

Sarju Prasad Vs. Viiiith Additional District Judge and ors.

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Court : Allahabad

Decided On : Jul-14-2006

Reported in : 2007(2)AWC1068

Judge : Rakesh Sharma, J.

Appellant : Sarju Prasad

Respondent : Viiiith Additional District Judge and ors.

Advocate for Def. : Sri. S.K. Mehrotra

Disposition : Petition dismissed

Judgement :

Rakesh Sharma, J.

1. Heard Sri D.C. Jain holding brief of Sri H.S. Sahai, learned senior advocate appearing for the petitioner-tenant and Sri I.D. Shukla, holding brief of Sri S.K. Mehrotra, learned Counsel for the respondent-landlady.

2. The petitioner has assailed the two orders, one passed by the prescribed authority/Munsif, Sadar, Faizabad on 28.4.1995 by which the application of the landlady filed under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 (Act XIII of 1972), hereinafter referred to as the Act, has been allowed and the other, order dated 19.3.1999, passed by the

appellate authority, i.e., VII It h Additional District Judge, Faizabad, by which the appeal filed by the petitioner has been dismissed. The petitioner was directed to hand over peaceful possession of the shop in question to the respondent landlady within one month. Both the learned courts below have recorded concurrent findings of facts on the points of bona fide need and comparative hardship in favour of the landlady.

3. It emerges from record that a shop situate at Mohalla Fatehganj, city Faizabad was let out by the landlady to the father of the present petitioner on a monthly rent of Rs. 20. On 27.9.1985, an application for releasing the shop, accommodation in dispute was filed by the landlady Smt. Khatoon under Section 21(1)(a) of the Act before the prescribed authority. It was indicated in the said application that the landlady had six sons-Akeel Ahmad aged 38 years, Wakil Ahmad aged 35 years, Aleem Ahmad aged 31 years, Anis Ahmad aged 29 years, Sharif Ahmad aged 24 years and Mohammad Raseed aged 18 years. The landlady had a large family. Her sons had completed their education and they were requiring the shop in question for establishing their own business of selling utensils. The landlady had demonstrated various facts in support of her bona fide and genuine need for the shop.

4. In addition to above facts, the landlady had further submitted before the prescribed authority that the shop in question was very old; its roof was leaking and the same was in dilapidated condition. She wanted to get the shop demolished and raise a new construction over the land. The landlady had further submitted that the petitioner-tenant Sarju Prasad was not occupying the shop in question. He was working as Munim-cum-Clerk in a firm Bholanath Saligram, Fatehganj, Faizabad. He was a full-time servant of the said firm. He was making illegal demand of Rs. 20,000 from the landlady for vacating the said shop. Accordingly a notice was served on the tenant on 23.7.1984. The tenant refused to vacate the shop in question, vide his reply dated 15.1.1985. As per the landlady, her need for the shop was genuine and bona fide.

5. The tenant resisted the application for release and vacation. He submitted that the landladys sons were comfortably settled with their business. According to him,

the landlady had purchased three shops in the main market of Faizabad city from Smt. Savitri Devi, Ram Prasad and Ram Behari. Two of the shops were being used by the landlady and one had been let out. The landlady's elder sons Aleem Ahmad, Sharif Ahmad and Mohammad Raseed were carrying on their own business from the shops in their possession. The tenant had specifically denied the need of the landlady and filed some documents, maps and other evidence in support of his above submissions. He had laid much stress that he was doing business in the shop for about 35 years and had earned a goodwill. According to him, he needed the shop to settle his son Shyam. Dev in business. Looking to the question of comparative hardships, the tenant would have suffered greater hardships in comparison to the landlady. The Advocate Commissioner had found two bags of wheat and several bags of Arhar, maize and rice in the shop in question. The Advocate Commissioner had reported that the landlady's sons were doing their business from three shops. As per petitioner, the impugned judgments and orders are wholly erroneous.

6. Sri D.C. Jain, learned Counsel appearing for the petitioner has submitted that the prescribed authority had no jurisdiction to decide the case. The question of bona fide and genuine need of the landlady has not been properly dealt with. The landlady had various other shops in the town. No additional accommodation was required by her. The Advocate Commissioner's report was not properly appreciated. The subsequent events have not been taken into account by the courts below. Learned Counsel for the petitioner has placed reliance on a decision of Apex Court as in *Kiran Singh and Ors. v. Chaman Paswan* 1954 ALJ 551, in support of his submissions.

7. Sri I. D. Shukla, holding brief of Sri S.K. Mehrotra, learned Counsel appearing for the respondent landlady has opposed this writ petition. He has submitted that the application for release under Section 21(1)(a) of the Act was filed by the landlady on several grounds which were duly appreciated by the prescribed authority and the appellate authority. The landlady had six sons, out of whom Wakil Ahmad and Aleem Ahmad were already married at the relevant time. They had their own families and needed gainful employment. The learned courts below had appreciated these facts. The tenant did not need the shop in dispute as he

was employed as Munim-cum-Clerk in the firm Bholanath Saligram, Fatehganj, Faizabad. The tenant had built his own house and shop on a plot of land purchased by him where he could have shifted his business. The shop in question was rented out at a meagre rent of Rs. 20 per month. Considering the location of the shop in main market of Faizabad city, the said rent was 'no rent' in the eye of law. The landlady had given details of the business being run by her sons in support her bona fide and genuine need for the shop. The tenant had already acquired his own house, shops and the landlady was suffering greater hardship than the tenant. Learned Counsel for the respondent landlady has relied on the following judgments in support of his submissions:

1. Gokaraju Rangaraju v. State of Andhra Pradesh : 1981 CriLJ876 ;
2. Beopar Sahayak (Put) Ltd. and Ors. v. Vishwa Nath and Ors. 1987 (2) ARC 145 : 1987 (2) AWC 1219 (SC);
3. Union of India and Anr. v. Charanjit Gill and Ors. : AIR 2000 SC3425 ;
4. Atma Ram v. VIth Additional District Judge and Ors. 2006 (1) ARC 168 ;
5. Prativa Devi (Smt.) v. T. V. Krishnan : (1996)5SCC353 ;
6. Vishnu Kant Coswami v. IInd A.D.J., Allahabad and Ors. 2006 (1) ARC 282 ;
7. Braham Kumar and Ors. v. Raja Ram and Ors. 2006 (1) ARC 93 ;
8. Kaushal Kumar Gupta v. Bishun Prasad and Ors. 2006 (1) ARC 73 ;
9. Hari Narain (Sri) v. VIth A.D.J., Kanpur and Ors. 2006 (1) ARC 81 ;
10. Sushila v. IInd Additional District Judge, Banda and Ors. 2003 (1) ARC 156 (SC);
11. Kafeel Ahmad v. Smt. Satvindra Kaur 2006 (1) ARC 459 : 2006 (2) AWC 1299 ;
12. Hashmat Ali v. VIth A.D.J., Kanpur Nagar and Ors. 2006 (1) ARC 65 ;

13. Nandani Devi (Smt.) v. 1st Additional District Judge, Varanasi and Ors. 2005 (1) ARC 58 ;

14. Kelawati (Smt.) v. Special Judge (E.C. Act), Moradabad and Ors. 2006 (1) ARC 78 ; and

15. Abdul Nairn Quraishi v. Masi-Uddin Khan 2005 (1) ARC 316 : 2005 (2) AWC 1260.

8. I have heard learned Counsel for the parties and perused the record.

9. In the present case, both the courts below have recorded concurrent findings of facts and have arrived at the conclusion that the need of the landlady was bona fide and genuine. The landlady had a large family consisting of six sons and their dependents. As far as the jurisdiction of the prescribed authority is concerned, the same stood cured as an appeal was filed before the appellate authority, i.e., Additional District Judge, Faizabad. The appellate court has also appreciated the material on record and was of the same opinion that the landlady's need was bona fide, genuine and pressing. The tenant would not suffer greater hardship than the landlady who was having a large family consisting of six grown-up sons. The case of the landlady is squarely covered by the judgment of this Court as in Atma Ram v. VIth Additional District Judge and Ors. 2006 (1) ARC 168.

10. There is force in the submission made by the learned Counsel for the respondent landlady that on the basis of de facto doctrine and the appellate authority's order, now it cannot be said that the release of the shop was not justified. The above submission is strengthened by the judgments as in Gokaraju Rangaraju v. State of Andhra Pradesh : 1981 CriLJ876 ; Beopar Sahayak (Put.) Ltd. and Ors. v. Vishwa Nath and Ors. 1987 (2) ARC 145 : 1987 (2) AWC 1219 (SC) and Union of India and Anr. v. Charanjit S. Gill and Ors. : AIR 2000 SC3425 .

11. It is well-settled that the landlord is the best Judge to assess his residential requirement. He has complete freedom in this matter. Neither the tenant, nor the Court can suggest to the landlord other means to satisfy his need so that the tenant may continue in possession unless those means are equally viable. It is

unnecessary to make an endeavour as to how the landlord could have adjusted himself (vide Vishnu Kant Goswami v. IInd A.D.J., Allahabad and Ors. 2006 (1) ARC 282 ; Braham Kumar and Ors. v. Raja Ram and Ors. 2006 (1) ARC 93 and Kaushal Kumar Gupta v. Bishun Prasad and Ors. 2006 (1) ARC 73).

12. Both the learned courts below have rightly held that the landlady's need was quite bona fide as she required the shop for establishing some of her sons, who were six in number. A son cannot be compelled to join his father, uncle or other family members in their business in other shops. The landlady's one son or two sons could start business of their own choice from the shop in question independently. Certainly her need was greater than that of the petitioner-tenant. Her case finds support from the judgments as in Hari Narain (Sri) v. VIth A.D.J., Kanpur. and Ors. 2006 (1) ARC 81 ; Sushila v. IInd Additional District Judge, Banda and Ors. 2003 (1) ARC 156 (SC) ; Kajeel Ahmad v. Smt. Satvindra Kaur 2006 (1) ARC 459 : 2006 (2) AWC 1299 ; Nandani Devi (Smt.) v. 1st Additional District Judge, Varanasi and Ors. 2005 (1) ARC 58 ; Kelawati (Smt.) v. Special Judge (E.C. Act), Moradabad and Ors. 2006 (1) ARC 78 and Abdul Nairn Quraishi v. Masi-Uddin Khan 2005 (1) ARC 316 : 2005 (2) AWC 1260.

13. It is also evident that the tenant did not make any effort to search an alternative accommodation. This was sufficient to tilt the balance of comparative hardship against the tenant, (vide B. C. Bhutada v. G.R. Mundada AIR 2003 SC 2713 and Hashmat Ali v. VIth A.D.J. Kanpur Nagar and Ors. 2006 (1) ARC 65).

14. Learned Counsel for the petitioner has failed to persuade this Court to take a different view from what has been taken by the learned courts below. It is well-settled that in exercise of power under Article 226 of the Constitution of India, the High Court will not sit in appeal over the findings arrived at by the prescribed authority and affirmed by the appellate authority, as has been held by the Apex Court in Ranjit Singh v. Ravi Prakash 2004 (1) ARC 613 (SC) : 2004 (2) AWC 1721 (SC).

15. In view of above, the judgments and orders rendered by both the courts below, impugned in this petition, do not call for any interference. The writ petition being devoid of merit is dismissed with costs. The interim order, if any, is discharged.

The judgments and orders passed by the learned courts below on 28.4.1995 and 19.3.1999, shall become operative forthwith. The petitioner shall vacate the premises in his occupation and hand over vacant and peaceful possession of the same to the respondent landlady within one month from today. He shall also pay arrears of rent, damages etc. within the stipulated period.

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