.

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