

(2001) 01 AHC CK 0019

Allahabad High Court

Case No: C.M.W.P. No. 53031 of 2000

Pradeep Kumar Rastogi

APPELLANT

Vs

XVIth Addl. District Judge,
Meerut and others

RESPONDENT

Date of Decision: Jan. 10, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1), 22

Citation: (2001) 1 AWC 690

Hon'ble Judges: O.P. Garg, J

Bench: Single Bench

Advocate: Rajesh Tandon and Anurag Khanna, for the Appellant; S.C., Ashish Kumar Singh, Ravi Kiran Jain and Pushkar, for the Respondent

Final Decision: Dismissed

Judgement

O. P. Garg, J.

The dispute in this writ petition pertains to the release of shop No. 85 (old premises numbers 286, 288 and 289) situate in Subhash Bazar, Meerut city. The said shop was originally owned by one Jagdish Chand Gera and was under the tenancy of late Dr. Jitendra Vir, who was running the business of sale of homeopathic medicines. After the death of the original tenant, his son Pradeep Kumar Rastogi, the present petitioner inherited the tenancy rights and is carrying on the business of sale of homeopathic medicines from the disputed shop. He is paying monthly rent at the rate of Rs. 57.50 p. Vivek Gupta-respondent No. 3 had purchased the property, in question, from the previous owner Jagdish Chand Gera in the year 1988.

2. He filed an application for release of the tenanted accommodation u/s 21 (1) (a) of the U. P. Urban Building (Regulation of Letting, Rent and Eviction) Act. 1972 (Act No.

XIII of 1972) (hereinafter referred to as "the Act"). It was registered as P.A. case No. 23 of 1994. The case of the landlord-respondent No. 3 was that he is in occupation of a tenanted shop situate in a closed lane of Khair Nagar Bazar, Meerut since the year 1989 at an exorbitant monthly rent of Rs. 1,300 and that the provisions of the Act also do not apply to the said shop. According to the landlord, he was under the threat for vacating the tenanted shop in Khair Nagar Bazar and, therefore, has a bona fide and genuine need to occupy the tenanted shop in occupation of the petitioner Pradeep Kumar Rastogi. It was also averred that the tenanted shop in dispute was eminently suited for carrying out the business of ready-made garments. The petitioner resisted the various allegations of the landlord-respondent No. 3 and contested the petition on a variety of grounds. The Prescribed Authority allowed the release petition of the landlord-respondent No. 3 by order dated 18.8.2000 and the present petitioner was directed to hand over the vacant possession of the tenanted shop to the landlord-respondent No. 3 within the specified period subject to payment of compensation equivalent to two years rent. The petitioner preferred a rent Appeal No. 243 of 2000 u/s 22 of the Act. The appeal was also dismissed on 25.10.2000 by XVIth Additional District Judge, Meerut-respondent No. 1. It is in these circumstances that the petitioner has come forward before this Court by filing the present petition under Article 226 of the Constitution of India to challenge the order of release passed by the Prescribed Authority and as confirmed in appeal.

3. At the lime of admission of the present petition, Sri Ravi Kiran Jain, learned senior advocate, assisted by Sri Pushkar put in appearance on behalf of the landlord-respondent No. 3. On behalf of the petitioner. Sri Rajesh Tandon, learned senior advocate assisted by Sri Anurag Khanna had appeared. Learned counsel for both the parties agreed that the petition be finally disposed of on merits on the basis of material available on record. I have, therefore, heard this petition, on merits, at the admission stage in view of the agreement between the learned counsel for the parties and proceed to decide the same on merits.

4. It is an indubitable fact that the petitioner is the tenant of the disputed shop and the relationship of landlord and tenant subsists between the petitioner and the respondent No. 3. The petitioner has acknowledged the respondent No. 3 as the owner-landlord by paying monthly rent. The application for release of the said shop u/s 21 (1) (a) of the Act was moved by the landlord as he needed the disputed shop to occupy himself to carry on his own business as he had been carrying on the business in rented shop in Khair Nagar market which according to him was highly inconvenient for the business of ready-made garments as the lady customers hesitated to approach the shop on account of its location. According to him, he was paying exorbitant rent of Rs. 1,300 per month and did not have the required protection to continue in the rented shop as the provisions of the Act are not applicable to it. On the other hand, the petitioner took the plea that he is having a joint business with his father and brothers and that there are other Joint Hindu Family properties in which the petitioner is joint owner. In any case, according to the

petitioner, the first floor accommodation is available to the landlord in Subhash Nagar itself which he can usefully utilize for running the business which he is carrying on from the rented shop in Khair Nagar market. Sri Rajesh Tandon, learned counsel for the petitioner further pointed out that the petitioner has earned goodwill in the sale of homeopathic medicines on account of his long standing possession over the disputed shop for a number of decades and in case the petitioner is evicted pursuant to the release order, his business is likely to be completely ruined. It was urged that the Prescribed Authority as well as the appellate court have not appraised the serious pleas taken by the petitioner in their true perspective and consequently they were misdirected in arriving at the conclusions which they have recorded. Sri Tandon also took me through the evidence of the parties and the findings recorded by the two Courts below. Sri Ravi Kiran Jain, maintained that in view of the concurrent findings of fact recorded by the two authorities below, this Court has very limited jurisdiction and the writ jurisdiction under Article 226 of the Constitution of India cannot be invoked to upset the said findings.

5. I have given thoughtful consideration to the respective submissions made by the learned counsel for the parties. The order passed by the Prescribed Authority is quite elaborate and well reasoned. All the pleas which have been canvassed by Sri Rajesh Tandon before this Court have been considered by him. The judgment of the appellate court is even more thorough. It gives a complete answer to all the points which have been canvassed by Sri Tandon before this Court. None of the findings recorded by the two Courts below can be said to be perverse or suffering from material irregularity. As a matter of fact, reading of the two judgments would indicate that the Prescribed Authority as well as the appellate court have rightly rejected the various contentions and the pleas raised on behalf of the petitioner.

6. The question of bona fide need as well as that of the hardship has been held to be a finding of fact which cannot be interfered with by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. The findings of the Prescribed Authority as well as the appellate authority that the tenanted shop was bona fide required by the landlord-respondent No. 3 for his own use and occupation is unquestionably a finding of fact and it is not competent for this Court to interfere with the said finding by reappraising the evidence. In *Kamla Sarin v. Shyam Lal and others* 1984 (2) All RC 344, this Court following the various decisions of the Hon"ble Supreme Court observed as follows :

"Their finding that the need of the petitioner was not bona fide being that of fact, cannot be set aside under Article 226 of the Constitution. In [Muni Lal and Others Vs. Prescribed Authority and Others](#), , the Supreme Court held while deciding an appeal preferred from the judgment of this Court that the finding on the ground of bona fide need is one of fact. In *Nattu Lal v. Radhey* AIR 1974 SC 1696, a similar view has been taken. The Court under Article 226 of the Constitution has no power to

reappraise evidence and to record its own finding. In *Babhutmal Raichand v. Laxmibai* AIR 1975 SC 1296, the Supreme Court held that the High Court has no jurisdiction under Article 227 to reconsider the evidence. The law laid down in this case applied to the present petition under Article 226 of the Constitution as well [Mrs Labhkuwar Bhagwani Shaha and Others Vs. Janardhan Mahadeo Kalan and Another,](#) ."

7. In *Ram Rakesh Pal and others v. Ist Additional District Judge and others*. 1976 UPRCC 376, it was ruled that the question of bona fide requirement of the premises as well as that of comparative need are questions of fact and, therefore, High Court has no power to correct the question of fact even if erroneously decided. A reference may also be made to the decision of this Court in the case of *Jagan Prasad v. District Judge and others* 1976 UPRCC 342 and *Laxmi Narain v. IInd Additional District Judge and others* 1977 UPRCC 230. In the case of *Smt. Nirmala Tandon v. Xth Additional District Judge, Kanpur Nagar* 1966 (2) ARC 409, this Court held that the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is of supervisory nature only and it does not sit as a court of appeal when called upon to judge the finding of the competent authorities, namely, the bona fide need of the landlord and comparative hardship of the parties. The Court would not embark upon reappraisal of the evidence or substitute its own findings of fact in place of the findings reached by the fact finding authorities. It is clearly outside the Court and ambit of the judicial review when this Court exercises its powers under Article 226 of the Constitution of India. However, a finding of fact may be interfered with when it is based on account of wrong application of principle of law relevant thereto or relevant material has not been taken into consideration, or a finding is otherwise arbitrary or perverse.

8. The matter was further considered by the Apex Court in the case *Kamleshwar Prasad v. Pradumanju Agarwal* 1997 (1) ARC 627, in which it was held that under the Act, the order of the appellate authority is final and the said order is a decree of the civil court and a decree of a competent Court having become final cannot be interfered with by the High Court in exercise of its power of superintendence under Articles 226 and 227 of the Constitution of India by taking into account any subsequent event which might have happened. That apart, it was further observed that the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of law, must be that on the day of application for eviction, which is the crucial day, the tenant incurred the liability of being evicted from the premises. The finality of the decision cannot be disturbed on account of any subsequent events on a petition under Article 226 of the Constitution of India.

9. It is not a case in which the learned Prescribed Authority or the appellate court has arrived at the conclusion based on wrong application of principles of law or has failed to take into consideration the relevant material which was germane for

decision on the controversy in hand. The findings recorded by them cannot be said to be arbitrary or perverse.

10. Without burdening this judgment with a plethora of other decisions on the point, I feel that suffice it to say that this Court cannot reappreciate or reappraise the findings of facts recorded by the two Courts below that the landlord bona fide requires for his personal occupation the tenanted shop and that the balance of hardship tilts in his favour. It is an innate desire of every owner-landlord to occupy his own shop. In the instant case, the need of the landlord-respondent No. 3 cannot be said to be unreal, fraudulent or colourable. The release petition is not actuated by any avarice. When once the need of the landlord is established as bona fide and genuine, the tenant has to make a way. There is ample evidence on record to indicate that the petitioner did have many alternatives to shift but he did not make any attempt in spite of the fact that the question of release of the tenanted shop in favour of the landlord continued to attract the attention of the authorities below for a long period of six years.

11. All told, the petitioner has no case to resist the bona fide need of the landlord to occupy his own shop which is under the tenancy of the petitioner. The release application has been rightly allowed. The writ petition, therefore, falls as being devoid of merits and substance and is accordingly dismissed without any order as to costs.