

(2010) 12 AHC CK 0114
Allahabad High Court
Case No: Writ A No. 73745 of 2010

Sita Ram Nikhra

APPELLANT

Vs

Dhirendra Pratap Gaur

RESPONDENT

Date of Decision: Dec. 21, 2010

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21, 22

Hon'ble Judges: Shashi Kant Gupta, J

Final Decision: Allowed

Judgement

Shashi Kant Gupta, J.

This writ petition has been filed against the concurrent judgment and orders dated 5.5.2010 and 25.11.2010 passed by the prescribed authority/Judge Small Cause, Jhansi and Additioanl District Judge, Special Judge (E.C. Act), Jhansi respectively whereby the release application of the landlord filed under Section 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (In short " the UP Act No. 13 of 1972") has been allowed.

2. The brief facts of the case are as follows;

3. The petitioner, Sitaram Nikhra was the tenant of the disputed Shop situated at Mohini Baba, outside Sainyer Gate, Jhansi (In short "the disputed shop"). The total area of the house is 325 sq. ft. which was purchased by the landlord in 1988. The ground floor portion of the house is divided into two shops; one shop is under the tenancy of the petitionertenant and the other shop (in short "adjoining shop") is in the possession of the landlord. The family of the landlord consists of his wife, three sons and three daughters. Since the landlord wanted to settle his unemployed highschool failed elder son Atul Chaurasia, aged 24 years in business, he filed a release application under Section 21 of the UP Act No. 13 of 1972.

4. The petitioner filed his written statement/objections, wherein inter alia, it was stated that there are two shops in the ground floor of the disputed property; one shop is under the tenancy of the petitioner and the other shop is in a vacant state, in possession of the landlord, who is running a Pan shop in front of the vacant shop over chabutra, therefore, the adjoining shop was available to the landlord in a vacant state which can be used by his son who is already carrying on the business of manufacturing and repairing of inverters and batteries.

5. The release application of the landlord was allowed by judgment and order dated 5.5.2010 by the prescribed authority which was later on confirmed by the lower appellate court by judgment and order dated 25.11.2010 in Rent Control Appeal No. 18 of 2010. Being aggrieved and dissatisfied with the orders passed by the courts below, the petitioner filed the present writ petition.

6. The main contention of the learned counsel for the petitioner is that the adjoining shop is vacant and the son of the landlord can carry on the business from the said shop. It was submitted that the son of the landlord is already carrying on the business of inverter and battery, as such, the need of the landlord for settling his son is neither bonafide nor genuine.

7. Per contra, learned counsel for the landlord submitted that the adjoining shop is occupied by the landlord himself and is carrying on his business of Parchun. He further submits that the landlord has got a very huge family of eight members and has to settle his unemployed son in the business and no other shop is available to him, therefore, the need of the landlord is bonafide and genuine and the comparative hardship also tilts in his favour.

8. Heard the learned counsel for the parties and perused the material available on record.

9. The landlord has filed the release application for settling his unemployed son in the business. According to the petitioner, there is already one shop adjoining to the disputed shop which is lying vacant and the son of the landlord can carry on the business from the said shop.

10. From the perusal of the application filed by the landlord under Section 21 of the UP Act No. 13 of 1972 it is evident that the area of the disputed property is 325 sq. ft. and the ground floor portion of the said house is divided in two shops; one is being occupied by the petitioner and the other is in the occupation of the landlord. The landlord has specifically stated in his application filed under Section 21 (1)(a) of the UP Act No. 13 of 1972 that he himself is carrying on the business of Parchun from the adjoining shop.

11. The petitioner has not been able to show that the landlord has got any other source of income except from the Parchun shop. The contention of the petitioner that the landlord is not carrying on any business from the said shop instead he is

running a Pan Shop over the Chabutra has no basis. Apart from a bald statement, the petitioner has not been able to adduce any cogent evidence to show that the adjoining shop is not being used by the landlord for his business purposes. There is no application on the record for any spot inspection of the premises. It is also quite improbable that the landlord who is the sole bread earner in the family will not use the said shop for carrying on his business and instead will keep it vacant and run a Pan Shop over the Chabutra.

12. Much stress has been laid by the learned counsel for the petitioner that the petitioner in paragraph 19 of the written statement specifically had pleaded that the shop adjoining to the disputed shop is vacant and is not being used by the landlord and this fact has not been denied by the landlord by filing his replication, as such, the nonrebuttal of the aforesaid averment of the petitioner amounts to admission. The contention of the petitioner has no force. The pleadings as I understand under the Code of Civil Procedure and as is defined under the provision of Rule 1 Order 6 of the Code consists only of a plaint and a written statement. The landlord could have filed a replication in respect to the plea raised in the written statement, which if allowed by the court could have become the part of the pleadings, but mere nonfiling of a replication does not and could not mean that there has been admission of facts pleaded in the written statements.

13. The courts below have on meticulous evaluation of evidence on record has given a concurrent findings of fact that the son of the landlord is unemployed and does not have any other suitable accommodation except the disputed shop and the adjoining shop is being used by the landlord himself for carrying on his business.

14. The courts below have recorded a concurrent finding of fact that the need of the landlord is bonafide and genuine and comparative hardship tilts in favour of the plaintiffrespondent. The findings recorded are neither perverse nor based on any extraneous or irrelevant material. Moreover, the petitioner has not made any effort to search out any alternative accommodation. This Court cannot substitute its opinion for the opinion of the court below unless it is found that that the conclusion drawn by the lower courts are arbitrary, perverse and manifestly illegal.

15. Thus, in view of the above, I do not find any illegality or infirmity in the impugned orders.

16. No other point was pressed.

17. In the result, the petition is dismissed.

18. After the order was dictated it was requested by the learned counsel for the petitioner that at least six months" time may be granted to the petitioner to vacate the disputed premises. The prayer seems to be reasonable.

19. In view of the above, the petitioner is granted six months time to vacate the disputed premises provided that within one month from today the petitioner files an

undertaking before the prescribed authority to the effect that on or before the expiry of the aforesaid period of six months, he will willingly vacate and hand over the possession of the property in dispute to the landlord. In case of default, in compliance of the aforesaid condition, petitioner shall be evicted through the process of the Court in accordance with law.