

Ram Kishun Vs. Dashrath and ors.

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Court : Allahabad

Decided On : May-25-2005

Reported in : 2005(4)AWC3887

Judge : Anjani Kumar, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 5397 of 2005

Appellant : Ram Kishun

Respondent : Dashrath and ors.

Advocate for Def. : Tarun Verma, Adv.

Advocate for Pet/Ap. : C.K. Parekh, Adv.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. This is a writ petition under Article 226 of the [Constitution of India](#) by the petitioner who is aggrieved by order dated 21st August, 1997, passed by the prescribed authority under the provisions of U.P. Act No. 13 of 1972 (in short the Act) and the order dated 24th December, 2004, passed by the appellate authority

under the Act.

2. The facts giving rise to the present writ petition are that in the year 1965 petitioner's mother, Pyari Devi, was inducted as tenant of the portion in dispute and also some more portion on the back side. In 1973 Smt. Pyari Devi died. She had two sons, one the petitioner and the other Ram Lakhan. In the front portion of the accommodation in dispute Smt. Pyari Devi was running a shop and in the back portion she was living. A release application was filed by the landlord under Section 21 (1)(a) of the Act for release of the shop occupied by the petitioner and for back room occupied by the petitioner. This release application filed by the landlord was allowed in part by the prescribed authority by order dated 16th November, 1979. The back room in occupation of the petitioner was released in favour of the landlord and so far as shop was concerned, the application for release was dismissed by the prescribed authority. The petitioner as well as landlord preferred appeal against the order of prescribed authority dated 16th November, 1979, before the appellate authority under the Act. The appellate authority by its order dated 12th October, 1982, dismissed both the appeals, namely, filed by the petitioner as well as the appeal filed by landlord and the order of release of back portion has become final. It appears that after about 11 years the landlord filed the present application for release of the shop in dispute, which remained in possession of the petitioner, for his bona fide requirement for setting down his sons in business. During the pendency of the present release application before the prescribed authority an application was filed by the petitioner for spot inspection and report by an Advocate Commissioner. The prescribed authority by its order dated 28th February, 1995, appointed Sri Narendra Dwivedi as Advocate Commissioner who submitted his report. The petitioner filed his objection to the report filed by the Advocate Commissioner. The landlords also filed their objection to the report of the Advocate Commissioner. The prescribed authority by its order dated 21st August, 1997, arrived at a conclusion on the basis of pleadings and evidence on the record that the need of the landlord is bona fide and that the tilt of comparative hardship is also in favour of the landlord. The prescribed authority has rejected the contentions raised by the petitioner that on a similar application in the year 1979 half of the then accommodation under the tenancy of the petitioner was released, therefore, the present application is barred by principle of res

judicata.

3. Aggrieved thereby the petitioner preferred an appeal under Section 22 of the Act. On 23rd July, 2004, during the pendency of appeal, the petitioner filed a fresh application for spot inspection which was rejected by the appellate authority by its order dated 30th September, 2004. The appellate authority by its order dated 24th December, 2004, affirmed the findings arrived at by the prescribed authority regarding bona fide need of the landlord and also regarding comparative hardship. Thus, the appeal filed by the petitioner has been dismissed. Aggrieved thereby the petitioner preferred the present writ petition.

4. The appellate authority after affirming the findings recorded by the prescribed authority on bona fide requirement has discussed the comparative hardship and maintained the order passed by the prescribed authority that the petitioner-tenant has alternative accommodation as his sons are already engaged in business at other places. The prescribed authority as well as appellate authority have not accepted the contention raised on behalf of the petitioner-tenant that the sons of the landlord, namely, Dashrath, are looking after the business which is carried out by Mahabir and therefore the landlords do not require the shop in dispute what to say of landlords need bona fide. In the case in 1984 ARC 113 and 2000 (1) JCLR 906, this Court has held that merely because the son for whose requirement the need is set up, if is looking after the business of the landlord, is not sufficient to reject the application of the landlord. The appellate authority has referred the case in 2002 (44) ALR 234, wherein this Court held that the son cannot be forced to carry out the business of his father in stead of starting his own business. The prescribed authority has dealt with the decisions relied upon by the petitioner-tenant and found that those decisions are not applicable to the facts and circumstances of the present case and for this purpose the appellate authority relied upon the decision in 2003 (1) ARC 368. The appellate authority has upheld the argument advanced on behalf of the landlord that in view of Explanation to Section 21(1)(a) in the matter of residential accommodation where the tenant or any of his family member has any vacant accommodation or he obtains possession of any accommodation in that event his objection to the release application filed by the landlord will not be acceptable. The Explanation to section

reproduced below :

Explanation.--In the case of a residential building :

(i) where the tenant or any member of his family who has been normally residing with or is wholly dependent on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this, sub-section shall be entertained.

5. From the facts it is clear that the tenant is residing in the house which is in the name of his wife and that he has already started a shop in the said house, therefore, in the circumstances of the case the Explanation to Section 21 (1) (a) of the Act is fully applicable and the defence of the tenant with regard to comparative hardship is not available to him in view of law laid down in the case in 2002 (4) ALR 1 72. An attempt was made on behalf of the petitioner to press that from the facts and circumstances of the case and in view of law laid down by this Court in the decisions in 2004 (1) AWC 1034, 2002 (2) AWC 1708 and 1979 AWC 3, the landlord has not been able to establish the bona fide requirement for his son and therefore the application filed by the landlord deserves to be dismissed.

6. The appellate authority relied upon the earlier decision of this Court and has arrived at a conclusion that the need of the landlord has been bona fide and thus the finding regarding bona fide arrived at by the prescribed authority has been affirmed by the appellate authority. Thus, the appeal was dismissed.

7. Before this Court learned Counsel for the petitioner has repeated the same arguments and tries to demonstrate that the findings arrived at by the prescribed authority and affirmed by the appellate authority suffer from error of law. However, learned Counsel for the petitioner has not been able to demonstrate that the findings arrived at by the prescribed authority and affirmed by the appellate authority suffer from manifest error of law or are perverse. In view of law laid down by the Apex Court in the case of Surya Dev Rai v. Ram Chander Rai, : AIR 2003 SC3044 , I do not find that the findings arrived at by the prescribed authority and affirmed by the appellate authority suffer from error much less error apparent on

the face of record so as to warrant interference of this Court in exercise of jurisdiction under Article 226 of the [Constitution of India](#).

8. This writ petition, therefore, has no force and is accordingly dismissed.

9. Lastly it is submitted that since the petitioner is carrying on business from the shop in dispute, therefore, he be granted some reasonable time to vacate the accommodation in dispute. Considering the facts and circumstances of the case and in the interest of justice I direct that petitioner will not be evicted for one year, i.e., up to 31st May, 2006, provided :

(1) the petitioner furnishes undertaking before the prescribed, authority within a period of one month from today that he will hand-over peaceful vacant possession of the accommodation in question to the landlord on or before 31st May, 2006 ;

(2) the petitioner pays the entire arrear of rent/damages calculated at the rate of rent within one month from today, if not already paid, by either depositing the same before the prescribed authority or paying the same to the landlord-respondent and keeps on depositing the future rent/damages by first week of the succeeding month in the manner prescribed above. The amount if deposited before the prescribed authority by the petitioner-tenant, the same shall be permitted to withdraw by the landlord.

10. In the event of default of any of the conditions mentioned above, it will be open to the landlord to get the order of eviction executed against the petitioner.

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