(2008) 07 AHC CK 0233

Allahabad High Court

Case No: None

Narendra Pal Singh		APPELLANT
	Vs	
Ilam Chand Sharma		RESPONDENT

Date of Decision: July 21, 2008

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: (2008) 4 AWC 4198

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.U. Khan, J.

At the time of argument no one appeared on behalf of the respondent even though the case was taken up in the revised list. Accordingly, only the arguments of learned Counsel for the petitioner were heard.

2. This is landlord''s writ petition whose release application filed on the ground of bona fide need u/s 21 Uttar Pradesh Urban Buildings (Regulation of Letting. Rent and Eviction) Act, 1972 has been rejected by both the courts below. Release application was registered as P.A. Case No. 24 of 1997 and was dismissed by Prescribed Authority/Judge, Small Causes Court, Saharanpur on 16.6.1999. Against the said Judgment and order landlord-petitioner filed R.C. Appeal No. 15 of 1999. IIIrd Additional District Judge. Saharanpur dismissed the appeal on 6.11.1999 hence this writ petition.

3. House in dispute is situate within the city of Saharanpur and contains three rooms, one store room, kitchen, bath-room, latrine, verandah and sahan. Rent is Rs. 100 per month.

Case set up in the release application was that the landlord was in service in Education Department of Delhi Government and had retired from the said service in 1995; that landlord had a flat at Delhi however, his elder son who was at Singapore was coming back to India within a fortnight and landlord intended to settle him in his flat at Delhi. It was further pleaded that Saharanpur was ancestral city of the landlord and he has great attachment with the city and he intended to shift in the house in dispute alongwith his younger son and his younger son would complete his education at Saharanpur.

4. The tenant pleaded that landlord had ancestral house in Saharanpur and in partition among him and his brothers landlord had got a separate share/portion of the ancestral house and this fact was not disclosed by the landlord in the release application. Landlord in reply to the said allegation admitted that separate portion of ancestral house had come in his share in family partition.

5. However, landlord further asserted mat the said portion was not habitable. Both the courts below after thorough examination of the entire material on record in this regard found that some damages had been done to the ancestral house by the landlord himself in order to show that it was in dilapidated condition. The courts below held that until 1992-93 the said house was assessed to house tax without any objection meaning thereby it was actually inhabitated.

6. The more important circumstance on the basis of which the courts below held that the portion of the ancestral house which came in the share of the landlord was quite habitable and only some damage had been done to the said portion by the landlord in order to create ground of eviction was that the other portions of the ancestral house which had fallen in the share of other brothers of the landlord were perfectly in order and actually inhabitated.

7. Courts below also found that landlord had got his own flat at Delhi which was quite spacious and he had retired from service at Delhi hence there was no likelihood of his shifting back to Saharanpur.

8. I do not find least error in the concurrent findings of the court below. The fact that remaining portion of, the ancestral house was quite habitable and actually inhabitated clearly proved that the portion which had fallen in the share of the landlord was also quite habitable and whatever damage was there it was caused by the landlord himself in order to create ground for bona fide need of house in dispute. In any case it was essential for the landlord to disclose the separate share/portion of the ancestral house which he had got in partition. Accordingly, I do not find any merit in this writ petition hence it is dismissed.

9. However, this case is an occasion for the Legislature to ponder. U.P. Rent Control Act (No. 13 of 1972) has frozen the rents for 36 years and eviction of tenants has been made very difficult. The result is that landlords are damaging their own properties in order to make out ground for eviction. It is not a healthy sign from any

one''s point of view. Supreme Court in the following authorities has taken strong view against frozen rents:

1. Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another,

2. Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Another,

10. It is a great lacuna In U.P. Act No. 13 of 1972 that there is no provision for enhancement of rent to the reasonable extent after October, 1972 except when tenant Is Government or Governmental body or landlord Is public charitable religious institution.

11. The Supreme Court in Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another, issued an earnest appeal to the Legislature for insertion of such provision. In one of my judgments in Bal Kishan and Others Vs. VIth Additional District Judge and Others, . I also, suggested to the Legislature to consider whether it is desirable to incorporate such provision.

12. Frozen rents coupled with difficulty in seeking eviction of the tenant is driving the landlords to frustration. The Times of India in its July 16, 2008 edition under the recurring heading before the editorial ''thought for today'' has quoted U.S. Supreme Court as follows:

Money, like water, will always find an outlet.

13. To the above list frustration may also be added. The instant case illustrates an unusual outlet. The other usual more convenient outlet is approaching unsocial elements and Mafias as pointed out by the Supreme Court in the aforesaid authority of Malpe. There may be other outlets also much more dangerous.

14. Legislature must realise that time is running out. If the Legislature does not make suitable changes in the Rent Control Act then in future Court may seriously consider the argument of some frustrated landlord to strike down the entire Rent Control Act as arbitrary, discriminatory and violative of Article 14 of the Constitution, as has been indicated by the Supreme Court in the Malpe Authority (supra) or to provide for a provision and mechanism for enhancement of rent as has been done by the Supreme Court in Satayawati Sharma case (supra) (where Supreme Court added the provision of release of commercial building on the ground of bona fide need of the landlord in Delhi Rent Control Act).

15. The Supreme Court in the aforesaid Authority of Malpe took into consideration report of Economic Administrative Reforms Commission on Rent Control presented to the Government of India in September, 1982 particularly para 51 of the said report which was quoted in the judgment in para 16 thereof which is reproduced below:

We now turn to the problem of existing tenancies. Many of these are very old and the rents were fixed a few decades ago. These old and frozen rents bear little

relation to the present day maintenance costs, or to the current returns from alternative investments, or to the prevailing market rents in respect of new accommodation. In the case of new construction we have suggested that the periodical revision of rents should be based on a parital neutralization of the effects of inflation. Applying the same principle to existing tenancies where rents have remained frozen for at least 5 years, what needs to be done is to update those rents by neutralizing 50 per cent of the inflation which has taken place from the time of initial determination of those rents up to the present time.

Paragraphs 26 to 29 and part of para 30 of the aforesaid Supreme Court authority are quoted below:

26. It is true that whenever a special provision, like the Rent Control Act, is made for a Section of the society it may be at the cost of another section, but the making of such a provision, or enactment may be necessary in the larger interest of the society as a whole but the benefit which is given initially if continued results in increasing injustice to one Section of the society and an unwarranted largess or windfall to another, without appropriate corresponding relief, then the continuation of such a law which necessarily, or most likely, leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as being reasonable. Its continuance becomes arbitrary.

27. The Legislature itself, as already noticed hereinabove, has taken notice of the fact that puggrie system has become prevalent in Mumbai because of the Rent Restriction Act. This Court was also asked to take judicial notice of the fact that in view of the unreasonably low rents which are being received by the landlords, recourse is being taken to other methods to seek redress. These methods which are adopted are outside the four corners of the law and are slowly giving rise to a state of lawlessness where, it is feared, the Courts may become irrelevant in deciding disputes between the landlords and tenants. This should be a cause of serious concern because if this extra-judicial backlash gathers momentum the main sufferers will be the tenants, for whose benefit the Rent Control Acts are framed.

28. Insofar as social legislation, like the Rent Control'' Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another Section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants. It is not as if the Government does not take remedial measures to try and off set the effects of inflation. In order to provide fair wage to the salaried employees the Government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent the

increase made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in today''s context.

29. When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have a narrow or short sighted parochial approach. Giving a greater than due emphasis to a vocal Section of society results not merely in the miscarriage of justice but in the abdication of responsibility of the legislative authority. Social legislation is treated with deference by the Courts not merely because the Legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The Legislature is not shackled by the same constraints as the courts of law. But it''s power is coupled with a responsibility. It is also the responsibility of the Courts to look at legislation from the alter of Article 14 of the Constitution. This article is intended, as is obvious from its words, to check this tendency, giving undue preference to some over others.

30. Taking all the facts and circumstances into consideration we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable. The said provisions would have been struck down as having now become unreasonable and arbitrary but we think it is not necessary to strike down the same in view of the fact that the present extended period of the Bombay Rent Act comes to an end on 31st March, 1998. The Government''s thinking reflected in various documents itself shows that the existing provisions have now become unreasonable and, therefore, require reconsideration. The new bill is under consideration and we leave it to the Legislature to frame a Just and fair law keeping in view the interest of all concerned and in particular the resolution of the State Ministers for Housing of 1992 and the National Model Law which has been circulated by the Central Government in 1992.

16. I have held in Smt. Khursheeda Begum and Others Vs. Additional District Judge and Others, and H.M. Kichlu v. A.D.J. 2004 (2) ARC 652, that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act or while maintaining the said relief already granted by the courts below, writ court is empowered to enhance the rent to a reasonable extent.

17. In the aforesaid authority of Khhursheeda, I placed reliance upon the Supreme Court authority of Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another, , where it was held that it was essential to provide for periodical enhancement of rent under the Rent Control Acts. The Supreme Court has further held that frozen rents are giving rise to lawlessness and landlords out of frustration are approaching muscle man to get the premises vacated and courts of law are becoming redundant in this sphere. This authority has recently been followed by the Supreme Court in Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Another, part of para 29 and para 34 of which are quoted below:

29. It is trite to say that legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.

34. In Malpe Vishwanath Acharya and Ors. v. State of Maharashtra and Anr. (supra), the Court found that the criteria for determination and fixation of rent by freezing or by pegging down of rent as on 1.9.1940 or as on first date of letting, had, with the passage of time become irrational and arbitrary but did not strike down the same on the ground that extended period of Bombay Rent Act was coming to an end on 31.3.1998.

18. Under U.P. Rent Control Act, there is no provision of enhancement of rent after October, 1972 [Except where landlord is public charitable or public religious institution (Section 9A) or Government is tenant (Section 21(8)]. In the aforesaid authority of Khursheeda, I have also placed reliance upon the authority of Supreme Court in Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, paragraph 11 of which is quoted below:

It is well-settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief.

19. Thereafter in para 8 of the aforesaid authority of Khursheeda, I held as under:

Rent Control Act confers a reasonable advantage upon the tenant of protection against arbitrary eviction. Tenant under the Rent Control Act cannot be1 evicted except on specific grounds like bona fide need of the landlord, arrears of rent, subletting and material alteration etc. This advantage is also coupled with the advantage of immunity from enhancement of rent. The latter advantage cannot be said to be either reasonable or equitable. The Supreme Court in the aforesaid authority of Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, has laid down that while granting relief to a party the writ court can very well ask the said party to shed the unfair advantage which it gained under the impugned order. By slightly extending the said doctrine it may safely be held, that while granting the reasonable advantage to the tenant conferred upon him by the Rent Control Act the tenant may be asked to shed the

unreasonable arbitrary advantage conferred upon him by the said Rent Control Act. The writ court therefore while granting or maintaining the relief against arbitrary ejectment to the tenant can very well ask the tenant to shed the unreasonable benefit of the Rent Control Act granted to him in the form of immunity against enhancement of rent, however inadequate the rent might be. Tenant will have to shed the undue advantage of immunity from enhancement of rent under the Rent Control Act to barter his protection from arbitrary eviction provided for by the said Act.

20. Thereafter in H.M. Kichlu v. A.D.J. 2004 (2) ARC 652. I have held that the same principle of enhancement of rent to a reasonable extent may be made applicable while dismissing the writ petition of the landlord for the reason that by doing so writ court approves the protection of Rent Control Act granted to the tenant by the courts below.

21. However, it is to be borne in mind that rent cannot be enhanced through interim order in landlord''s writ petition as has repeatedly been held by the Supreme Court.

22. For a house like disputed one Situate in Saharanpur which is about 150 kms. from Delhi rent of Rs. 100 per month can very well be described virtually as well as actually no rent. It is rather ridiculous.

23. Accordingly, it is directed that with effect from August, 2008 onwards tenant-respondent shall pay rent to the landlord-petitioner at the rate of Rs. 1,500 per month.