Smt. Shashi Prabha Srivastava and Another Vs Surya Pal Singh

Court: Allahabad High Court

Date of Decision: Sept. 17, 2010

Acts Referred: Constitution of India, 1950 â€" Article 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 â€" Section 21(1)

Citation: (2010) 6 AWC 6302

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: A.K. Mehrotra and Pranjal Mehrotra, for the Appellant; Rama Goel, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.
Heard counsel for the parties and perused the record.

2. This writ petition is preferred by the tenant challenging the validity and correctness of the order dated 23.3.2010 passed by the appellate court /

Addl. District Judge-13, Kanpur in Suryapal Singh v. Shashi Prabha Srivsatava and Ors. Rent Appeal No. 66 of 2009 as well as the judgment

and order dated 24.5.2001 passed by the aforesaid appellate authority appended as Annexures 16 and 17 respectively to the writ petition. The

Petitioner has prayed for quashing of the aforesaid order on the ground that the orders are illegal.

3. The facts culled out from the record are that the landlord filed release application u/s 21(1)(a) of the U.P. Act No. 13 of 1972 which was

registered as Rent Case No. 30 of 2004 for release of the portion in the tenancy of the tenant consisting of one room, courtyard, latrine and

bathroom situated on the ground floor of the premises No. 109/231 Ram Krishna Nagar, Kanpur Nagar. The aforesaid accommodation was given

on rent @ Rs. 100 p.m. The release application was filed by the landlord on the ground that he is aged about 65 years and that he and his wife are

senior citizens and his mother is very old aged about 90 years ; that all the three persons were suffering from old age diseases such as arthritis and

high blood pressure and as their movement were restricted due to aforesaid disease, they require ground floor accommodation under the tenancy

of the Petitioner. It was also averred in the release application that the landlord has only one daughter and there is no one except her to lookafter

them as such she is living with her family alongwlth them which consist of four persons, i.e., son-in-law of the landlord, daughter and two sons.

Three brothers and the two sisters of the landlord also frequently visit the landlord for residing with him alongwlth their family in summer vacation

and on festive occasions but as there are only three rooms on the first floor it is insufficient for the landlord as the landlord requires at least several

rooms. The need for additional accommodation under the tenancy of the Petitioner is genuine and bona fide.

4. The tenant filed his written statement denying the allegations in the application inter alia that originally the need set up by the landlord was of

seven rooms including one room for his mother, who has since deceased, i.e., after her death now six rooms are required by the landlord and as

there are three rooms already in his possession, only three more additional rooms are required and that the landlord has much more

accommodation in the concerned premises than what is revealed by him in the release application for the reasons that the landlord has two more

houses in district Kanpur itself.

5. It appears that the tenant suggested in his written statement that the landlord has two rooms in his possession on the ground floor whereas in fact

he had only in possession of one room behind the shop of the Petitioner in which the landlord is doing his business ; that the tenant has described

the portion of mezzanine floor as one very big hall.

6. An affidavit appears to have been filed by the landlord (Annexure 3 to the writ petition) in which he clarified the portion wrongly described by

the tenant. An application was also filed by the landlord for issuing advocate commission before the Prescribed Authority in order to verify the

actual position of the portion in possession of the landlord, which was objected by the tenant and the application remain undecided about more

than three years compelling the landlord to withdraw the application on 23.7.2009 so that the matter may be heard on merits.

7. The Prescribed Authority by its order and judgment dated 30.7.2009 rejected the release application. Aggrieved by the order of the Prescribed

Authority, the landlord preferred an, Suryapal Singh v. Shashi Prabha Srivastava and Anr. Appeal No. 66 of 2009. The appellate court allowed

the appeal and set aside the order passed by the Prescribed Authority on the ground that the tenant himself did not make any effort to search out

any accommodation after filing of the release application against him.

8. The contention of the counsel for the Petitioner is that the Prescribed Authority had illegally dismissed the release application on total

misconception of facts as he did not consider the grounds on which release application has been filed.

9. It is stated that the Prescribed Authority did not even consider the diseases from which the landlord and his family members were suffering and

were having difficulty in locomotive movement and the release application was dismissed totally on misconceived grounds that the landlord has a

huge accommodation in his possession situated in the second floor.

10. It is submitted that on the second floor, one room was vacated by Ghanshyam which is situated in dilapidated condition and there are two

other kotharies which have been vacated by Smt. Kanti Srivastava. Those are being used for storage purpose by the landlord.

11. It is also stated that at the appellate stage, the landlord had made an offer to the tenant to take that portion and the mezzanine floor and tin shed

situated in the third floor which was refused by the tenant by saying that the offer of the accommodation of the landlord was not suitable for

residential purposes.

12. The appellate court found that the need of the landlord was bona fide and genuine and considering the materials on record as well as the facts

and circumstances of the case found that the need of the landlord for additional accommodation was pressing, genuine and bona fide and that the

landlord has only three rooms available on the first floor which are insufficient for requirement of the landlord.

13. It is argued by the learned Counsel for the Petitioner that the appellate court also considered the accommodation / portion suggested by the

landlord and allowed the release application and has set aside the order passed by the Prescribed Authority. It is lastly urged that the order passed

by the appellate court is based on material facts available on record and is in accordance with law, therefore, liable to be upheld and the writ

petition is liable to be quashed. Counsel for the Petitioner has relied upon the following case law:

1. Savitri Sahay v. Sachida Nand Prasad, AIR 2003 SC 223, wherein the Supreme Court had held that the landlord is the best judge of his

requirement and if the landlord has premises 2 or more than that 2 premises, even then only landlord has right to choose which one would be

preferable and the tenant cannot question such preference.

2. R.C. Tamrakar and Anr. v. Nidi Lekha, AIR 2002 SC 661, wherein Apex Court has held that the landlord is the best judge of his requirement

for the residential purposes and he has to decide that how and in what manner he should live and neither the tenant nor the Court can suggest the

landlord as to how the landlord should adjust with his requirement.

3. Joginder Pal v. Naval Kishore Baghel, 2002 SCFBRC 288, wherein the question has come before Hon''ble Supreme Court that for whom the

landlord can file release application and it is held by the Hon''ble Supreme Court that the family includes the requirement of the wife, husband,

sister, children including son, daughter, a widow daughter and her son, nephew, co-parceners members of the family and dependant and kith and

kin of the requirement of landlord and "as his" of "his own" requirement and user keeping in view the social or socio religious milieu a practice

prevalent in particular section of society or a particular religion to which the landlord belongs.

4. Chandrapal Singh Parihar v. Vth Additional District Judge, Kanpur and Ors., 1992 (2) ARC 523. It is stated in this case also for occupation by

himself or by any member of his family or any person has been described and it is held that if a landlord moved by social rules and moral principles,

sentiments of love and affection, sympathy and compassion, permanently accommodates with him a person related to him by marriage or birth,

directly or indirectly. Who is in distress, the need of occupation for the purposes of residence of such a person may be taken as the need of the

landlord himself notwithstanding the fact that such person is not a member of the landlord"s family within the meaning of the term as defined in

Section 3(g) and the landlord also does not require such person for any assistance, personal or professional. Reasons being the fulfilment of

landlord"s social and moral need.

14. Per contra the learned Counsel for the Respondent has submitted that the need originally set up by the landlord in the release application was

for seven persons inclusive of married daughter and her family members as well as mother of the landlord (mother of the landlord viz. Smt. Raihna

Devi expired during the pendency of the release application).Thus there are now only six persons in the family of landlord, which includes married

daughter and her family member also. Thus according to the landlord himself four more/additional rooms were required, which was inclusive of one

room for mother, who admittedly expired in the month of October, 2003 during the pendency of the release application.

15. It is argued by the learned Counsel for the Petitioner that the Prescribed Authority has rightly rejected the release application and that the

findings recorded by the appellate authority is bona fide, are wholly perverse. He has made reference to the following admissions, made by the

landlord:

(a) that he has two rooms and one verandah on the ground floor of the concerned premises though initially the landlord has not revealed about this

accommodation ; that he had himself admitted in the release application that he has three rooms on first floor.

16. In his affidavit appended as Annexure 13, the landlord had admitted in paragraphs 7 and 15 thus:

17. It is stated that one room was vacated by Ghanshyam, one room was vacated by Smt. Kanti Srivastava and one room has also been vacated

by Nandan Singh during the pendency of release application which came into possession of the landlord. Therefore the landlord has two rooms,

one verahdah on ground floor, three rooms on first floor as admitted by the landlord in his release application, one room vacated by Ghanshayam,

one room vacated by Smt. Kanti Srivastava and one room vacated by Nandan Singh. Thus according to the tenant, the landlord has at least 8

rooms as per his own admission and according to the tenant, he has at least 11 rooms which goes to show that the Prescribed Authority has not

applied its mind and the findings recorded by the appellate authority are wholly perverse. It is also stated that the appellate court has wrongly

observed that the matter regarding vacation of one room by Nandan Singh is still pending. As such the need set up by the landlord is neither bona

fide nor the factum of comparative hardship is in his favour as he has more, accommodation than the need set up by him.

18. With regard to comparative-hardship, the counsel for the Petitioner has pointed out that the offer made by the Petitioner for getting the whole

accommodation allotted was not met with and the findings recorded by the appellate court in this regard are wholly perverse as such the judgment

of the appellate authority deserves to be set aside and the writ petition is liable to be allowed.

19. Counsel for the Petitioner has relied upon the paragraph 9 of the case in G.C. Kapoor v. Nand Kumar Bhasin, 2001 (2) ARC 603: 2002 (1)

AWC 73 (SC), and submits that it has been held in this judgment that the need of the landlord should be bona fide. Paragraph 9 is quoted below:

It is settled position of law that bona fide requirement means that requirement must be honest and not tainted with any oblique motive and is not a

mere desire or wish. In Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and Another, , this Court while considering the bona fide

need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no

warrant for "presuming that his need is not bona fide". It was also held that while deciding this question. Court would look into the broad aspects

and if the Court feels any doubt about bona fide requirement of the landlord for non-residential purposes, as he wanted to start a grocery business

in the suit premises to improve his livelihood.

20. He has also relied upon the paragraphs 5, 6, 7 and 8 of the judgment in Smt. Ram Devi Vs. VIIIth Additional District Judge, Kanpur and

others, which pertains to the scope of interference in the writ petition. Paragraphs are quoted below:

5. It is true that this Court while exercising powers under Article 226/227 of the Constitution of India does not act as a Court of appeal and the

powers are of judicial review only. It is also well-settled that this Court in exercise of powers of judicial review does not ordinarily interfere with

the concurrent findings of fact recorded by the courts below on appraisal of evidence but that does not mean that in no case this Court will

intervene. When can interference be made in writ jurisdiction in such cases, has been explained by the Supreme Court in the case of Variety

Emporium Vs. V.R.M. Mohd. Ibrahim Naina, In that case, the Apex Court made interference on the ground that injustice should not be allowed to

be perpetuated.

6. Even in those cases where this Court in its writ jurisdiction is faced with concurrent decisions, it is the duty of the Court to examine the material

and do justice between the parties and it will be a denial of justice if the Court acts on a computerised system of administration of justice by Just

affixing a rubber stamp of approval on the concurrent decisions merely on the ground that they are based on findings of fact. I do not feel that the

litigant public should be given a message that concurrent findings howsoever erroneous may be, cannot in any circumstances be questioned in writ

jurisdiction. Where the case of a party has been accepted without an objective test and careful assessment of evidence on record, intervention by

this Court becomes necessary for doing Justice between the parties.

7. In the case of Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, it was held by the Apex Court that in exercise of jurisdiction under Article

227 of the Constitution, the High Court can go into the question of facts or look into the evidence if justice so requires. But it should decline to

exercise that jurisdiction in the absence of clear cut down reasons where the question depends upon the appreciation of evidence. It also should

not interfere with a finding within the jurisdiction of the inferior Tribunal or Court except where the finding is perverse in law in the sense that no

reasonable person properly instructed could have come to such a finding or there is misdirection in law or a view of fact has been taken in the teeth

of preponderance of evidence or the finding is not based on any material or it has resulted in manifest injustice. Except to that limited extent the

High Court has no Jurisdiction.

8. In the case of Smt. Nirmala Tandon v. Xth A.D.J., Kanpur, 1996 (2) ARC 409: 1997 (1) AWC 2.59 (NOC), it was held by this Court that

the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India in rent control matters is supervisory in nature and it does

not sit as a Court of appeal when called upon to judge the findings of the competent authorities viz, bona fide need of the landlord and comparative

hardship of the parties. The Court would not embark upon reappraisal of the evidence or substitute its own findings of fact in place of findings

reached by the fact finding authorities. It is clearly outside the Court and ambit of the Judicial review. However, findings of fact may be interfered

with when they are based on account of wrong application of principle of law relevant thereto or relevant material has not been taken into

consideration or a finding is otherwise arbitrary or perverse.

21. Counsel for the Petitioner has contended that even bona fide need of the accommodation and the comparative hardship is in favour of the

landlord. It may also be noted that the landlord had offered the accommodation vacated by the other tenant to the Petitioner but he refused the

same on the ground that it is not fit for residential purpose. The two small kotharies and the rooms vacated by Ghanshyam and Smt. Kanti

Srivastava and the mezzanine floor are being used by the landlord as store purpose. If the accommodation in mezzanine floor is not useful for

residential purpose, it cannot be considered for residential purpose in the facts and circumstances of the case. The landlord has also clarified the

accommodation in his possession.

22. The landlord and his wife are senior citizens and are living with his old mother. Their daughter had come to look after them. The need of the

daughter and her family who have come to look-after her parents and grandmother cannot be ignored. The mother and wife of the landlord is not

very locomotive and suffering from old age diseases. Their problems have increased in the old age as they are living on the first and second floor. It

would be wholly unreasonable to calculate the number of rooms and number of members of the family to come to a conclusion that the

accommodation is sufficient or not. Apart from the rooms to sleep and keeping their valuables the family also requires store room, latrine,

bathroom, drawing room etc. for common use of the family members. The landlord is the best Judge of his requirement. Apex Court in the case of

Savitri Sahay (supra) has held that even if the landlord has more than two premises or more he has a choice of preference and the landlord cannot

question such preference. The room vacated by Ghanshyam is in dilapidated condition which has been made habitable by the landlord for his

daughter and her family who are living with them. It is prerogative of a landlord how and in what manner he has to live and the tenant is loath to

make any suggestion how need of the landlord can be satisfied by adjusting his requirement.

23. The appellate court has rightly found that the need of the landlord was genuine and he would suffer more comparative hardship than the tenant

in the facts and circumstances of the case as is also held in the case of Chandrapal Singh Parihar (supra). The appellate court has not committed

any error of law on facts of record to come to the conclusion that the accommodation in possession of the landlord does not satisfy his bona fide

requirement and his bona fide need and comparative hardship for the accommodation under the tenancy of the Petitioner cannot be ignored.

24. The appellate court has also found that the tenant did not make any effort to search out any accommodation after filing of the release

application against him. The order passed by the appellate court is based on material facts available on record and based on legal approach.

Therefore no interference is called under Article 226 of the Constitution of India.

For all the reasons stated above, the writ petition is dismissed. No order as to costs.