

Chandrawati (Smt.) Vs. IInd Additional District Judge and ors.

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SooperKanoon Citation : sooperkanoon.com/514247

Court : Uttaranchal

Decided On : Aug-31-2004

Reported in : 2005(1)ARC337

Judge : Rajesh Tandon, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 3, 11(1), 21 and 21(1); Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 - Sections 15(3); [Constitution of India](#) - Articles 226 and 227; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules - Rule 17

Appeal No. : Civil Misc. W.P. No. 5218 of 2001

Appellant : Chandrawati (Smt.)

Respondent : IInd Additional District Judge and ors.

Advocate for Def. : Rakesh Thapliyal, Adv. and; J.C. Belwal, learned Counsel

Advocate for Pet/Ap. : P.C. Kandpal, learned Counsel

Disposition : Petition dismissed

Judgement :

Rajesh Tandon, J.

1. Heard Sri P.C. Kandpal, learned Counsel for the petitioner and Sri Rakesh Thapliyal, alongwith Sri J.C. Beiwal, learned Counsel for the respondents.
2. By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 27.3.1990 passed by the Illrd Additional District Judge, Nainital.
3. Briefly stated that the facts of the case are that the petitioner is a tenant of the disputed shop No. 11/47 Kasera Bazar, Haldwani, District Nainital. An application under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 was moved on the ground of personal need of the respondent No. 3 for setting-up his business, and also on the ground that the shop in dispute is in a dilapidated condition. A perusal of the application shows that the father of the petitioner Sri Puran Prasad S/o Kanhaiya Lal was the tenant of the landlord-respondents. He died before filing the application. Srnt. Chandrawati was the only heir as will appear from Paragraph-2 of the application under Section 21 (1) (a) of the Act stating therein that she was residing at the relevant time along-with her husband at Bilaspur, District Rampur and has a huge business. She has never lived at Haldwani.
4. According to the case of the landlord the petitioner has illegality let out the shop to one Sri Keshar Singh S/o Bhim Singh who is actually carrying on the business after the death of the tenant. The landlord has stated in Paragraph-5 of his application that Damodar Balutiya has passed B.A. and after completing his education he is completely unemployed.
5. In Paragraph 7 of the application it was clearly mentioned that there was shop in the tenancy of Shanti Swaroop, which was got vacated for the personal need of Jagdish Chandra Balutiya and the same is in the occupation of Sri Jagdish Chandra Balutiya. In Paragraph 8 of the application the landlords have further stated that even the shop which has been released in favour of Jagdish Chandra Balutiya is in a dilapidated condition and after the reconstruction the same shall also be used by the landlords. The landlords have submitted that the whole of the shop i.e. 11/47 shall be reconstructed for which a map has already been sanctioned in the year 1975 but since the possession of the shop is in the tenancy of the petitioner and the same has not yet been released, the construction has not

yet proceeded as the entire building has to be reconstructed.

6. Landlords have further specifically stated that Sri Jagdish Chandra Balutiya and Damodar Balutiya are doing the business of agricultural implements and the shop in the possession of Shanti Swaroop was got vacated for the business of Jagdish Chandra Balutia. It was submitted that both are of marriageable age and they will settle alongwith family members and the shop is required for the livelihood of the landlords.

7. The petitioner has contested the application under Section 21 (1) (a) of the UP. Act No. 13 of 1972. The petitioner has stated that she is the only heir after the death of her father. On behalf of the petitioner affidavit of Sri Keshar Singh was filed. In Paragraph-1 of the affidavit it has been stated by Sri Keshar Singh that he is doing the entire business of utensils and from the very beginning he was residing alongwith Puran Prasad as a family member. In fact he has stated that he is carrying on the business independently as he was residing as a family member of Puran Prasad. The relevant averments made in Paragraph-5 are quoted below:-

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8. During the pendency of the case, Smt. Chandrawati expired on 5.11.1.997 and a substitution application was filed. In Paragraph-3 of the counter affidavit it has been stated that actual tenant of the accommodation in dispute was Puran Prasad and there is none in the family left now and the daughter of the tenant after her marriage has settled outside Haldwani and actually the shop in dispute is in the

actual possession of an outsider who is not a family member.

9. In order to justify the requirement of bonafide need the affidavit has been filed by Sri Gopal Dutt Balutiya who has stated that the shop in dispute is required for Sri Damodar Balutiya, who has passed M.A. and is completely out of employment for the last 3-4 years. The affidavit was filed in the year 1987 and it appears that Sri Damodar Dutt Balutiya is unemployed from the year 1983 since when the present petition is pending. It was also mentioned in Paragraph 8 of the affidavit that the shop which was released from the possession of Shanti Swaroop is required for Jagdish Chandra Balutiya, another brother of Damodar Dutt Balutiya. Both the shops are in dilapidated condition and both shops will be reconstructed for the requirements of both the brothers respectively. In Paragraph-9 of the affidavit it has been stated that the shop which was taken from the possession of Shanti Swaroop has fallen down and therefore, the entire shop No. 11/47 requires demolition and new construction.

The landlord has also filed one certificate alongwith this affidavit showing that the shop is in dilapidated condition and requires demolition and new construction. The affidavit of Sri Ajay Jain B.E. Civil Engineer, has also been filed certifying that the building in dispute is in dilapidated condition and requires demolition and new construction. Another affidavit was filed on behalf of the landlord viz. paper No. 45-C i.e. Jagdish Chandra Balutiya who has also deposed that both the brothers are completely unemployed and they want to run their separate business and there is no shop available except the disputed one.

10. Paragraph 6 of the affidavit of Jagdish Chandra Balutiya, in which he has specifically stated in the following words:

'Ish kaaran wea apan swayam ka rojgaar karna chahten hain,'

11. He has also stated that he has taken vacant possession of the shop vacated by Shanti Swaroop for the personal requirement of Jagdish Chandra Balutiya but since the shop in dispute is in a dilapidated condition, therefore, no business can be transacted without getting the shop reconstructed and that too without making construction of the whole shop i.e. also the disputed shop which also is in

dilapidated condition.

12. Another affidavit was filed by Sri Damodar Dutt Balutiya. In Paragraph 8 of the affidavit it has been stated that the agricultural land is wholly insufficient as per the requirements of the family members of the landlord.

13. On behalf of the landlord one Kishan Saxena has also filed affidavit who has also deposed that the shop in dispute is in a dilapidated condition. Similar affidavit was also filed by Madan Mohan Pandey who has also deposed regarding the dilapidated condition of the building. One Sri Keshav Dutt Tiwari has also filed affidavit showing the requirement of the landlord.

14. The Prescribed Authority after taking into consideration the entire evidence on the record, has come to the conclusion that since the landlord has available with him the agricultural land therefore, the shop is not required and further a finding has been recorded by the Prescribed Authority that Puran Prasad was looking after the business as a family member therefore, hardship lies in his favour.

15. The documents which have been filed are paper Nos. 71-C/25, 71-C/26, 71 - C/27, 71 -C/30, and 71-C/32. The Prescribed Authority has also come to the conclusion that the landlord has got resources i.e. the agricultural income and the shop vacated by the Shanti Swaroop is also available to the landlord and as such greater hardship lies in favour of the tenant rather than the landlord. So far as the dilapidated condition of the building is concerned, the Prescribed Authority has recorded a finding that for the spot inspection since the petitioner was not present and therefore, no reliance can be placed on the inspection of the premises and as such the finding was recorded that the shop in dispute is not in dilapidated condition.

16. The landlord preferred an appeal before the District Judge. The learned District Judge after taking into consideration the entire evidence on record has framed two points for determination, with regard to the bonafide requirement on the ground of Section 21 (1) (a) itself and further with regard to comparative hardship. The learned Judge has allowed the appeal. Hence the present writ petition has been filed.

17. A perusal of the record shows that learned Judge, has considered the affidavit of Gopal Dutt Balutiya as well as paper Nos. 44-C/6, 44-0/11, affidavit 45-C sworn in by Jagdish Chandra Balutiya and the documents referred therein i.e. 45-C/4, 45-C/5 and 45-C/6. Similarly the affidavit of Damodar Dutt Balutiya, 47-C, affidavit of Kishan Saxena, paper No. 47-C, affidavit of Madan Mohan Pandey Paper No. 47-C, affidavit of Ajay Jain, paper No. 47-C, affidavit of Gopal Dutt paper No. 50-C, affidavit of Keshav Dutt Tiwari paper No. 50-C/2, affidavit of Gopal Dutt paper No. 58-C, Affidavit of Gopal Dutt Balutia, paper No. 62-C and the map 64-C. The learned Judge has also considered the affidavits filed on behalf of the petitioner, reference of which has been given in his judgment, and same is reproduced as under:-

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18. So far as the bonafide need is concerned the learned Judge has recorded a finding that Damodar Dutt, the brother of the landlord is completely unemployed and therefore, the shop released from the possession of Shanti Swaroop has nothing to do with Damodar Dutt as the same has been released for the requirements of Jagdish Chandra Balutiya and the same is also lying in his possession. For recording the aforesaid finding the learned Judge has believed the affidavit of Damodar Dutt as well as Jagdish Chandra Balutiya. It has come on the record that both the brothers are completely unemployed and the shops are required for their business and merely the shop of Shanti Swaroop has been released for the purposes of Sri Jagdish Chandra Balutia will not serve the purpose of the other brothers.

19. So far as the bonafide need for Damodar Dutt Balutiya is concerned his need is bonafide and as such the release application has been rightly allowed.

20. In Prem Prakash Gupta and Ors. v. IInd Additional District Judge, Allahabad and Ors., 1993 (1) ARC 77, after the following the decision of Rajeshwari Prasad v. Fateh Bahadur Chaturvedi and Ors. reported in, 1984 (1) ARC 387, it has been held that bona fide need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word. So far as the fourth proviso is concerned, it has to be considered liberally in favour of the landlord, when the bona fide need for grant of release has been established. Moreso, when there has been inaction on the part of the tenant in searching for alternative accommodation by seeking allotment or otherwise.

21. With regard to the dilapidated condition of the building is concerned it has come on the record that both the shops are in a dilapidated condition and therefore, it require for demolition and new construction as well. Section 21 (1) (a) provides as under:-

'21. Proceedings for release of building under occupation of tenant.-(1) The Prescribed Authority may, on an application of landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely-(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust.'

22. As will appear from the aforesaid Section 21 (1) (a) that the Shop may be released for the requirement of the landlord for self occupation or for demolition and new construction. The Appellate Court having recorded a finding that the shop is required for bonafide need for self occupation as well as for demolition and new construction I find no infirmity in the findings recorded by the Appellate Judge.

23. It has been held in Smt. Champa Kunwar Trust v. The District Judge Rampur and Ors., AIR 1976 Allahabad 252, that so far as the purpose of repairs and construction is concerned the landlord has not to justify that the shop requires the demolition, the statement is sufficient that its bonafide requirement by the landlord

for the demolition and new construction. In the aforesaid judgment reliance was placed on the judgment of Apex Court reported in, AIR 1975 Supreme Court Page 1750. The Apex Court has observed that the landlord has every right to demolish in order to improve his business. The same is quoted below: .

'In Bhulan Singh v. Gancndra Kumar, AIR 1950 Cal 74, a Bench of the Calcutta High Court took the view that the words 'bona fide required by the landlord' could not be read as 'Premises bona fide requiring rebuilding.' Could have no application whatsoever unless the state of the premises was such that they required to be rebuilt. It is to be observed that proviso (f) to Section 11 (1) of the Act does not mention premises requiring rebuilding. What it states is that Sub-section (1) shall have no application if the landlord requires the premises bona fide for rebuilding. The sate of premises therefore, is not an essential factor in the case. However, it cannot be overlooked that in this case the learned Judge has accepted the evidence of a witness which shows that these premises were very old, dilapidated, dangerous and likely to fall if extensive repairs were not done to them quickly.

It appears to me that the premises are bona fide required by the landlord for the purpose of 'rebuilding' if, the landlord honestly requires them for that purpose. The equivalent of the phrase 'bona fide' is 'honestly'. It refers to the state of the landlord's mind. It refers to the state of the landlord's time. The landlord therefore, will be entitled to possession as against the tenant if he established that he honestly requires the premises for rebuilding.

In Mohammed Azizuddin v. Aziz Hassan, (1960) 2 Andh WR 203, the Andhra Pradesh High Court was required to consider the scope of Section 15 (3) (a) (iv) of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954. The question in this case was whether the landlord had satisfied the requirement of bona fide need for the purpose of rebuilding and dealing with the same the Andhra Pradesh High Court said as under:-

'In so far as Clause (iv) is concerned, the landlord would be entitled to an order for eviction if he bona fide requires the house for building or rebuilding or making substantial repairs etc. Here again the question of bona fides would be a question of fact, that is, the Rent Controller would be entitled to take into consideration the

fact that the landlord has the means and that the the intends in fact to construct a big or a small building, and whether it is reasonable or necessary to construct it or not is not a matter which could be taken into consideration because that would depend upon the means and the intention of the landlord to make the best use of his property, a matter in which his view will not be substituted by the view of the Rent Controller. If the landlord has the means to build and intends to build a three-storeyed building as in this case, that does not go counter to the policy of the Rent Control Act. In fact, it may effectuate the policy because the policy of the Rent Control Act is to protect the tenant, having regard to the scarcity of accommodation. If a landlord can afford to build premises with greater accommodation, certainly that would in some way relieve the scarcity.'In *Panchamel Narayana v. Basthi Venkatesha*, AIR 1971 SC 942, the argument advanced by the learned Counsel appearing for the tenant was that the condition of the building must be such that is was immediately necessary to demolish it. The argument was repelled by the Supreme Court by observing that in considering the bona fide requirement of the landlord the desire of the landlord to put the property to a more profitable use after demolition and reconstruction was also a factor that might be taken into account in favour of the landlord. The Supreme Court further observed that in its opinion it was not necessary for the landlord to establish that the condition of the building was such that it required immediate demolition.

In *S.M. Gopala Krishna Chetty v. Ganeshan*, (1975) 2 SCC 408 : AIR 1975 SC 1750, the Supreme Court admitting the right of a landlord observed that a landlord had ever right to demolish his property in order to get better utilization of his investments, and such a step per se could not be characterized as mala fide on the part of the landlord.'

24. In *Prem Prakash Gupta and Ors. v. IInd Additional District Judge, Allahabad and Ors.*, 1993 (1) ARC 77, it has been held as under: -

'As observed by this Court in its decision in the case of *Rajeshwari Prasad v. Fateh Bahadur Chaturvedi and Ors.*, reported in 1984 (1) ARC 347, the bona fide need is the foundation of the application for eviction of the tenant without which it cannot be allowed. Hardship is relative word. In our society with divergence of

economic prosperity no single test can be laid down for it. In some cases, drawing room guest room, consultation room may be necessary. In other a pretext only. What may be valid and relevant consideration in relation to one land landlord and his tenant may not be relevant for the other.

In the case of Bega Begum v. Abdul Ahmad Khan, reported in, AIR 1979 SC 272 : 1986 SCFBRC 346, the Apex Court had observed that while it was no doubt true that the tenant will have to be ousted from a house if decree of eviction had been passed yet such an event by itself could not be a valid ground for refusing a decree for eviction. While considering the question of relative hardship the requirement of the landlord having regard to his profession or calling or even the status have to be taken into account. In the present case while the landlord had led sufficient evidence to show that no other alternative accommodation was available, the tenant had not let any such evidence which could show that he had ever attempted to seek allotment of any accommodation which could be utilized for shifting his business which was dwindling day by day and as observed by the Appellate Authority itself, had been closed during the pendency of the appeal.

In this case where there is inaction on the part of the tenant in searching for an alternative accommodation by seeking allotment or otherwise inspite of coming to know that the building in his tenancy is genuinely required by the landlord for satisfying his bona fide need, the question of relative hardships envisaged under the 4th proviso to Section 21 of the Act deserves to be considered liberally in favour of the landlord specially when the bona fide need for the grant of release sought for is established. While it is true that a proviso embraces the field which is covered by the main provision and the main part cannot be construed in such a manner so as to render a proviso redundant yet under the scheme of the Act, the 4th proviso to Section 21 does not appear to fall within those exceptional cases where this proviso may be said to be a part of the substantive provision itself. It should also not be lost sight of that a proviso cannot be permitted to defeat the basic intent expressed in the substantive provision which, as is apparent from the perusal of Section 21 of the Act, is to enquire the availability of the demised premises to the landlord on his successfully establishing the bona fide requirement of the same for the purposes envisaged in that section.

The connotation of the term 'requirement' should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under Section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since Section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that inspite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardships may be tilted in favour of the landlords as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for out weight the prejudice or the inconvenience which may likely be caused to the tenants.'

25. Apart from that the landlord has already complied with the provisions of Rule 17 of the U.P. Act No. 13 of 1972 as the appropriate estimate has already been submitted.

26. The findings of the appellate Court therefore, on the ground on dilapidated condition of the building requires no interference under Article 226/227 of the [Constitution of India](#).

27. So far as the comparative hardship is concerned the learned Judge has also recorded a finding from the evidence on the record that the shop after the death of the tenant namely Puran Prasad, was occupied by his daughter, who also expired and therefore, the shop in dispute is in occupation of Keshar Singh who is not a family member as defined under Section 3 (g) of the Act.

28. The finding of the Prescribed Authority to the effect that Keshar Singh and now his heirs have been treated to be a part of family cannot be allowed to stand in as much as admittedly he was not a member of the family and merely he was living alongwith the tenant cannot be said to a family member of the tenant. However

hardship is in favour of the landlord and the hardship of the landlord is greater than the tenant. The landlord has proved from the evidence on record that he has no accommodation to run business whereas Smt. Chandrawati has expired and after her death, her all the daughters are married and are residing out side Haldwani. It has come in the evidence on record the Keshar Singh is occupying the shop and as such the hardship of the landlord is much greater than the petitioner and as such the finding of the appellate Court with regard to the comparative hardship is just and proper.

29. Further with regard to the greater hardship in All England Law Reports 1958 Piper v. Harvey on Page 454 Lord Denning has held as under:-

'However, when I took at all the evidence in this case and see that the strong case of hardship which the landlord put forward, and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to buy or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and that is that the tenant did not prove (and the burden is on him to prove) the case of greater hardship. Although it is very rarely that this Court interferes in a hardship case, this does not seem to me to be a case in which only one conclusion is possible.

I would therefore, allow the appeal and given judgment for the landlord for possession.

The domestic position of the landlord is indeed a hard one. It is not even a case where he is occupying a house on his own; he is living in an unfurnished room upstairs in a house which does not belong to him with his invalid wife, and there is very strong evidence of hardship on his side; whereas I am bound to say that I can see no evidence on the other side which can be put into the scale to balance that, I would therefore, allow the appeal.'

30. Relying upon the judgment of Surya Dev Rai v. Ram Chander Rai it has been held by the Apex Court in Ranjeet Singh v. Ravi Prakash (2004) 3 Supreme Court Cases 682 : 2004 SCFBRC 256 that no inference can be made under Article 226 of the [Constitution of India](#). The finding of the Apex Court is as under:-

'In Surya Dev Rai v. Chander Rai this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Dev Rai that the jurisdiction was not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the error in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that -'considering the evidence on the record carefully' it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like an appellate Court which was not permissible for it to do under Article 226 or 227 of the Constitution.'

31. The Appellate Court having recorded the finding of fact so far as the bonafide need and the comparative hardship are concerned. The orders passed by the Appellate Court cannot be interfered under Article 226/227 of the [Constitution of India](#).

32. In view of the above, I find no infirmity in the order passed by the Appellate Court. The writ petition lacks merit and is dismissed. Since the petitioner is in possession of the premises, he is allowed time upto 30.11.2004 to vacate the premises provided he gives an undertaking to vacate the premises by 30.11.2004. The undertaking shall be furnished within three weeks by paying the damages which have accrued up-to-date.