

(1996) 02 AHC CK 0121

Allahabad High Court

Case No: C.M.W.P. No. 7426 of 1989

Badri Prasad Daya Ram

APPELLANT

Vs

Rent Control and Eviction Officer
and Others

RESPONDENT

Date of Decision: Feb. 5, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 - Section 6
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 12(1), 12(3), 21(1)

Hon'ble Judges: Sudhir Narain, J

Bench: Single Bench

Advocate: K.L. Grover, for the Appellant;

Final Decision: Allowed

Judgement

Sudhir Narain, J.

This writ petition is directed against the order dated 3.4.1989 passed by the Rent Control and Eviction Officer--Respondent No. 1 declaring the shop in question as vacant.

2. Facts of the case in brief are that the Petitioner is tenant of shop No. 313/31, Jawaharganj, Shamli. Muzaffarnagar. Petitioner is a registered partnership firm and was carrying on business of Gur and Khandsari, as commission agent. In Shamli, market yard was established after declaration of the market area u/s 6 of Krishi Utpadan Mandi Adhiniyam, 1964 (in short as the "Adhiniyam"). Petitioner was required to carry on business only within the market area. Petitioner applied for allotment of a shop in new Mandi Sthal, Shamli. The Petitioner was allotted shop No. 27A, in Navin Mandi Sthal, in the year 1982. It also started carrying on business of commission agency in Gur and Khandsari in that shop.

3. Respondent No. 2 filed an application for allotment of the disputed shop on the allegation that the Petitioner has shifted its business from the disputed shop to shop No. 27A, Navin Mandi Sthal, Shamli and has removed all its effects. It was further stated that the Petitioner had sublet the disputed shop to M/s. Rajesh Kumar Ajai Kumar and it should be deemed as vacant. The Rent Control and Eviction Officer asked for report from the Rent Control Inspector. Rent Control Inspector visited the shop in question on 12th October. 1987. He found that the shop in question was locked. There was a signboard on the shop in question giving notice that the business had been shifted to shop No. 27A, Navin Mandi Sthal, Shamli. Notice was given to the Petitioner as well as Respondent No. 3. Respondent No. 3 filed application for release of the shop in question. It was stated that the Petitioner was carrying on business in shop No. 27A, Navin Mandi Sthal. Shamli and the disputed shop should be deemed as vacant. She further prayed that the accommodation in question be released in her favour as she bona fide required the same for carrying on the business. Petitioner filed objection stating that it had not sublet the shop in question to the firm known as Rajesh Kumar Ajai Kumar as alleged by the Respondent No. 2. It shifted its business of commission agency in Gur and Khandsari, etc. but it has still Gaddi and godown in the shop in question and is further carrying on business of Bardana. This business has not been shifted to New Mandi Sthal, Shamli.

4. Parties led evidence before the Rent Control and Eviction Officer. Respondent No. 1 recorded finding that the Petitioner has shifted business to shop No. 27A, New Mandi Sthal, Shamli and is not carrying on business in the disputed shop and as such the shop in question will be deemed as vacant. The Petitioner has challenged this order dated 3.4.1989 passed by Respondent No. 1 in the instant writ petition.

5. I have heard the learned counsel for the parties.

6. Section 12(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, provides that a landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if he has substantially removed his effects therefrom; or he has allowed it to be occupied by any person who is not a member of his family.

7. It is not denied by the Petitioner that the Petitioner has been allotted shop No. 27A, Navin Mandi Sthal, Shamli. The Petitioner's contention is that it has shifted business of sale of Gur and Khandsari, etc. but still it has Gaddi and godown and further is carrying on business of Bardana which is not being carried on in shop No. 27A, Navin Mandi Sthal.

8. Respondent No. 1 recorded finding that the Petitioner has failed to establish that it is carrying on any kind of business in the premises in question. He has placed reliance upon the report of Rent Control Inspector in which he had stated that shop in question was found locked.

9. Mere fact that a shop is locked itself does not establish that the tenant has substantially removed his effects from the disputed accommodation. In *Surendra Kumar v. Smt. Kasturi Devi and Ors.* 1979 ALJ 1227, it was held that by mere fact that shop was locked, it cannot be taken as deemed vacant within the meaning of Section 12(1)(a). It may be that the tenant may not be able to carry on business for sometime for certain reasons.

10. In *Dr. S.N. Ghosh v. Rent Control and Eviction Officer, Allahabad and Ors.* 1976 ALJ 256, considering the provisions of Section 12(1)(a) of the Act, it was observed that it has to be established that the tenant has substantially removed his effects. The Court observed "the expression substantially removed his effect" is of great significance. It does not contemplate removal of some of households effects. On the contrary, it envisages that for all practical purpose, landlord or tenant, as the case may be, is found to have practically removed all his households effects from the disputed accommodation.

11. The meaning of the word "effects" has been taken as moveable of a person in the case of residential building and the goods or apparatus in case the building is used for business purpose. The nature of goods or apparatus kept in shop would depend upon the nature of the business which is carried thereon.

12. The Rent Control and Eviction Officer has to find out the nature of the business which is being carried on in the building in question. Sometimes only Gaddi is there and only transaction of agency is carried on and there may not be goods in the shop in question, while in the case of general merchandise it is expected there may be sufficient quantity of goods stored therein for sale and purchase.

13. The Petitioner was admittedly carrying on the business of sale and purchase of Gur and Khandsari from the disputed shop. As the commodities in which the Petitioner was dealing could not be carried on in the shop in question after enforcement of Adhiniyam, 1964, the Petitioner shifted that business in shop No. 27A, Navin Mandi Sthal, Shamli which was allotted to it by the authorities concerned.

14. The case of the Petitioner was that though the business in Gur and Khandsari had been shifted to Navin Mandi Sthal, but it had godown and Gaddi in the disputed shop. This has not been accepted by the Rent Control and Eviction Officer. The Petitioner itself applied for licence to the Regional Food Controller Officer, Meerut and in that application, the Petitioner requested that it may be permitted to fix godown at 27A, Navin Mandi Sthal, copy of that application has been annexed as Annexure-5A to the counter affidavit which was filed before the Prescribed Authority. In the counter affidavit, it has further been stated that in Mandi Sthal area in the shop itself there is godown and verandah. The Petitioner has further got telephone No. 57 in shop No. 27A, Navin Mandi Sthal, Shamli. From this evidence, inference drawn by the Rent Control and Eviction Officer that the Petitioner has godown and has been transacting business relating to the business of Gur and

Khandsari and food grains in shop No. 27A is not erroneous.

15. The question still remains as to whether the Petitioner is carrying on business of Bardana in the disputed shop. It was allotted shop No. 27A, Navin Mandi Sthal, Shamli in the year 1982. It had telephone No. 57 in the shop in dispute. After allotment of the shop at Navin Mandi Sthal telephone No. 57 was shifted to 27A Navin Mandi Sthal, Shamli. The Petitioner had two other telephone numbers 111 and 34 at residential house but according to the Petitioner, telephone No. 111 was shifted to the shop in question in the year 1984 and it is carrying on business of Bardana from the disputed shop. The Petitioner had filed various telephone bills and correspondence indicating that they were addressed at the shop in question.

16. The Rent Control and Eviction Officer held that telephone bills were for meagre amount and placed reliance upon the affidavit filed by Surendra Kumar, one of the partner of the firm, submitted before the Regional Food Controller, Meerut Region, Meerut dated 8.10.1986, wherein he stated that he had no other business except in shop No. 27A, Mandi Sthal, Shamli. The learned counsel for the Petitioner contended that this affidavit was given in the context of the business in Gur and Khandsari and food grains. The Petitioner had to obtain a licence for carrying on business of Gur and Khandsari and that affidavit related only to that extent. It is submitted that mere fact that amount shown in the telephone bills was meagre, does not indicate that the Petitioner was not carrying on business in the shop in question.

17. The version of the contesting Respondent was that the Petitioner had sublet this shop to M/s. Rajesh Kumar and Ajay Kumar.

18. The Rent Control and Eviction Officer has not found that it is occupied by any person than the Petitioner or anybody is carrying business who is not partner of the Petitioner's firm. Petitioner is registered partnership firm comprising of Surendra Kumar and Om Prakash, sons of Daya Ram. They are also registered dealers under the provisions of U.P. Sales Tax Act. The Rent Control Inspector had submitted a report that the shop in question was found locked. It was the duty of the Rent Control and Eviction Officer to get the shop in question inspected through a Commissioner who could find out the true position. If a tenant has to shift his business to another shop for some reason, it is open for him to carry on any other business in the disputed shop. It may be noticed that Sub-section (3) of Section 12 is not applicable to non-residential building. If a tenant acquires another shop and carries on the business in such shop, the shop which is already in his occupation shall not be deemed to have fallen vacant. It is, however, a question of fact as to whether the Petitioner has substantially removed its effects from the shop in question. In case the Petitioner is not carrying on business of Bardana as alleged by it, and keeps it totally locked, it may be treated as vacant.

19. Respondent No. 1 after getting the shop in question as well as the shop No. 27A, Navin Mandi Sthal, Shamli in occupation of the Petitioner inspected through a

Commissioner, record finding as to whether the Petitioner has substantially removed its effects from the shop in question. It will be examined since when the Petitioner has been carrying on business of Bardana and what goods are required for it for carrying on such business, and further whether it had installed a telephone in the disputed shop. Respondent No. 1 will also examine the sales tax certificate, documents pertaining to the assessment of sales-tax, Income Tax, and trading account of the Petitioner.

20. Learned counsel for the Petitioner contended that Respondent No. 3 required the shop in question and it has been released and Petitioner having been allotted another shop at 27A, Navin Mandi Sthal, Shamli, this Court should not interfere in the impugned order under Article 226 of the Constitution of India. The question involved in the present writ petition is as to whether the Petitioner has removed its effects substantially from the disputed shop so as to declare it as deemed vacant u/s 12(1)(a) of the Act. This Court is not considering the comparative hardship between the parties which may be considered while considering the application u/s 21(1)(a) of the Act.

21. In view of the above, the writ petition is allowed. The order dated 3.4.1989 is hereby quashed. Respondent No. 1 is directed to decide the matter afresh keeping in view the observations made above, within three months from the date of production of a certified copy of this order before him.