(2004) 09 AHC CK 0226

Allahabad High Court

Case No: C.M.W.P. No. 3467 of 1986

Harish Chandra Agrawal (D) through L.Rs.		APPELLANT
	Vs	
IIIrd A.D.J. and Another		RESPONDENT

Date of Decision: Sept. 23, 2004

Acts Referred:

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

Citation: (2005) 1 AWC 170

Hon'ble Judges: Anjani Kumar, J

Bench: Single Bench

Advocate: B.D. Mandhyan, S.C. Mandhyan and Vinod Sinha, for the Appellant; B.P. Agrawal and Dinesh Tewari, S.C., for the Respondent

Final Decision: Dismissed

Judgement

Anjani Kumar, J.
Heard learned counsel appearing on behalf of the parties.

2. The petitioner-tenant aggrieved by the order dated 11th February, 1986, passed by IIIrd Additional District Judge, Agra, copy whereof is annexed as Annexure-''IV to the writ petition, approached this Court by means of present writ petition under Article 226 of the Constitution of India, whereby the appeal filed by the respondent-landlord u/s 22 of the U.P. Act No. 13 of 1972 was allowed by the appellate court.

3. In short, the facts of the present case are that the contesting respondent-landlord filed an application u/s 21 (1) (a) of the Act, (hereinafter referred to as the Act''), for release of the accommodation in question, namely, two shops numbered as 1/VII/6 and 1/V/12 on the ground of bona fide requirement of the landlord. The prescribed authority on the basis of the pleadings of the parties and evidence adduced before it

arrived at the conclusion that the need of the landlord cannot be said to be bona fide and thus the tilts of the comparative hardship does not arise in favour of the landlord, therefore, the application of the landlord was rejected by the prescribed authority vide his order dated 25th September, 1980 copy whereof is annexed as Annexure-III to the writ petition.

4. Aggrieved thereby the landlord-contesting respondent preferred an appeal as contemplated u/s 22 of the Act before the appellate authority. The appellate authority by the order impugned in the present writ petition set aside the order passed by the prescribed authority and allowed the application of the landlord, which was rejected by the prescribed authority and appeal was allowed. Thus, this writ petition.

5. Learned counsel appearing on behalf of the petitioner-tenant argued that the order of the prescribed authority is an order, which is not an order of affirmance, therefore the appellate authority should have considered the entire evidence on record and also the subsequent facts, which came into existence during the pendency of the appeal and if the same is taken into account, particularly considering the requirement after the application was filed, namely, opening of show-room for display and sale of the products of the self factory made of the landlord, which admittedly has been closed down during the pendency of the appeal, the need itself vanished. For this purposes Sri Mandhyan, learned counsel appearing on behalf of the petitioner-tenant relied upon a single Judge decision of this Court in Ranjeet Singh v. Ganeshi Lal Gupta and others, 1984 (2) ARC 208 and further laid emphasis on another decision of learned single Judge of this Court in Devi Charan v. Third Addl. District Judge, Muzaffarnagar and others 1980 ARC 381. On the strength of the aforesaid decisions, learned counsel for the petitioner further contended that in view of the discussion and the law laid down in the aforesaid two decisions, the appellate authority should have remanded back the matter before the prescribed authority to be decided afresh. Learned counsel for the petitioner tried to assail the findings arrived at by the appellate authority by citing instances here and there that the findings arrived at by the appellate authority suffer from such errors, which can be termed as manifest error of law, which need to be corrected by this Court in exercise of power under Article 226 of the Constitution of India.

6. On the other hand, learned counsel appearing on behalf of the contesting respondent-landlord relied upon a recent decision of the Apex Court in Gaya Prasad v. Pradeep Srivastava, 2001 (1) AWC 834 : 2001 (1) ARC 352. Paragraphs 10, 15 and 17 of the aforesaid judgment relied upon by learned counsel for the landlord is reproduced below :

"10. We have no doubt that the crucial date for deciding as to the bonafide of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post-petition period is

to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as to unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent development during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an appellant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite. Because the opposite party succeeded in prolonging the matter for such unduly long period."

7. The relevant portion of paragraph 15 of the aforesaid judgment relied upon by learned counsel for the landlord is reproduced below :

"15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long years from the start to the ultimate termini, is a malady afflicting the system. During his long interval many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused."

8. The relevant portion of paragraph 17 of the aforesaid judgment relied upon by learned counsel for the landlord is reproduced below :

"17. Considering all the aforesaid decisions, we are of the definite view that the subsequent events pleaded and highlighted by the appellant are too insufficient to overshadow the bona fide need concurrently found by the fact finding courts."

9. The aforesaid decision is covered with the recent pronouncement of the Apex Court in a case in Surya Dev Rai Vs. Ram Chander Rai and Others, . The relevant paragraph 38 of the aforesaid judgment is reproduced below :

"38. Such like matters frequently arise before the High Courts. We sum up our conclusion in a nutshell, even at the risk of repetition and state the same as hereunder :

(1) Amendment by Act 46 of 1999 with effect from 1.7.2002 in Section 115 of the CPC cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the Courts subordinate to the High Court, against which remedy of revision has been excluded by C.P.C. Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction-by assuming jurisdiction where there exists none, or (it) in excess of its jurisdiction-by over stepping or crossing the limits of jurisdiction, or (Hi) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within bounce of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the . jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step into exercise of its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self evident, i.e., which can be perceived or demonstrated without involving into any lengthy or completed argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of Justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth

flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English Courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in suppression or substitution of the order of the subordinate court as the Court should have made in the facts and circumstances of the case."

10. A bare reading of paragraph 38, sub-para (8) of the aforesaid judgment clearly shows that it clearly prescribes the guidelines for interference by this Court in exercise of power under Article 226 of the Constitution of India. On the question of finding being perverse, it should have considered the entire evidence on record, according to learned counsel for the petitioner, but I do not agree with the contention of learned counsel for the petitioner that the findings arrived at by the appellate authority were either perverse, or suffer from the manifest error or law, so as to warrant any interference by this Court in exercise of power under Article 226 of the Constitution of India.

11. In this view of the matter, this writ petition has no force and is liable to be dismissed. Lastly, it is submitted by learned counsel appearing on behalf of the petitioner that since the petitioner is carrying on business from the accommodation in question, he may be granted some reasonable time to vacate the premises in question to the landlord. Considering the facts and circumstances of the case and also in the interest of justice, I direct that the order of eviction against the petitioner-tenant, namely, the order passed by the appellate authority, shall not be executed till 31st December, 2005, provided :

(i) the petitioner-tenant shall furnish an undertaking within three weeks'' from today before the prescribed authority to the effect that he will handover peaceful vacant

possession of the premises in question to the landlord on or before 31st December, 2005 ;

(ii) the petitioner-tenant further undertakes to pay the entire arrears of rent and damages, if the same has not already been paid, to the landlord at the rate of the rent within three weeks'' from today and continue to pay the rent/damages in first week of each succeeding month, so long he remains in possession or till 31st December, 2005, whichever is earlier ; and

(iii) in the event of default of any of the conditions aforementioned, it will be open to the landlord to execute the order passed by the appellate authority.

12. Except for the modification, referred to above, this writ petition has no force and is accordingly dismissed. The interim order, if any, stands vacated.