

Munni Lal Vs. Smt. Vimla Devi

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Court : Allahabad

Decided On : Dec-19-2005

Reported in : 2006(1)AWC513

Judge : Anjani Kumar, J.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction), 1972 - Sections 21(1) and 22

Appeal No. : C.M.W.P. No. 75936 of 2005

Appellant : Munni Lal

Respondent : Smt. Vimla Devi

Advocate for Def. : Vishnu Gupta and ;Rakesh Kumar, Advs.

Advocate for Pet/Ap. : Shashi Kant Gupta, Adv.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. By means of present writ petition under Article 226 of the [Constitution of India](#), the petitioner-tenant of the accommodation in question, which is non-residential accommodation (shop), has challenged the order passed by the lower appellate

court dated 31st August, 2005 in Rent Appeal No. 1 of 2002, whereby the appellate authority dismissed the appeal filed by the petitioner-tenant, copy whereof is annexed as Annexure-'II' to the writ petition.

2. The facts of the present case are that the respondent-landlord filed an application in the year 1998 under Section 21(1)(a) of the U.P. Act No. XIII of 1972, here-in-after referred to as 'the Act', for release of the aforesaid accommodation in favour of the landlord-respondent in this petition, on the ground that the landlord's son, namely Ajay Kumar is in IIIrd year B.Sc. and the landlord wants to settle her son in the business of wholesale medicines for which the accommodation in question is suitable and that the landlord has also entered into correspondence for wholesale dealership. The landlord has sufficient financial resources to settle her son, who is unemployed, in the wholesale medicines business. The landlord further asserted that the accommodation in question is in fact is not utilised for any business by the tenant, but the tenant is utilizing the same only for after-noon siesta, as the business of the sale of gun is carried out by the tenant in another accommodation. In these circumstances, the landlord-respondent asserted that the tenant will have no hardship in case the accommodation in question is released in favour of the landlord.

3. The petitioner-tenant denied the aforesaid allegations of the landlord and submitted that in fact the landlord has no bona fide requirement and it is also incorrect to say that no business is carried out by the tenant from the accommodation in question. The premises is utilized for repair of the gun and afternoon siesta by the tenant and his son, who is patient of high blood pressure. On the pleadings of the parties and evidence on record and after hearing learned counsel appearing on behalf of the parties, the prescribed authority has arrived at the conclusion that the need of the landlord is bona fide and that the tilt of the comparative hardship is also in favour of the landlord. The prescribed authority therefore by the order dated 15th January, 2002, allowed the application filed by the landlord and directed the release of the accommodation in question in favour of the landlord-respondent.

4. Aggrieved thereby, the petitioner-tenant preferred an appeal under Section 22 of 'the Act' before the appellate authority. The appellate authority affirmed the findings arrived at by the prescribed authority on the question of bona fide requirement and also on the question of comparative hardship. Thus, the appellate authority vide order dated 9th November, 2004, dismissed the appeal filed by the petitioner-tenant.

5. The petitioner-tenant aggrieved by the order dated 9th November, 2004, passed by the appellate authority, approached this Court by means of Civil Misc. Writ Petition No. 10741 of 2005, Munni Lal v. Smt. Vimla Devi. This Court vide its judgment and order dated 1st July, 2005, remanded back the matter to the appellate authority with a direction to decide the question of part release of the accommodation in question. The operative portion of the judgment and order dated 1st July, 2005, reads as under :

In view of what has been stated above and in view of the law laid down by the Apex Court and this Court, this writ petition is allowed in part. The order of the appellate authority is quashed. The matter is remanded back to the appellate authority with the direction to decide the question of part release within three months from the date of presentation of certified copy of this judgment before him.

6. After remand before the appellate authority in pursuance of the direction issued by this Court, the landlord filed affidavits of her son Ajay Kumar, which was registered as paper No. 127C and her own affidavit, paper No. 129C and the petitioner-tenant has also filed his proposals along with the affidavit, paper No. 134C. The appellate authority after hearing learned Counsel for the parties on the question of part release has found that in view of the material on record, coupled with the fact that the tenant is not utilizing the accommodation in question for any commercial purposes, but it is utilized only for the purposes of afternoon siesta, as would be clear from the statement made in paragraphs 19 and 24 of the written statement filed by the petitioner-tenant and also coupled with the fact that from the affidavits on record filed by the landlord, part release will not serve the purpose for which the accommodation in question is released in favour of the landlord, therefore directed release of the entire accommodation in question by its order

dated 31st August, 2005. The petitioner-tenant now challenges the order dated 31st August, 2005 by means of present writ petition under Article 226 of the [Constitution of India](#).

7. It is contended by learned Counsel appearing on behalf of the petitioner-tenant that the appellate authority in spite of four offers from the landlord, has not accepted any offer of part release, therefore has committed an error in releasing the entire accommodation in question in favour of the landlord. Learned Counsel for the petitioner-tenant further contended that while deciding the question of part release after remand, the appellate authority has taken into consideration the letter, along with the affidavits filed by the landlord, which according to him was obtained only for the purposes of present dispute and have arrived at the erroneous finding that the part release will not serve the landlord's need for which the accommodation is released and therefore prayer made by tenant for part release has been rejected, which according to learned Counsel for the petitioner-tenant is perverse and suffers from the manifest error of law.

8. On the other hand, learned Counsel appearing on behalf of the respondent-landlord submitted that it is the own admission of the tenant that he is not utilizing the accommodation in question for any commercial purposes, but utilizing the same only for afternoon siesta, coupled with the requirement submitted by the landlord with the matter was remanded back by this Court clearly demonstrates that the view taken by the appellate authority cannot be said to be either perverse, or suffers from any error, much less manifest error of law, so as to warrant any interference by this Court in exercise of jurisdiction under Article 226 of the [Constitution of India](#). It is further contended by learned Counsel for the landlord that the tenant cannot be permitted to resile from his own admission, as stated in paragraphs 19 and 24 of the written statement filed by the tenant that he is utilizing the accommodation in question only for rest, as according to admission of the tenant, the sale and purchase transactions are being carried out from another accommodation.

9. I have given my considered thoughts to the arguments advanced on behalf of learned Counsel for the parties and I am of the view that the view taken by the

appellate authority cannot be said to be either perverse, or suffers from the manifest error of law, so as to warrant any interference by this Court in exercise of jurisdiction under Article 226 of the [Constitution of India](#). Both the prescribed authority as well as the appellate authority have arrived at the conclusion that the need of the landlord is bona fide and the landlord has demonstrated the same by means of filing the affidavits after remand the matter by this Court that her need will be fulfilled only by releasing of the entire accommodation, which in fact is being utilised by the tenant only for the purposes of rest during the day. Thus, in my opinion, the appellate authority has not committed any error, so as to warrant any interference by this Court in exercise of jurisdiction under Article 226 of the [Constitution of India](#).

10. Lastly, it has been submitted by learned Counsel appearing on behalf of the petitioner-tenant that the petitioner-tenant be granted some time to vacate the accommodation in question, as he is carrying on the business from the shop in question. In view of the concurrent findings of both the authorities, namely, prescribed authority as well as the appellate authority that the accommodation in question is used by the petitioner only for afternoon siesta and that the business of sale and purchase of guns is being carried out from another accommodation, coupled with the fact that the release application has been filed in the year 1998 and is pending till today, I do not think that it is a fit case in which any time for vacation of the accommodation in question should be granted to the petitioner-tenant. Therefore, the request for grant of time for vacation of the accommodation in question is rejected.

11. In view of what has been stated above, this writ petition has no force and is accordingly dismissed. However, there shall be no order as to costs.