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Court : Allahabad

Decided On : Mar-09-2011

Judge : Anil Kumar, J.

Acts : U.P. Act No. 13 of 1972 - Section 21(1)(a), 22, Rule 16(2); Code Of Civil Procedure ; Constitution of India - Article 226

Appeal No. : RENT CONTROL No. - 50 of 2010

Appellant : Gopal Lal Bhalla

Respondent : Additional District and Sessions Judge Lucknow and ors.

Advocate for Def. : C.S.C., Munawar Sultan, Sudeep Kumar

Advocate for Pet/Ap. : P.K.Khare

Judgement :

1. Heard Sri P.K. Khare, learned counsel for the petitioner, Sri Umesh Chandra, Senior Advocate assisted by Sri Munawar Sultan, learned counsel for the respondents.

2. Controversy involved in the present case relates to the shop situated in the premises having Municipal No. 332/20 situated at Sher-wali-Kothi, Sharrafa Bazar, Chowk Road, Lucknow under the tenancy of the petitioner.

2. Respondent no. 3 vide sale-deed dated 22.05.2000 purchased the same from the previous owner-Jagdish Chandra Agarwal. Thereafter, on 22.03.2007, moved an application under Section 21(1)(a) of the U.P. Act No. XIII of 1972 for release. Accordingly, a PA case no. 6/2007(Smt. Usha Agarwal v. Gopal Lal Bhalla) registered before the Prescribed Authority/Civil Judge(S.D.), Mohanlalganj, Lucknow.

3. In the release application it has been mentioned by respondent no. 3-landlady that she has purchased the shop in question from the then owner Sri Jagdish Chandra Agrawal by a registered sale-deed, the same be released as her three sons doing business selling of chikan, cloths from one shop not sufficient, wants to settle one son namely Sachin Agrawal in separate business. Written statement filed by tenant stating that need of landlady is not genuine, does not require any additional accommodation for the purpose of starting a new business for her son. It was also2 asserted that the petitioner made his best effort to get an alternative accommodation, unfortunately he has been unsuccessful. Therefore, if the eviction order passed, he will suffer irreparable loss and injury.

4. By order dated 06.08.2008 (Annexure no. 1 to the writ petition), respondent no. 2 allowed release application, challenged by way of appeal under Section 22 of the Act before Appellate Authority, dismissed vide order dated 10.03.2010(Annexure no. 2 to the writ petition), hence the present writ petition.

5. Sri P.K. Khare, learned counsel for the petitioner while challenging the impugned orders submits that the prescribed authority as well as appellate authority not correctly followed the procedure as prescribed under the law in the instant case, neither pleadings have been perused with reference to the provisions of the CPC nor the evidence was looked, as such the impugned orders suffers from an error, apparent on record, liable to be set aside.

6. He further submits that as per the provisions as provided under Section 21(1)(a) of the U.P. Act no. XIII of 1972 read with Rule 16(2). The need of the respondent no. 3-landlady must be genuine and it not be a desire to get the premises in the tenancy of his client to be vacated. The said provision should strictly be followed but not done in the present case, as such the orders passed by the courts below

are contrary to law.

7. It has been also submits on behalf of the petitioner that in the instant case, the courts below had failed to discharge their mandatory duty in applying the provisions of Section 21(1)(a) of the Act as well as Rule 16 of Rules, rather they had not taken into consideration the correct facts on record, so orders in question are against the principles of natural justice, illegal, arbitrary in nature, liable to be set3 aside. In support of his plea, Sri P.K. Khare, learned counsel for the petitioner relies on the following judgments :-

8. In the case of Ramesh Chandra Kesharwani v. Dwarika Prasad and another (2002) SC 476, the Hon'ble Supreme Court held as under :-

(6). Regarding Rule 16, it is to be noted that sub-rules (1) and (2) lay down certain factors for consideration by the prescribed Authority which is considering the question of eviction from the premises. Rule 16(1) deals with premises in occupation for the purpose of residence and Rule 16(2) deals with premises in occupation of a tenant for the purpose of any business.

Clause(d) of Rule 16(1) provides that where the tenant's needs would be adequately met by leaving with him a part of the building under tenancy and the landlord's needs would be served by releasing the other part, the Prescribed Authority shall release only the latter part of the building. This provision, in our view merely reiterates the power vested in the authority to order eviction of the tenant from the premises in entirety or portion of it. No doubt a similar provision is not found in sub rule (2) of Rule 16, but that does not affect the power of the authority vested under section 21 of the Act to order eviction of a tenant from a portion of the premises in appropriate case if the authority is satisfied that on the facts and circumstances of the case interest of justice will be served by passing such an order. Therefore, the first contention raised by Shri Mehrotra cannot be accepted.

(8). It is apparent from the observations quoted above that the learned Single Judge had considered the question of partial eviction for the purpose of avoiding delay in bringing the litigation to a close and with a view to do justice between the

parties. It is apparent that equitable consideration has weighed with the Court in passing the order. We would also like to note here that the learned Single Judge appears to have been inclined to remand the case, but in order to avoid delay that would arise in case of remand,was persuaded to pass the order himself in all probabilities on the submission made by learned Counsel for the appearing parties. In such circumstances, when an order has been4 passed on equitable considerations and with a view to do justice between the parties we do not feel that nay interference with the order and judgment passed by the High Court is called for.

9. In the case of Mst. Bega Begum and others v. Abdul Ahad Khan(dead) By L.Rs. And others (1979)1 SCC 273, the Hon'ble Apex Court held as under :-

The court in determining the reasonableness or requirement for purpose of building or rebuilding shall have regard to the comparative public benefit or disadvantage by extending or diminishing accommodation, and in determining reasonableness of requirement of occupation shall have regard to the comparative advantage or disadvantage of the landlord or the person for whose benefit the house or shop in held and of the tenant.

The words 'reasonable requirement' in the sub-section undoubtedly postulate that there must be an element of need as opposed to mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even a genuine need as nothing but a desire. The connotation of the term 'need' or the word '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 a decree for eviction. 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. The Act strikes a just balance between the genuine need of the landlord on the one hand and the great inconvenience and trouble of the tenants on the other.

10. In the case of Dwarika Prasad and another v. Second Addl. District Judge, Allahabad and others [2000(U.P.) RCC 274], this Court held as under :-

The next contention of the learned counsel for the petitioners was that the disputed shop is a big one having an area 20 feet wide facing the road and 48 feet inside. On 11.04.1999 I directed the appellate authority to appoint an Advocate Commissioner to submit report regarding the exact measurement of the shop after making a local inspection. In pursuance of the said order the appellate authority appointed a Commissioner and he has submitted a detailed report alongwith a map. There is no objection in regard to this report and the map. The petitioner is carrying on grain business. He has also obtained licence from the Mandi Samiti. It was contended by the learned counsel for the respondent that the petitioner has a shop in the Mandi Samiti. Learned counsel for the petitioners has denied the fact and secondly it is submitted even if he might be having a shop in Mandi Samiti,it is far away from the city itself and his business will be affected.

11. Sri Umesh Chandra, Senior Advocate assisted by Sri Munawar Sultan, Advocate, learned counsel for the respondents submits that in the present case, the landladyrespondent no. 3 in order to establish her son (Sri Sachin Agarwal) in business, moved an application for release, stating therein that she has four sons out of which one settled abroad and other three sons are doing business from one shop not sufficient to cater their need as well as their family, so in order to increase earning of the family, the shop under the tenancy of the petitioner-tenant required for establishing chicken cloth business for her third son namely Sachin Agarwal for better livelihood for the family, so the need of landlady is genuine and bonafide.

12. He further submits that it is well settled proposition of law that if the landlady-respondent no. 3 wanted to start a new business for her son from the shop, who has legal right to do and get shop vacated under tenancy of the petitioner, then in that circumstances it would neither be proper nor is intention of law to deprive the owner of the building from the user of the same for starting/settling up business for a young unemployed youth in the family. In support of his argument he placed reliance the following judgments :-

1. Mohd Sohail v. Additional District Judge, Lucknow and another [2007(25)LCD 800]

2. Oil and Oil Seeds Exchange, Kanpur v. XIIth Addl. District Judge, Kanpur Nagar and others 1995(1) ARC 170.

3. Sushila v. IInd Addl. District Judge, Banda and others 2003(1) ARC 256.

4. Hari Om Bhutani v. Smt. Raj Kumari Maheshwari and others [2004(2) ARC 388.

5. Sri Gaffar Khan v. The First Addl. District Judge and others 1977 ARC 194.

6. Brij Nandan Saran v. The Addl. District Judge and others 1978 ARC 236.

13. Sri Umesh Chandra, Senior Advocate further submits that two courts below after interpreting Section 21(1)(a) of the U.P. Act no. XIII of 1972 and Rule 16(2) have held that need of the landlady-respondent no. 3 is more genuine and bonafide in comparison to the tenant for release of the shop in question, as such, in view of the law laid down by the Apex Court in the case of Sushila v. IInd Addl. District Judge, Banda and others 2003(1) ARC 256, argument advanced on behalf of the petitioner-tenant that the need of landlady-respondent no. 3 is not genuine and bonafide got no force liable to be rejected.

14. Sri Umesh Chandra, Senior Advocate, lastly argued that in the instant case, both the courts given concurrent finding that the need of the landlady-respondent no. 3 is more genuine and bonafide, cannot be interfered by this Court while exercising power of judicial review under Article 226 of the Constitution of India, so the present writ petition filed by the petitioner is liable to be rejected.

15. I have heard learned counsel for the parties and gone through the record.

In order to decide the controversy involved in the present case, it is proper to have a glance to the provisions which is involved in the present case which are as under :-

Section 21(1)(a) of the U.P. Act No. XIII of 1972 :-

21. Proceedings for release of building under occupation of tenant (1) The Prescribed Authority may, on an application of the 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. Rule 16(2):-

(2) While considering an application for release under clause (a) of sub section 91) of Section 21 in respect of building let out for purposes of any business the prescribed authority shall also have regard to such facts as the following :-

(a) the greater the period since when the tenant opposite party, or the original tenant whose heir the opposite party is, has been carrying on his business in that building, the less justification for allowing the application ; (b) where the tenant has available with him, suitable accommodation to which he can shift his business without substantial loss there shall be greater justification for allowing the application ; (c) the greater the existing business of the landlords own part from the business proposed to be set up in the leased premises, the less the justification for allowing the application, and even if an application is allowed in such a case, the prescribed authority may on the application of the tenant impose the condition where the landlord has available within him other accommodation(whether subject to the Act or not) which is not suitable for his own proposed business but may serve the purpose of the tenant, that the landlord shall let out that accommodation to the tenant on a fair rent to be fixed by the prescribed authority

16. In view of the above said facts, as per the argument advanced by the learned counsels for the parties in the instant case, the first point which is to be considered that what is the meaning of the word bonafide.

17. The word bonafide has been interpreted by the Hon'ble Supreme Court in the case Shiv Sarup Gupta V. Dr. Mahesh Chand Gupta (1999) 6 SCC 222 : 1999 SCFBRC 330, as under :-

The term bonafide or genuinely refers to a state or mind. Requirement is not mere desire.

The degree of intensity contemplated by required bona fide is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the absence of felt need which is an outcome of sincere,honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the Court. The judge of facts should place himself in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord.

18. This Court in the case of Pramod Kumar v. VI Additional District Judge, Bijnor and others, 2000(1) ARC 185, has defined 'bona fide need' on the basis of decisions of the Hon'ble Supreme Court rendered in Muttu Lal v. Radhey Lal, AIR 1974 SC 1596 and Bega Begum v. Abdul Ahad Khan, AIR 1979 SC 272 : 1986 SCFBRC 346, as under :-

The word 'bona fide' means genuinely and sincerely i.e. in good faith in contradiction to mala fide. The requirement of an accommodation is not bona fide if it is sought for ulterior purpose but once it is established that the landlord requires the accommodation for the purpose which he alleges there is of ulterior motive to evict the tenant that requirement should be bona fide

19. In the same manner the word bonafide has been interpreted in the case of Jagdish Chandra v. District Judge, Kanpur Nagar and others 2008 2 ARC 756 and 2009 (2) ARC 802 Hariom v. Additional District Judge and others.

20. The Apex Court in the case of Sarla Ahuja. v. United India Insurance Company Ltd.,(1996) 5 SCC 353, held as under :-

The rent controller should not proceed on the assumption that the landlord's requirement is not bona fide. When the landlord shows a prima facie case a presumption that the requirement of the landlord is bonafide is liable to be drawn. It is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without giving possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlords, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

21. Further, in the case of Sushila v. IInd Addl. District Judge, Banda and others 2003(1) ARC 256, while interpreting the Rule 16 of the Rule has held as under :

A bare perusal of Rules 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 , makes it clear that the rule only prescribes certain factors which have also to be taken into account while considering the application for eviction of a tenant on the ground of bonafide need. Sub Rule 2 of Rule 16 quoted earlier relates to the cases of eviction from an accommodation for business use. Clause (a) of Sub Rule 2 provides, greater the period of tenancy less the justification for allowing the application; whereas according to Clause (b) in case tenant has a suitable accommodation available to him to shift his business, greater the justification to allow the application.

Availability of another suitable accommodation to the tenant, waters down the weight attached to the longer period of tenancy as a factor to be considered as provided under Clause (a) of Sub Rule 2 of Rule 16. Yet another factor which may in some cases be relevant under clause (c) is where the existing business of the landlord is quite huge and extensive leaving aside the proposed business to be set up, there would be lesser justification to allow the application. The idea behind sub clause (c) is apparent i.e. where the landlord runs a huge business eviction may

not be resorted to for expansion or diversification of the business by uprooting a tenant having a small business for a very long period of time. In such a situation if eviction is ordered it is definitely bound to cause greater hardship to the tenant.

22. In view of the above said facts, arguments as advanced by learned counsel for the petitioner that the courts below have not considered that the need of the landlady-respondent no. 3 is not bonafide, so contrary to the provisions as provided under section 21(1)(a) of the U.P. Act no. XIII of 1972 read with Rule 16(2) of the rule is misconceived having no force, rejected.

23. Every citizen is entitled to expand his business and argument his income therefrom. If an application is filed by a landlady for the purpose of expanding his business or opening a new one, the same cannot be rejected simply on the ground that such an application was not maintainable.

24. What is required to be seen in such case is whether the application filed was bona fide, and that the premises in the tenancy of a tenant was required for the genuine need of the landlady/landlord.

25. In the instant case, two courts below on the basis of evidence and material on record came to the conclusion that the shop in the tenancy of the petitioner-tenant was bonafidely required by the landlady-respondent no. 3 to establish and start the business of her third son namely Sachin Agarwal in order to earn better livelihood for himself as well as his family members is genuine and bona fide as per law laid down in the case of Sri Gaffar Khan v. The First Additional District Judge and others, 1997 ARC 194, it is held as under :-

The Prescribed Authority as well as the learned Judge, on the basis of the material on record, came to the conclusion that the landlord did require another business premises where he could start his cloth business in order to support his growing family. A person may be having some income and yet there may be necessity of starting a new business in order to maintain the family. There appears to be no prohibition under this Act or in any other law of this land that a person cannot make efforts to earn some more money in order to maintain the family.

26. In the case of Oil and Oil Seeds Exchange, Kanpur v. XII Additional District Judge, Kanpur Nagar and others 1995(1) ARC 170, this Court held as under :-

that a young man in the family who is unemployed if intends to start the business in his own accommodations in tenancy or others, he has a legal right to start such a business and get the tenant vacated. It would not be proper nor is the intention of law to deprive the owner of the building from the user of the same for starting a business for settling up a young unemployed youth in the family.

27. In the case of Sri Niwas and another v. Vth Additional District Judge, Moradabad and others 2004(2) ARC 220, this Court held as under :- Every adult members of the family of landlord has got right to start independent business. Mere fact that some of the sons of landlord are established in business does not warrant dismissal of the release application filed for establishing other son of the landlord in business.

28. In the case of Mahesh Chand and others v. Iind Additional District Judge, Moradabad and others 2004(2) ARC 221, this Court held as under :-

Every family member has got right to start his own business. The mere fact that other sons of landlord/petitioner no. 2 or one of his sons i.e. petitioner no. 1 does not deserve to start business of his own. The landlord(petitioner no. 1) had been ejected from the tenanted shop in which he was carrying on business. The tenant did not show that he made any efforts to search alternative shop after filing of release application.

29. In the case of Girdhari and others v. IIIrd A.D.J. Mathura and others 2006(2) ARC 173, this Court held as under :-

The prescribed Authority held that the need of Banwari Lal was not bona fide as Munna, another son of original landlord, Raman Lal had a shop. This fact was also utterly irrelevant. Raman Lal, original landlord had four sons. He had full right to settle each and every son in independent separate business. Supreme Court in Shushila v. A.D.J., AIR 2003 SC 780 :2003(1) ARC 256, has held that no member of landlord's family can be compelled to share the business with the landlord or

any other family member. The business in the other shop was carried out by the brother of Banwari Lal (see also : Shakuntala Devi Rathod(smt.) v. Smt. Raj Kumari and others, 2008(1) ARC 242).

30. In the case of B.C. Bhutada V. G.R. Mundada, A.I.R. 2003 SC 2713 wherein it was held that bona fide requirement implies an element of necessity. The necessity is a necessity without regard to the degree to which it may be. For the purpose of comparing the hardship the degree of urgency or intensity of felt need assumed significance. In the above authority it has also been held in para 13, that tenant must show as to what efforts he made to purchase or take on rent other accommodation after filing of the release application which is quoted below:-

" In Piper V. Harvey, 1958(1) All ER 454, the issue as to comparative hardship arose for the consideration of Court of appeals under the Rent Act, 1975. Lord Denning opined; "when I look at all the evidence in his case and see 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 but 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." Hudson, L.J. ,opined: " the tenant has not been able to say any thing more than the minimum which every tenant can say, namely, that he was in fact been in occupation of the bungalow, and that he has not at the moment any other place to go to . He has not , however, sought to prove any thing additional to that by way of hardship such as unsuccessful attempts to find other accommodation, or , indeed , to raise the question of his relative financial incompetence as compared with the landlord." On such state of the case, the Court answered the issue as to comparative hardship against the tenant and ordered his eviction."

31. In the case of Salim Khan V. IVth Additional District Judge, Jhansi and others , 2006(1) ARC 588 has held as under:-

"In respect of comparative hardship, tenant did not show what efforts they made to search alternative accommodation after filing of release application. This case sufficient to tilt the balance of hardship against them Vide Bhutada V. G.R.

Mundada 2003 Supreme Court 2713; 2005(2) ARC 899. Moreover, rent of Rs. 6/- per month which the tenants are paying is virtually as well as actually no rent. By paying such insignificant rent they must have saved a lot of money. Money saved is money earned. They must, therefore, be in a position to take another house on good rent. Further, they did not file any allotment application for allotment of another house. Under Rule 10(3) of the Rules framed under the Act, a tenant, against whom release application has been filed, is entitled to apply for allotment of another house immediately. Naturally such person is to be given preference in the matter of allotment. Respondents did not file any such allotment application. Thus, the question of comparative hardship has also to be decided against the tenants."

32. The above said view as laid down has been further reiterated by this Court in the case of Mohd Sohail v. Additional District Judge, Lucknow and another [2007(25)LCD 800] as under :-

In Kafeel Ahmad v. Smt. Satvindra Kaur, this court observed that every adult member of landlord's family is entitled to do separate business. No one can be compelled to participate business carried out by other family members. It was also observed that since the tenant had not made any effort after making of application under Section 21 of the Act, to search out any alternative accommodation, therefore, thee would be greater hardship to the landlord if the application is disallowed.

33. So, keeping in view the above said facts as well as both the courts below have given concurrent finding of fact to the effect that tenant has not made any effort to search alternate accommodation since the moving of the release application and no evidence has been placed by tenant on record in this regard, so argument advanced by the learned counsel for the petitioner-applicant that he is old aged person, running business from the shop in question since 1977, accordingly his need is bonafide in comparison to the landlady-respondent no. 3, he will be greater hardship if evicted from the premises in question. No doubt it is an old tenancy but there is nothing to show any real efforts were made by the tenant to find another accommodation despite the fact that application for release has been

moved in the year, 2006, argument advanced by Sri P.K. Khare, learned counsel for the petitioner in this regard are rejected.

34. Further, in the instant case, the prescribed authority as well as appellate authority on the basis of material on record, had given finding in respect to genuine and bonafide need of the landlady-respondent no. 3 based on appraisal of evidence, as such it is not open to this Court to re-appraise evidence given by the parties and to record its own finding thereon. A finding on the question of fact is binding and has to be accepted unless found to be perverse or having been given without any evidence. The learned counsel for petitioner could not establish any of two grounds. So, as per settled proposition of law laid down by the Hon'ble Supreme Court that the power of the High Court under Article 226 of the Constitution of India is of a supervisory nature where this Court can only correct an error of law apparent on the face of the record. It has no jurisdiction to correct an error of fact, accordingly present writ petition filed by the tenantpetitioner lacks merit liable to be dismissed with observation that tenant-petitioner is permitted to retain the premises for a six month i.e. uptil 31 st August, 2011.

35. Thereafter, he shall hand over the peaceful possession of the shop in question to the landlady-respondent no. 3. Provide he gives an undertaking in this regard on an affidavit to the prescribed authority within a period of four weeks from today and pay regularly rent and damages for the said purpose. Failing which, respondent no.3-landlady has a liberty to execute orders passed by the courts below.

36. For the foregoing reasons, writ petition is dismissed with above observations.

37. No order as to costs.

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