

(2011) 01 AHC CK 0127

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 5527 of 2011

Anand Kishor and Others

APPELLANT

Vs

Laxmi Kant Shukla and Another

RESPONDENT

Date of Decision: Jan. 31, 2011

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1)(a)

Citation: (2011) 2 ADJ 874 : (2012) 4 AWC 3762

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard Sri Pramod Kumar Jain, senior counsel assistant by Sri Saurabh Jain, counsel for tenant Petitioners, Sri M.K. Gupta appearing for the landlord Respondent and perused the record.

2. This petition challenges the validity and correctness of the judgment and order dated 25.10.2010 passed by the Prescribed Authority/Civil Judge (S.D.), Pilibhit in P.A. case No. 3 of 1999 as well as judgment and order dated 13.1.2011 passed by the appellate authority/Additional District Judge, Pilibhit dismissing P.A. Appeal No. 26 of 2008, appended as annexure No. 1 and 2 to the writ petition.

3. The impugned orders have been challenged on the ground that while dismissing the appeal, the appellate court has not taken notice of the judgment in respect of another shop under the tenancy of Sri Satish, against whom similar another release application was filed on same grounds. It is stated that in the release application filed against Sri Satish, the court had recorded a finding that landlord Respondent is aged about 70 years and it is not possible for him to carry on trade, as such his need was not bonafide. According to the counsel for Petitioner, this aspect of the matter

has been ignored by both the courts below. It is submitted that not only this, the courts below have also not looked into this aspect that the landlord Respondent had four shops of same size i.e. 9" X 18" and after purchase of the property, first shop was got vacated by the landlord from Aslam, tenant in that case, and thus the element of bonafide need stood satisfied on vacation of shop by Aslam. It is also submitted that shop under tenancy of the Petitioner is not adjacent to the shop which was under tenancy of Aslam and there is another shop measuring 9" X 18" feet in between the two shops i.e. the shop under tenancy of the Petitioner and the shop vacated by Aslam.

4. Contention of the counsel for Petitioner is that if the Petitioner's shop had been adjacent to the shop under tenancy of Aslam, then it could be said that landlord Respondent wants to enhance the size of the shop, but that was neither the case nor the position at the spot and in fact the Respondent landlord is not occupying the property after allotment i.e. the shop which was under tenancy of Aslam in view of statement made by him in the proceedings u/s 21(1)(a) of U.P. Act No. 13 of 1972, and in view thereof, release application filed against the Petitioner was not maintainable.

5. Per contra, Sri M.K. Gupta appearing for the landlord Respondent, has argued that it was never case of the landlord that he required two additional shops and would enlarge the area of the shop for establishing his business by demolition of partition wall between the two shops. According to him, case of the landlord was that he required two shops for the business i.e. for establishing Aata chakki, Dhan kutti machine and Expeller which cannot be done in one shop measuring 9" X 18 feet as some additional space would be required for storage of bye products and working space, hence two shops were required for the purpose.

6. It is vehemently argued by the counsel for Respondent landlord that age can never be a factor to repel contention of bonafide need as the business is to be done through servants and only investment is to be made by the landlord. In this regard, he has relied upon decision of this Court rendered in *Jai Raj Agarwal v. Bhola Nath Kappor and Ors.* 2005 (3) ARC 417.

7. In that case also, the landlord after retirement wanted to do cloth business and also to settle his adopted son in business. In these circumstances, it was held that even at the age of 76 years, one can supervise the business and the need for the landlord for starting business, was bonafide and has to be considered.

8. In the instant case also, the landlord has retired from service and as has been held in a catena of decisions, his need to settle himself in business to augment his income, has to be considered on the premises of bonafide need.

9. Learned Counsel for the Respondent has then relied upon findings of fact recorded by the courts below to the effect that Petitioner No. 7-Ram Pratap Jaiswal has acquired a shop during pendency of the proceedings and as such even though

the prescribed authority in the case of Sri Satish illegally held need of the landlord to be not bonafide, yet in the present case the tenant Petitioner has to establish his bonafide need for the shop under his tenancy. He has relied upon the judgment rendered in Shiv Singh Chak v. Smt. Baby Jain 2007 (66) A.L.R. 134, wherein it has been held that hardships of the tenants ends if any member of his family has acquired or constructed a shop.

10. It is submitted by the counsel for landlord Respondent that earlier the shop in question was under tenancy of father-in-law of Petitioner No. 7-Ram Pratap Jaiswal and upon his death, the tenancy devolved upon his daughter Sankari Devi (since deceased) wife of Ram Pratap Jaiswal apart from other heirs. After death of Smt. Sankari Devi, the tenancy has devolved upon her husband Petitioner No. 7-Ram Pratap Jaiswal and Petitioner No. 8 & 10; that in subsequent development during pendency of the proceedings, Ram Pratap Jaiswal has acquired a shop of his own, hence he has plead and establish his bonafide need for the shop in question.

11. From the judgment and order passed by the Prescribed Authority which has been confirmed by the appellate court, it is apparent that the authority has recorded a finding of fact that space of one shop vacated by Aslam, is too small for running the business of Aata chakki, Dhan kutti machine and Expeller by the landlord. Moreover, there is only one intervening shop in between and in my opinion the business can be established in two different shops with ample working and storage space.

Findings recorded by the Prescribed authority, are thus:

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12. In so far as the release application filed against Sri Satish, another tenant in one of the four shops is concerned, suffice it to say that Satish had not purchased or acquired any vacant shop during pendency of the proceedings nor he had any other alternative shop, as such his case is different. In so far as the question of age is concerned, in view of law laid down by the Court in the case of Jai Raj Agarwal (supra), no further comment is required by the court in that regard.

13. Thus, from the perusal of the judgment it is apparent that landlord has a right to establish his business and his age would not be a bar in considering his bonafide need particularly when the tenant has acquired a shop of his own. In such circumstances, even the tenant has to establish his bonafide need for retaining the shop. This has neither been pleaded nor established by the tenant in the instant case. A tenant cannot suggest his landlord what business to do and whether the space required by him shall be sufficient or not. Once Ram Pratap Jaiswal (Petitioner No. 7) who himself has filed affidavit in the writ petition as tenant, has acquired a shop of his own in backdrop of the case that he and his son both had become tenant on the death of Smt. Sankari Devi, who inherited tenancy of her father, he cannot claim that the shop under his tenancy cannot be released because his son is in occupation of the said shop.

14. For all the reasons stated above, there appears to be no illegality or infirmity in the impugned orders. The petition has no force and is accordingly dismissed. No order as to costs.