

Dr. Nilambhar Jha Vs. Special Judge/Additional District Judge and ors.

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Court : Allahabad

Decided On : Dec-10-2002

Reported in : 2003(1)AWC684

Judge : S.P. Mehrotra, J.

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

Appeal No. : C.M.W.P. No. 52776 of 2002

Appellant : Dr. Nilambhar Jha

Respondent : Special Judge/Additional District Judge and ors.

Advocate for Def. : S.N. Tripathi, Adv.

Advocate for Pet/Ap. : Tarun Verma, Adv.

Judgement :

S.P. Mehrotra, J.

1. This writ petition has been filed by the petitioner, inter alia, praying for quashing the judgment and order dated 25.11.2002 (Annexure-7 to the writ petition) passed by the learned Special Judge (Anti Corruption) Additional District Judge. Gorakhpur and the judgment and order dated 27.9.1999 (Annexure-5 to the writ

petition) passed by the learned Prescribed Authority. Gorakhpur.

2. The dispute relates to a shop in a house which is situated in Mohalla Dharamshala Bazar, Gorakhpur, the details whereof have been given in the release application referred to hereinafter. The said shop has, hereinafter, been referred to as 'the disputed shop'.

3. From the allegations made in the writ petition, it appears that the respondent No. 3 filed a release application under Section 21 (1) (a) of the U. P. Act No. 13 of 1972 (in short 'the Act') against the petitioner for the release of the disputed shop.

4. It was, inter-alia, stated in the release application that the petitioner was the tenant in the disputed shop since the year 1965 ; and that the respondent No. 3 was the sole owner of the said house including the disputed shop ; and that the rate of rent was Rs. 80 per month ; and that the respondent No. 3 wanted to establish business in the disputed shop for augmenting his income ; and that the petitioner would not suffer any hardship in case of his eviction from the disputed shop while the respondent No. 3 would suffer much greater hardship in case the disputed shop was not vacated. The said release application was registered as P. A. Case No. 24 of 1998. A copy of the release application has been filed as Annexure-1 to the writ petition.

5. The petitioner contested the said release application.

6. Evidence was led by both the sides.

7. The learned prescribed authority by its judgment and order dated 27.8.1999, allowed the said release application in respect of the disputed shop, and further directed that the respondent No. 3 would pay two years' rent at the rate of Rs. 80 per month to the petitioner as compensation.

8. Against the said judgment and order dated 27.8.1999. passed by the learned Prescribed Authority, Gorakhpur, the petitioner filed an appeal under Section 22 of the Act. The said appeal was registered as Rent Control Appeal No. 21 of 1999.

By the judgment and order dated 25.11.2002, the learned Special Judge (Anti Corruption)/Additional District Judge, Gorakhpur, dismissed the said appeal filed by the petitioner.

Thereafter, the petitioner has filed the present writ petition seeking the reliefs mentioned above.

9. I have heard Sri Tarun Verma, learned counsel for the petitioner and Sri S.N. Tripathi, learned counsel for the caveator-respondent No. 3.

10. Sri Tarun Verma submits that the respondent No. 3 had earlier filed a suit for ejectment against the petitioner in 1977 which was dismissed on 14th September, 1979. Thereafter, the landlord filed a revision in which he succeeded but on a writ petition filed by the tenant-petitioner, the case was decided against the landlord on 15.5.1982. Thereafter, the landlord filed special leave petition before the Supreme Court which was rejected on 17.1.1983.

11. It is further submitted by Sri Verma that thereafter, the respondent No. 3 filed a release application being P. A. Case No. 17 of 1983 against the petitioner in respect of the disputed shop as well as against one Ratan Lal Jain in respect of the portion in the tenancy of the said Ratan Lal Jain. The said release application was allowed in respect of the portion in the tenancy of the said Ratan Lal Jain but was rejected in respect of the disputed shop in the tenancy of the petitioner on 1.1.1987. The respondent No. 3 filed an appeal under Section 22 of the Act being Appeal No. 25 of 1987 which was dismissed on 5.5.1990. The writ petition being Civil Misc. Writ Petition No. 21256 of 1990 filed thereafter by the respondent No. 3 was dismissed by this Court on 31st July, 1995 (Annexure-2 to the writ petition).

12. It is submitted by Sri Verma that thereafter, the respondent No. 3 has filed the present release case. It is submitted that in view of the earlier litigation, the need of the petitioner, as set up in the present release case, is not bona fide.

13. I have considered the submission made by the learned counsel for the petitioner, and I find myself unable to accept the same. As is evident from the above narration of facts, the suit for ejectment was filed in the year 1977. The

special leave petition arising out of the said suit was ultimately dismissed on 17.1.1983. The earlier release application being P. A. Case No. 17 of 1983 was evidently filed in the year 1983. The writ petition filed in the year 1990 in respect of the said release case was dismissed by this Court in the year 1995. Thereafter, the respondent No. 3 has filed the present release application in the year 1998, i.e., after the expiry of almost 15 years from the filing of the earlier release application in the year 1983. In the circumstances, it is evident that the fact that the respondent No. 3 did not succeed in the earlier litigation will not nullify the bona fide need as set up by the respondent No. 3 in the year 1998.

14. Further, both the authorities below have examined in detail the entire material on record and have concluded that the need of the respondent No. 3 is bona fide. The said finding recorded on the consideration of the material on record is a finding of fact. No illegality or perversity has been shown in the said finding. Therefore, no interference is called for in exercise of writ Jurisdiction under Article 226 of the Constitution of India with the said finding of fact.

15. The authorities below have considered the material on record and have recorded the finding of fact on the question of comparative hardships. No illegality or perversity has been shown in the said finding of fact recorded by the authorities below. Therefore, no interference is called for with the said finding of fact recorded by the authorities below on the question of comparative hardships.

16. It is pertinent to refer to certain judicial decisions in this regard.

In *M/s. India Pipe Fitting Co. v. Fakruddin M. A. Baker and Anr.*, AIR 1978 SC 45, it was laid down by the Apex Court that the conclusions of fact cannot be interfered with by the High Court under Article 227 of the Constitution of India. The findings on the question of bona fide requirement of the landlord recorded by the courts below by appreciating the entire evidence cannot be interfered with by the High Court under Article 227 of the Constitution of India.

17. In *Munni Lal and Ors. v. Prescribed Authority and Ors.*, AIR 1978 SC 29, it was laid down by the Supreme Court that the finding on the question of comparative hardship of the landlord was finding of fact, and the same cannot be interfered with

by the High Court in the exercise of its writ Jurisdiction under Article 226 of the Constitution of India.

18. In *Ashok Kumar and Ors. v. Sita Ram*. 2001 (3) AWC 1997 (SC) : 2001 (2) ARC 1 : 2001 (43) ALR 783 (SC), the Apex Court held as follows (paragraphs 9 and 15 of the said ARC) :

9. The position is too well-settled to admit of any controversy that the finding of fact recorded by the final court of fact should not ordinarily be interfered with by the High Court in exercise of writ jurisdiction, unless the Court is satisfied that the finding is vitiated by manifest error of law or is patently perverse. The High Court should not interfere with a finding of fact simply because it feels persuaded to take a different view on the material on record.

15. The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the appellate authority. The order passed by the appellate authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter, which no reasonable person was likely to take. In that view of the matter there was no justification for the High Court to interfere with the order in exercise of its writ jurisdiction. In a matter like the present case where orders passed by the Statutory Authority vested with power to act quasi-judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High Court is not expected to interfere with the final order passed by the Statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another appellate court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case.'

19. In view of the aforesaid discussion, this writ petition lacks merit and the same is liable to be dismissed. The writ petition is accordingly dismissed.

20. Sri Tarun Verma, learned counsel for the petitioner has then submitted that some reasonable time may be granted to the petitioner for vacating the disputed

shop.

21. I have heard Sri Tarun Verma, learned counsel for the petitioner and Sri S.N. Tripathi, learned counsel for the caveator-respondent No. 3 on this question also.

22. Having considered the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it is directed that the petitioner will not be evicted from the disputed shop till 30th April, 2003, provided the petitioner gives an undertaking on his personal affidavit before the Prescribed Authority, Gorakhpur, within one month from today incorporating the following conditions :

(1) The petitioner will vacate the disputed shop on or before 30th April, 2003 and will hand over peaceful, vacant possession of the same to the respondent No. 3.

(2) The petitioner will continue to pay rent in respect of the disputed shop to the respondent No. 3 with effect from December, 2002 till the date of vacating the disputed shop.

23. In case, the requisite undertaking is not given by the petitioner within the time granted or any of the aforesaid conditions incorporated in the undertaking is not complied with, this order granting time to the petitioner for vacating the disputed shop will stand automatically vacated, and it will become open to the respondent No. 3 to execute the release order forthwith.

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