

Ramesh Chandra Soni Vs. Ramesh Chandra Soni and ors.

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Court : Allahabad

Decided On : Jul-17-2006

Reported in : 2006(4)AWC3798

Judge : Anjani Kumar, J.

Appellant : Ramesh Chandra Soni

Respondent : Ramesh Chandra Soni and ors.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. This writ petition filed by the petitioner who is tenant of the shop in dispute calls in question the order passed by the appellate authority and the order passed by the prescribed authority under the provisions of U.P. Act No. 13 of 1972 (in short 'the Act') dated 8.10.2003 and 8.3.2001 respectively.

2. The respondent-landlord filed an application under Section 21(1)(a) of the Act for the release of the shop in dispute in their favour for the purpose of carrying on business of sarrafa which they are carrying on from their residence in order to augment their income. The landlords' case is that the landlord is carrying on business of sarrafa in a shop which is owned by one Smt. Mehroonsa under the

name of Ramesh Chandra Suresh Chandra on the road because of the fact that the shop is to be vacated the landlord have shifted their business to their residence which is in a lane. As a result of shifting the business in a lane, the business of the landlord suffered a lot and in fact is reduced because the business is being carried out from a lane. The landlord therefore filed the aforesaid application. The aforesaid application of the landlord was contested by the petitioner on the ground that the landlords do not have any need and further that the landlords are carrying on their business comfortably from their residence which is no doubt situated in a lane but is in very close vicinity of the main road. It is incorrect to say that the business in any way suffered because of the situation of the place of business from where business is being carried out by the landlords. It is further contented by the tenant that the landlord has in fact entered into agreement to sale with petitioner-tenant but after the death of Suresh Chandra Soni who died on 29.6.1991 and landlord have vacated the shop owned by Smt. Mehroonisa in the October, 1992.

3. The landlord have entered into an agreement to sale of the shop in dispute in favour of the petitioner-tenant dated 10.10.1992 but since one of the owners is minor petitioner therefore, the permission of the District Judge was required before execution of the sale-deed. The landlord have also filed an application dated 7.9.1993 before the District Judge. The landlord have finally accepted an amount of Rs. 25,000 as advance and the price of the property was settled between the landlord and petitioner as Rs. 1,90,000 and Rs. 10,000 was separately paid to the landlord towards the expenses for obtaining the permission from the District Judge. It is the landlord who has changed his mind of selling the property, therefore, the suit was filed by the tenant being Original Suit No. 386 of 1993 in the civil court. The civil court granted temporary injunction that he will not be evicted except in accordance with law. It has also been asserted by the tenant that no doubt the agreement to sale was an unregistered document but subsequently the landlord clearly demonstrated that there was an agreement to sale between them. The tenant has further asserted that firstly there is no need what to say bona fide need and the tilt of comparative hardship is also in favour of the tenant because the tenants are carrying on their business for over 100 years from the disputed shop. It is further asserted because of the business rivalry this application is filed.

4. On the pleadings of the parties and evidence on record the prescribed authority arrived at the conclusion that the allegation that there was an agreement to sale, has not been proved by the petitioner-tenant, as according to the tenant himself the agreement to sale was an unregistered document whereas under law it requires to be registered. Therefore, apart from above, from the material on record, it is also clear that the agreement to sale by the landlord In favour of the petitioner could not be established by the petitioner-tenant. On the question of bona fide need the prescribed authority has recorded a finding that the need of the landlord is bona fide. The prescribed authority also recorded finding with regard to the tilt of comparative hardship being in favour of the landlord on the basis of the evidence on record as it was found by the prescribed authority that the tenants have other accommodation on the same road where the shop in dispute is located where he can comfortably shift his business without any loss. The prescribed authority therefore, allowed the release application and directed for eviction of the petitioner-tenant. The tenant aggrieved by the order passed by the prescribed authority filed an appeal before the appellate authority under Section 22 of the Act. Before the appellate authority the same arguments were advanced as were advanced before the prescribed authority. The appellate authority discussed the evidence on record and the pleadings of the parties and after discussing the pleadings and evidence on record arrived at the conclusion that the findings recorded by the prescribed authority with regard to bona fide need of the landlord does not require any interference, therefore affirmed the findings regarding bona fide need of the landlord and dismissed the appeal. Similar is the view of the appellate authority with regard to tilt of comparative hardship. The appellate authority has found that no doubt the hardship will be there in case, the tenant is asked to vacate the shop in dispute but this cannot brush aside the need of the landlord. On the question of agreement to sale the appellate authority affirmed the findings recorded by the prescribed authority as would be clear from the evidence on record. Thus, dismissed the appeal. Learned Counsel for the petitioner has challenged the order passed by the prescribed authority and affirmed by the appellate authority firstly the argument that in view of the law laid down by the Apex Court in the case of R. Kanthimathi and another v. Mrs. Beatrice Xavier (2000) 9 SCC 339, wherein the Apex Court ruled as under:

Any jural relationship between two persons could be created through agreement, and similarly could be changed through agreement subject to the limitations under the law. Earlier when the appellants were inducted into tenancy it only means both agreed that their relationship was to be that of landlord and tenant. Later when the landlord directed to sell this property to the tenant and the tenant agreed by entering into agreement, they by their positive act changed their relationship as purchaser and seller. When the seller-landlord accepts the sum he actually acts this agreement. This acceptance preceded by agreement of sale changes their relationship. This is how they Intended. Once accepting such a change, their relationship of landlord-tenant ceases.

5. In these circumstances, no application under Section 21(1)(a) of the Act is maintainable against the petitioner-tenant. Learned Counsel for the petitioner submitted that in view of the aforesaid law by the Apex Court since there is an agreement to sale, the application filed under Section 21(1)(a) of the Act ought to have been rejected by the prescribed authority and the view taken to the contrary by the authorities suffers from error apparent on the face of record.

6. There is no dispute about the proposition of law. But in the present case, since both the authorities have recorded that there is no agreement to sale, as pleaded by the tenant and it has not been demonstrated by the counsel for the petitioner that the findings recorded by the prescribed authority and affirmed by the appellate authority in any suffer from an error much less error apparent on the face of record. On the question of bona fide need of the landlord the findings recorded by the prescribed authority and affirmed by the appellate authority do not warrant any interference by this Court in view of the law laid down by the Apex Court in the case of *Ranjeet Singh v. Ravi Prakash and another* (2004) 6 SCC 682: 2004 (2) SCCD 890: 2004 (2) AWC 1721 (SC), wherein the Apex Court has held that this Court under Article 226 of the Constitution of India will not reappraise the evidence on record, as this Court is not hearing an appeal against the order passed by the prescribed authority and affirmed by the appellate authority. Similar is the position with regard to the tilt of comparative hardship wherein the prescribed authority found that the tilt of comparative hardship is in favour of the landlord. This also does not warrant any interference by this Court as counsel for the petitioner has

failed to demonstrate that the findings are either perverse or suffer from manifest error of law.

7. Lastly it is submitted that the petitioner-tenant is carrying on business from the disputed shop, therefore, he may be granted some reasonable time to vacate the same.

8. Considering the submission made by learned Counsel for the petitioner and facts and circumstances of the present case, I direct that the petitioner shall not be evicted pursuant to the decree of eviction till 31.5.2007 provided:

(1) petitioner furnishes an undertaking before the prescribed authority within one month from today that he will hand over peaceful vacant possession to the landlord on or before 31.5.2007; and

(2) petitioner pays to the landlord or deposits the entire arrears of rent/damages, if not already paid/deposited before the prescribed authority, at the rate of rent till date within one month from today and continues to pay or deposits the same by first week of succeeding month so long he remains in possession or 31.5.2007, whichever is earlier. The landlord will be entitled to withdraw the amount so deposited.

In the event of default of any of the conditions referred to above, it will be open to the respondent-landlord to get the decree executed.

9. In the result, the writ petition is dismissed with the above direction.