

Ram Shanker Gupta Alias Pappoo Vs. Additional District and Sessions Judge and anr.

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Court : Allahabad

Decided On : Dec-16-2002

Reported in : 2003(2)AWC1376

Judge : S.P. Mehrotra, J.

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

Appeal No. : C.M.W.P. No. 53911 of 2002

Appellant : Ram Shanker Gupta Alias Pappoo

Respondent : Additional District and Sessions Judge and anr.

Advocate for Def. : G.D. Srivastava and ;K.S. Chaudhary, Advs.

Advocate for Pet/Ap. : Murlidhar and ;A.K. Sachan, Advs.

Disposition : Petition dismissed

Judgement :

S.P. Mehrotra, J.

1. This writ petition has been filed by the petitioner under Article 226 of the Constitution of India, inter alia, praying for quashing the order dated 17.10.2002 (Annexure-11 to the writ petition) passed by the learned Additional District and Sessions Judge, Court No. 9, Kanpur Dehat in Rent Appeal No. 3 of 1999.

2. The dispute relates to a shop situated in Jawahar Nagar Kasba Ghatampur, district Kanpur Dehat, the details whereof have been given in the release application, a copy whereof has been annexed as Annexure-2 to the writ petition. 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. 2 had earlier filed an application under Section 21 (1) (a) of the U. P. Act No. XIII of 1972 (in short 'the Act') against the petitioner for the release of the disputed shop on 3.6.1993. The said release application was filed by the respondent No. 2, inter alia, alleging that the disputed shop was required for establishing his elder son (Alok) in Sarafa business. The said release application was registered as Rent Case No. 4 of 1993.

4. Learned Civil Judge (S.D.)/ Prescribed Authority, Kanpur Dehat, by the order dated 25th May, 1995 dismissed the said release application filed by the respondent No. 2.

5. Thereafter, the respondent No. 2 filed an appeal under Section 22 of the Act which was registered as Rent Appeal No. 5 of 1995.

6. Learned Additional District Judge, Court No. 9, Kanpur Dehat, by the Judgment and order dated 15.9.1997 dismissed the said appeal filed by the respondent No. 2. A copy of the said judgment and order dated 15.9.1997 has been filed as Annexure-1 to the writ petition.

7. It was, inter alia, held in the aforesaid release proceedings that the said elder son of the respondent No. 2 had already been engaged in the cloth business, and therefore, the need set up for establishing the said son in the Sarafa business was not bona fide.

8. Thereafter, it appears that the respondent No. 2 filed the present release application under Section 21 (1) (a) of the Act on 17.2.1999. The said release application was registered as Rent Case No. 2 of 1999. A copy of the said release application dated 17.2.1999 has been filed as Annexure-2 to the writ petition.

9. A perusal of the said release application dated 17.2.1999 shows that the respondent No. 2 set up therein the need for establishing the said elder son (Alok) as well as younger son (Rajiv) in the Sarafa business.

10. The said release case was contested by the petitioner.

11. The evidence was led by both the sides.

12. The learned Prescribed Authority/Civil Judge (S.D.), Kanpur Dehat, by the judgment and order dated 10.9.1999 rejected the said release application filed by the respondent No. 2. A copy of the said Judgment and order dated 10.9.1999 has been filed as Annexure-6 to the writ petition.

13. It was, inter alia, held in the said judgment and order dated 10.9.1999 that the need of the said elder son (Alok) was not proved to be bona fide. It was, inter alia, pointed out in the said judgment and order that the said elder son (Alok) had been found to be established in the cloth business in view of the findings recorded in the earlier release proceedings, and that no new circumstances had been brought on record to show that the said elder son (Alok) had stopped the said business and had become unemployed. It was, inter alia, further held in the judgment and order dated 10.9.1999 that the younger son (Rajiv) was aged about 16 years, and being minor his need for establishing himself in independent business could not be accepted. It was, inter alia, therefore, concluded in the said order dated 10.9.1999 that the respondent No. 2 failed to establish bona fide need for the disputed shop for establishing his younger son in the independent business. It was, inter alia, further held that the petitioner would suffer greater hardship in case of his eviction from the disputed shop than would be suffered by the respondent No. 2 in case of rejection of the said release application.

14. Thereafter, the respondent No. 2 filed an appeal under Section 22 of the Act. The said appeal was registered as Rent Appeal No. 3 of 1999.
15. By the judgment and order dated 17.10.2002, learned Additional District and Sessions Judge, Court No. 9, Kanpur Dehat, allowed the said Rent Appeal No. 3 of 1999, set aside the said judgment and order dated 10.9.1999 passed by the learned Prescribed Authority and released the disputed shop in favour of the respondent No. 2 subject to the condition that the respondent No. 2 would pay Rs. 2,400 as compensation.
16. It was, inter alia, held by the learned Additional District and Sessions Judge, Court No. 9, Kanpur Dehat (Appellate Authority) that the judgments and orders passed in the earlier release proceedings would not operate as res judicata but would be relevant for the present release proceedings ; and that the need set up by the respondent No. 2 for establishing the said elder son (Alok) in the business was not bona fide ; and that the learned Prescribed Authority was not correct in rejecting the need of the younger son (Rajiv) on the ground the said younger son (Rajiv) was minor ; and that the said younger son (Rajiv) was about 16 years of age at the time of filing the said release application in the year 1999 and now the said younger son (Rajiv) had become major ; and that the need of the respondent No. 2 for establishing, the said younger son (Rajiv) was bona fide ; and that the petitioner would not suffer hardship while the respondent No. 2 would suffer much greater hardship.
17. Thereafter, the petitioner has filed the present writ petition seeking reliefs mentioned above.
18. I have heard Sri Murlidhar, learned senior counsel assisted by Sri A.K. Sachan, learned counsel for the petitioner and Sri G.D. Srivastava, learned senior counsel assisted by Sri K.S. Chaudhary, learned counsel for the respondent No. 2.
19. Sri Murlidhar, learned senior counsel for the petitioner has fairly conceded that the conclusion of the appellate authority that the judgments and orders passed in the earlier release proceedings would not operate as res judicata was correct but he has further submitted that the said judgment and orders passed in the earlier

release proceedings would be relevant factor in the present release proceedings. Sri Murlidhar has also submitted that the findings on the question of bona fide need and comparative hardship have been recorded by the appellate authority in cursory manner without taking into consideration various relevant factors.

20. It is further submitted by Sri Murlidhar that the need of the said elder son (Alok) having been found to be not bona fide by both the authorities, it was evident that the need of the younger son (Rajiv) was also not bona fide.

21. In reply Sri G.D. Srivastava, learned senior counsel for the respondent No. 2 submits that the findings recorded by the appellate authority on consideration of material on record are findings of facts. It has not been shown by the petitioner that said findings are based on no evidence, or that the same are illegal or perverse. As such, no interference in the exercise of writ jurisdiction under Article 226 of the Constitution of India was called for with the said impugned judgment and order dated 17.10.2002. Even if two views of the evidence on record are possible, this would not justify interference under Article 226 of the Constitution.

22. I have considered the submissions made by the learned counsel for both the sides. I am of the opinion that this writ petition lacks merit and the same is liable to be dismissed.

23. The appellate authority in the said Judgment and order dated 17.10.2002 has considered the entire material on record and has recorded finding that even though the need for establishing the elder son (Alok) in business was not bona fide, still the need for establishing the younger son (Rajiv) in business was bona fide. Mere fact that the need for the said elder son (Alok) of the respondent No. 2 was found to be not bona fide, could not lead to the conclusion that the need for the said younger son (Rajiv) of the respondent No. 2 was also not bona fide. The contention of Sri Murlidhar, learned senior counsel for the petitioner in this regard cannot be accepted. Each son of the respondent No. 2 has right to establish himself in independent business.

24. The findings on the question of bona fide need and comparative hardship have been recorded by the appellate authority taking into consideration material on

record and other relevant considerations. I am unable to accept the submission made by the learned senior counsel for the petitioner that the appellate authority has decided the questions of bona fide need and comparative hardship in cursory manner.

25. It is well established that the findings on the question of bona fide need and comparative hardship are findings of facts. This Court, in the exercise of writ jurisdiction under Article 226 of the Constitution of India cannot sit in appeal over the said findings of facts recorded by the appellate authority on consideration of material on record. This Court normally does not interfere with the said findings of facts unless such findings are shown to be patently illegal or perverse. No illegality or perversity has been shown in the said findings recorded by the appellate authority in the impugned order dated 17.10.2002.

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

27. In *India Pipe Fitting Co. v. Fakruddin M.A. Baker and Anr.*, AIR 1978 SC 45. It was laid down by their lordships of 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.

28. In *Murmi Lal and Ors. v. Prescribed Authority and Ors.*, AIR 1978 SC 29, it was laid down by their lordships of 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.

29. In *Ashok Kwnar and Ors. v. Sita Ram*, 2001 (3) AWC 1997 (SC) : 2001 (2) ARC 1 : 2001 (43) ALR 783 (SC), their lordships of 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.'

30. In view of the aforesaid discussion, this writ petition, in my opinion, lacks merit and is liable to be dismissed. The writ petition is dismissed accordingly.

31. Sri Murlidhar learned senior counsel for the petitioner then submits that some reasonable time be granted to the petitioner for vacating the disputed shop.

32. I have heard Sri Murlidhar, learned senior counsel for the petitioner and Sri G.D. Srivastava, learned senior counsel for the respondent No. 2 on this question also.

33. Having considered the facts and circumstances of the case, and the submissions made by the learned senior counsel for both the sides, it is directed that the petitioner will not be evicted from the disputed shop till 31.5.2003 provided the petitioner gives an undertaking on his personal affidavit before the prescribed

authority within six weeks from today incorporating the following the conditions :

(1) The petitioner will vacate the disputed shop in or before 31st May, 2003, and will hand over peaceful vacant possession of the same to the respondent No. 2.

(2) The petitioner will continue to pay rent in respect of the disputed shop to the respondent No. 2 till the date of vacating the disputed shop.

34. In case, the aforesaid requisite undertaking is not given within the time granted or any of the aforesaid conditions incorporated in the said undertaking is not complied with by the petitioner, this order granting time for vacating the disputed shop will stand automatically vacated and it will become open to the respondent No. 2 to execute the release order forthwith.

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