
(2010) 03 AHC CK 0125

Allahabad High Court

Case No: None

Ram Raj

APPELLANT

Vs

Ist A.D.J. and Others

RESPONDENT

Date of Decision: March 12, 2010

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Anil Kumar, J.

Heard Sri D.C. Mukherjee, learned Counsel for the petitioner and Sri S.K. Mehrotra, learned Counsel for the respondent.

2. By means of present writ petition the petitioner has challenged the order dated 6.8.1991 passed by Ist Additional District Judge, Kheri in Rent Appeal No. 2 of 1990 and the order dated 5.3.1990 passed by Civil Judge/Prescribed Authority, Kheri in P.A. Case No. 1/1987.

3. The controversy in the present case relates to a house which is situated in Mohalla Idgah Nai Basti, district Lakhimpur Kheri is bounded as under:

East- Sitapur road

West- building of late Sri Puttu Lal

North- jahjam Road

South- Godown wineshop

4. In respect to the above said premises , an application for release u/s 21(1)(1) (a) of U.P. Act No. XIII of 1972 was moved by one Sri Ram Gopal Shakher inter alia stated therein that after the family partition with his brother Kishan Gopal Shekhar , the portion of the premises in question which is under the tenancy of Ram Raj (now deceased) has came to his share and looking into his personal need and the need of

the family, the said portion is required by him, accordingly a P.A. Case No. 1 of 1987 was registered before Civil Judge/ Prescribed Authority, Kheri, opposite party No. 2 in which Ram Raj (the tenant) had filed his written statement on 24.2.1987 disputing the need as set up by the landlord for release of the accommodation in question.

5. After exchange of the pleadings , the prescribed authority by means of the judgment and order dated 25.3.1990 allowed the release application. The said order was challenged by Ram Raj (tenant) by way of appeal (Rent Appeal No. 2 of 1990) before Ist Additional District Judge, Kheri,opposite party No. 1.

6. The opposite party No. 1 by judgment and order dated 6.8.1991 had allowed the appeal and categorical findings of fact have been given to the effect that it does not lie on the part of tenant to direct the landlord to chose for other building for his personal need and not to proceed for release of the premises in question which is under tenancy of the tenant as the landlord is the best judge for his need and accordingly he under law the landlord can move against particular tenant for release of a particular building . It was further held by the appellate court that the prescribed authority has right came to the conclusion that the bona fide need of landlord is more genuine in comparison to that of tenant so there is not good reason for ground to interfere in the order passed by the prescribed authority and for arriving the said findings the appellate court had also held that there is no evidence on record that the tenant had made any attempt to get some other accommodation during the pendency of the litigation in question as he never apply for allotment of any other building to the Competent Authority (R.E.C.O.) . Accordingly, the case of the petitioner cannot be considered .

7. Aggrieved by the said judgment and orders dated 6.8.1991 passed by Ist Additional District Judge, Kheri in Rent Appeal No. 2 of 1990 and the order dated 5.3.1990 passed by Civil Judge/Prescribed Authority, Kheri , the present writ petition has been filed before this Court.

8. During the pendency of the present writ petition, Sri Ram Raj (original tenant) of the premises in question has died and is substituted by his heirs as petitioner No. 1/1 to 1/4.

9. Sri D.C. Mukherjee, the learned Counsel for the petitioner has vehemently argued that the court below had not considered the fact that the respondent landlord are residing in a very big house and accommodation in their hand is sufficient for them. He further submits that the court below had failed to consider the genuine and bona fide need of the petitioners (tenants) and further failed to take into consideration the hardship of the tenant as such the orders which are under challenged are arbitrary in nature and liable to be set aside.

10. On the other hand Sri S.K. Mehrotra had defended the order, which are under challenge in the present case and had argued that the court below after taking into consideration the bona fide need of the landlord had passed the orders, which are

under challenge in the present writ petition. He further submits that during the pendency of the present writ petition the possession of the premises in question had already been taken by the landlord.

11. I have heard learned Counsel for the parties and perused the record.

12. From the perusal of the judgments which are under challenged in the present writ petition, it is clearly transpires that the courts below had given the concurrent findings of fact that the need of the landlord are more bona fide, genuine and pressing in comparison to that of tenants. It was also held by both the courts below that landlord will suffer more hardship, if there application was rejected. These are findings of fact given by both the courts below. There are no reason to disturb these findings recorded by both the courts when they are not perverse in nature.

13. In [Haridavar Gir Vs. Mallinath @ Malika Jun and another, Abdul Naim Quraishi Vs. Masi-Uddin Khan](#), Abdul Naeem Kureshi v. Masuddin Khan 2006 (24) LCD 1207 : 2006 (3) ARC 555, Dharmraj Singh v. IXth Additional District Judge, it was held by the Courts that the concurrent findings of facts arrived at by the courts below, the High Court will not sit in Appeal over such findings in writ jurisdiction.

14. Further, in the present case, the court below had given concurrent findings of fact that the tenant did not make any effort to search for an alternative accommodation. At least no evidence was adduced and nothing was brought on record to substantiate that after institution of the instant release application any effort was made whatsoever by the tenant to search for alternative accommodation and, therefore, he was not entitled for any consideration while comparing their respective hardship. This view was in consonance with the judgment of the Apex Court in [Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada](#), and this view was also reiterated in the case of Mohiuddin v. Mohd. Shahi 2009 (3) ARC 277 .

15. For the foregoing reasons, I do not find any valid ground to interfere in the orders passed by the court below.

16. Accordingly, the present writ petition lacks merits and is dismissed.

17. No order as to cost.