

(2004) 11 AHC CK 0223

Allahabad High Court

Case No: Writ Petition No. 8573 of 1984

Kripa Shankar (D) through L.Rs.
and Another

APPELLANT

Vs

Vth Addl. D.J. and Others

RESPONDENT

Date of Decision: Nov. 30, 2004

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1), 22
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 16

Citation: (2005) 3 AWC 2736

Hon'ble Judges: Vikram Nath, J

Bench: Single Bench

Advocate: V.K. Singh, S.K. Singh and M.N. Singh, for the Appellant; R.K. Misra and Neeraj Agarwal and Vipin Saxena, C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

Vikram Nath, J.

This writ petition has been filed by the tenant against the judgment and orders dated 9.2.1984 and 7.11.1977 passed by the Respondent Nos. 1 and 2 respectively, whereby the application for release of the accommodation in dispute, filed by the Respondent-landlord u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act) has been allowed and the appeal of the tenant against the same has also been dismissed.

2. The dispute relates to house situated in Mohalla Misrana, Katra, Kasba Etah, District Etah. Sri Karori Lal Varshney was the owner and landlord of the said building and the Petitioners were tenants in the same. The landlord filed application for release in the year 1976 on the ground that he has got a big family consisting of

himself, his wife, four sons and two daughters. Two sons were married and the other four children were also of marriageable age. They were all living with him and were suffering great hardship due to paucity of accommodation. The premises in dispute were bona fide required by them for his own use and for the use of his children. It was also alleged that the tenant has got his own house in Mohalla Marhera Darwaza and could easily shift there.

3. The application was contested by the tenant-Petitioners on the ground that the landlord has several other buildings in different localities and can easily shift there, it was further alleged that he could have easily made arrangements for living of all the children in the other accommodation available with him.

4. Both the parties led evidence in support of their cases. The prescribed authority vide judgment dated 7.11.1977 held that the need set up by the landlord was bona fide and after comparing the hardship likely to be faced by the landlord and tenant held that the landlord would suffer greater hardship in case the premises in dispute were not released. On these findings the release application was allowed. Against the said judgment the tenant filed an appeal u/s 22 of the Act, which was also dismissed by judgment dated 27.1.1979 and the finding recorded by the prescribed authority were confirmed. Aggrieved by the same the tenant filed writ petition before this Court, which was registered as C.M.W.P. No. 1329 of 1979, Kripa Shankar v. VIIth Additional District Judge C.M.W.P. No. 1329 of 1979. The said writ petition was allowed by this Court vide judgment dated 12.2.1982 and the matter was remanded to the appellate court for reconsideration on the question of comparative hardship between the tenant and the landlord. The relevant part of the judgment of this Court containing the direction is being reproduced below:

Thus, it is clear that the appellate court did not proceed with the case in a satisfactory manner and did not take into consideration the guidelines laid down in Rule 16 of the Rules framed under U.P. Act No. 13 of 1972 for residential accommodation which was obligatory on him and without considering the comparative needs and the hardships to be suffered by the parties in the light of facts established and the guidelines provided in the relevant rules decided the matter as such the order passed by the appellate court affirming the order passed by the prescribed authority deserves to be quashed.

5. Subsequently, the appellate authority, after considering the material on record in the light of the judgment of this Court, again held that on the question of comparative hardship the landlord will face greater hardship if the application is rejected and, accordingly dismissed the appeal vide judgment dated 9.2.1984. Against the said judgment the present writ petition has been filed.

6. I have heard Sri V. K. Singh, learned Counsel for the Petitioners and Sri R. K. Mishra, advocate holding brief of Sri Neeraj Agarwal, learned Counsel representing the Respondents.

7. The contention raised by the learned Counsel for the Petitioners is that the landlord has other accommodation available with him which can be occupied by him for use of his family members and the tenant will face greater hardship as he has no alternative accommodation available with him. Learned Counsel for the Petitioner has also relied upon the following four judgments of this Court in support of his contention:

1. Sri Ramesh Ji Nigam and Ors. v. District Judge, Kanpur and Ors., 1980 ARC 134.

2. Indu Bhushan Dass v. First Additional District Judge, Allahabad, 1980 ARC 140.

3. Smt. Ram Kali Devi and Ors. v. Sri Jagat Ram Arora and Ors., 1978 ARC 536.

4. Than Singh v. District Judge, Aligarh and Ors., 1978 ARC 355.

8. The judgments relied upon by the learned Counsel for the Petitioner do not help as they are distinguishable on facts. The judgments referred to and relied upon by the Petitioner deal with different situations in each case. These judgments are 25 years old and are based upon the particular facts of each case. In the present case, writ petition has been pending since last 20 years. There cannot be any parity or comparison with cases decided 25 years back. In any case question of comparative assessment of the likely hardship of the tenant and the landlord has lost its importance after 28 years.

9. On the other hand, learned Counsel for the Respondents has contended that firstly, the landlord did not have any other suitable accommodation available where he is living. The accommodation alleged by the tenant is not in the same locality where the premises in dispute is situate. It is in different locality. Further, the landlord cannot be compelled to live in particular accommodation at the dictates and instructions of the tenant.

10. The tenant has to establish that he has not been able to find out another accommodation. In the present case the tenant has not been able to show that he made efforts for finding out alternative accommodation but has not been able to find out any other accommodation for living in future. In any case the release application was filed in the year 1976 and almost 28 years have passed. The tenant has not been able to find out another alternative accommodation. There can be no justification for the tenant for continuing in the premises in dispute. The comparison of hardship likely to be suffered by the tenant loses its importance after a certain period and specially after 28 years.

11. It is further contended by the learned Counsel for the Respondent that the tenant is enjoying the premises at the monthly rent of Rs. 1.44 paise. There can be no greater injustice to the owner/landlord that he is being deprived of reasonable rent and also the use of his property. It is because of this nominal rent that the tenant still wants to continue to occupy the premises in dispute and hold on to it.

12. I have considered the rival submissions made by the parties. The findings recorded by the prescribed authority and the appellate court are based upon the material available on record. These are findings of fact and do not call for any interference by this Court. The Petitioner has not been able to show any perversity or material illegality in the findings of the courts below. The petition has no force and is, accordingly, dismissed.

13. Learned Counsel for the Petitioner has prayed for 6 months time to vacate the premises. Counsel for Respondents has agreed for the same. Subject to undertaking being filed by the Petitioner.