

(2002) 12 AHC CK 0137

Allahabad High Court

Case No: C.M.W.P. No. 52479 of 2002

Radhey Shyam

APPELLANT

Vs

Ishwari Prasad and Others

RESPONDENT

Date of Decision: Dec. 9, 2002

Acts Referred:

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

Citation: (2003) 1 AWC 687

Hon'ble Judges: S.P. Mehrotra, J

Bench: Single Bench

Advocate: Manish Kumar Nigam and Rahul Sahai, for the Appellant; S.C. Srivastava, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Mehrotra, J.

The petitioner has filed this writ petition under Article 226 of the Constitution of India, inter alia, praying for quashing the judgment and order dated 29.11.2002 (Annexure-1 to the writ petition) passed by the learned Additional District Judge, Court No. 1, Ballia (Appellate Authority) and the judgment and order dated 9.11.1998 (Annexure-2 to the writ petition) passed by the learned Civil Judge (Junior Division)/ Prescribed Authority, West, Ballia.

2. The dispute relates to a shop situate in Kasba Rasra, Mohalla Uttar Patti Dak Bangla Road, Pargana Laksheshwar, district Ballia. The said shop has hereinafter, been referred to as "the disputed shop."

3. From the allegations made in the writ petition, it appears that Smt. Parwati Devi predecessor-in-interest of the respondent filed a release application u/s 21 (1) (a) of U. P. Act No. 13 of 1972 (in short "the Act") against the petitioner for the release of the disputed shop.

4. It was, *inter alia*, stated on behalf of the said Smt. Parwati Devi that the disputed shop was bona fide required for establishing the son of the said Smt. Parwati Devi. The said release application was registered as P. A. Case No. 57 of 1995.

The said release application was contested by the petitioner.

Evidence was led by both the sides.

5. Learned Civil Judge (Junior Division)/Prescribed Authority, West, Ballia, by the judgment and order dated 9.11.1998, allowed the said release application filed by the said Smt. Parwati Devi.

Thereafter, the petitioner filed an appeal u/s 22 of the Act which was registered as Rent Control Appeal No. 3 of 1998.

6. It appears that during the pendency of the said appeal, an application dated 9.3.1999 (Annexure-8 to the writ petition) supported by an affidavit (Annexure-9 to the writ petition) was filed on behalf of the petitioner, *inter alia*, alleging that a shop in the tenancy of one Mohan had been vacated, and the said Smt. Parwati Devi had let out the said shop to one Hari Narain who had opened a medical store in the said shop.

7. Objections dated 7.4.1999, were filed on behalf of the said Smt. Parwati Devi wherein the said allegations made in the application dated 9.3.1999 were denied, and it was, *inter alia*, stated that the shop mentioned in the said application dated 9.3.1999, was still in the tenancy of Mohan and the said Mohan had not vacated the said shop, and that the said Mohan was still running his medical store in the said shop, and that the said shop was never let out to Hari Narain.

8. It further appears that during the pendency of the said appeal, the petitioner filed an application dated 25.8.1999 (Annexure-12 to the writ petition), *inter alia*, alleging that a release case, namely, P. A. Case No. 145 of 1996, u/s 21 of the Act had been decided in favour of the said Smt. Parwati Devi, and that an application u/s 23 of the Act registered as Case No. 141 of 1998 was pending. It was, *inter alia*, prayed that the records of the said Case No. 141 of 1998 (Execution) and the said P. A. Case No. 145 of 1996 be summoned. The said application was rejected by the appellate authority by the order dated 30.10.1999 (Annexure-13 to the writ petition). It was, *inter alia*, observed in the said order dated 30.10.1999, that the copy of the judgment of P. A. Case No. 145 of 1996 had already been filed by the said Smt. Parwati Devi. It was further observed that the copy of the petition of Case No. 141 of 1998 (Execution) had already been applied for by the petitioner, and in the circumstances, the said application dated 25.8.1999, was liable to be rejected.

9. Sri Manish Kumar Nigam, learned counsel for the petitioner fairly concedes that the copy of the petition of Case No. 141 of 1998 (Execution) which was stated to have been applied for by the petitioner was never filed in the said Rent Control Appeal No. 3 of 1998. Therefore, it is no longer open to the petitioner to make any

grievance on that ground.

10. During the pendency of the said appeal, Smt. Parwati Devi expired, and the respondents herein were brought on record as heirs and legal representatives of the said Smt. Parwati Devi.

11. By the judgment and order dated 29.11.2002, the said Rent Control Appeal No. 3 of 1998 filed by the petitioner was dismissed. Thereafter, the petitioner has filed the present writ petition seeking the reliefs mentioned above.

12. I have heard Sri Manish Kumar Nigam, learned counsel for the petitioner and Sri S. C. Srivastava, learned counsel for the caveator-respondents.

13. Learned counsel for the petitioner submits that the shop which was in the tenancy of Mohan had been vacated by the said Mohan, and the same was let out to Hari Narain. This aspect, the contention proceeds, ought to have been examined by the appellate authority.

14. I have perused the judgment and order dated 29.11.2002, passed by the appellate authority. The appellate authority has considered the version of the petitioner regarding the said shop in the tenancy of Mohan and also the version of the said Smt. Parwati Devi denying the version of the petitioner, and the appellate authority has believed the version of the said Smt. Parwati Devi in this regard. No illegality or perversity has been shown to have been committed by the appellate authority in believing the version of the said Smt. Parwati Devi and recording finding of fact in regard to the said shop in the tenancy of Mohan.

15. Sri Manish Kumar Nigam, learned counsel for the petitioner has then tried to assail the findings recorded by the authorities below on the questions of bona fide need and comparative hardship. The findings recorded by the authorities below on the said questions of bona fide need and comparative hardship are findings of fact. No illegality or perversity is shown in the said findings recorded by the authorities below on the consideration of entire material on record. No interference, therefore, called for with the said findings in exercise of writ jurisdiction under Article 226 of the Constitution of India.

16. Certain judicial decisions may be referred to in this regard.

In [India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and Another](#), it was laid down by the Apex Court that the conclusions of fact cannot be interfered with by the High Court under Article 227 of the Constitution of India. The findings on the question of bona fide requirement of the landlord recorded by the courts below by appreciating the entire evidence cannot be interfered with by the High Court under Article 227 of the Constitution of India.

17. In [Muni Lal and Others Vs. Prescribed Authority and Others](#), it was laid down by the Supreme Court that the finding on the question of comparative hardship of the

landlord was finding of fact, and the same cannot be interfered with by the High Court in the exercise of its writ jurisdiction under Article 226 of the Constitution of India.

18. In *Ashok Kumar and Ors. v. Sita Ram*. 2001 (3) AWC 1997 : 2001 (2) ARC 1 : 2001 (43) ALR 783 (SC) the Apex Court held as follows (paragraphs 9 and 15 of the said ARC) :

"9. The position is too well-settled to admit of any controversy that the finding of fact recorded by the final court of fact should not ordinarily be interfered with by the High Court in exercise of writ jurisdiction, unless the Court is satisfied that the finding is vitiated by manifest error of law or is patently perverse. The High Court should not interfere with a finding of fact simply because it feels persuaded to take a different view on the material on record.

15. The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the appellate authority. The order passed by the appellate authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter, which no reasonable person was likely to take. In that view of the matter there was no Justification for the High Court to interfere with the order in exercise of its writ jurisdiction. In a matter like the present case where orders passed by the Statutory Authority vested with power to act quasi-judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such Jurisdiction the High Court is not expected to interfere with the final order passed by the Statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another appellate court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case."

19. Considering the facts and circumstances of the present case, I am of the view that this is not a fit case for interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

20. This writ petition, in my opinion, lacks merit and the same is liable to be dismissed. The writ petition is accordingly dismissed.

21. Sri Manish Kumar Nigam, learned counsel for the petitioner has then submitted that some time may be granted to the petitioner for vacating the disputed shop.

22. I have heard Sri Manish Kumar Nigam, learned counsel for the petitioner and Sri S. C. Srivastava, learned counsel for the caveator-respondents on this question also.

23. Having considered the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it is directed that the petitioner will not be evicted from the disputed shop till 30th April, 2003, provided the petitioner gives

an undertaking before the Prescribed Authority, Ballia, on his personal affidavit within one month from today incorporating the following conditions :

- (1) The petitioner will vacate the disputed shop on or before 30th April, 2003 and will hand over peaceful, vacant possession of the same to the respondents.
- (2) The petitioner will continue to pay rent to the respondents till the date of vacating the disputed shop.

24. In case, the aforesaid requisite undertaking is not given by the petitioner within the time granted or the petitioner does not comply with any of the aforesaid conditions incorporated in the undertaking, this order granting time to the petitioner for vacating the disputed shop will stand automatically vacated, and it will become open to the respondents to execute the release order forthwith.