

(2010) 08 AHC CK 0468**Allahabad High Court****Case No:** C.M.W.P. No. 69460 of 2009

Gurudeo Singh and Others

APPELLANT

Vs

Neeraj Batra alias Neeraj Bhagat

RESPONDENT

Date of Decision: Aug. 20, 2010**Acts Referred:**

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

Citation: (2010) 6 AWC 5688**Hon'ble Judges:** Rakesh Tiwari, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

Rakesh Tiwari, J.

Heard learned Counsel for the Petitioners and perused the record.

2. Father of the Petitioners purchased the disputed premises on 21.8.1997 in the name of the Petitioners for settling his two sons namely Narendra Singh and Dileep Singh. The Petitioners preferred an application u/s 21(1)(a) of the U. P. Act No. 13 of 1972 on 20.12.2003 for release of the disputed premises for personal and bona fide need which was contested by the Respondent by filing written statement on 4.1.2005. On the request of the Respondent, a Court commission was issued who submitted its report on 7.10.2007 after inspection of the spot in presence of counsel for the parties. The report of the commission was confirmed by order dated 10.1.2008 with the consent of the parties subject to the evidence led by them. The tenant also immediately moved an application denying that that he had not given any warrant. This application was rejected by order dated 6.2.2008. The orders dated 10.1.2008 and 6.2.2008 were challenged by the Respondent in a Civil Misc. Writ Petition No. 19177 of 2008 which was dismissed by this Court by order and judgment dated 15.4.2008 which is thus:

The Petitioner is aggrieved by the orders dated 10th January, 2008 and 6th February, 2008, passed by the Prescribed Authority in Rent Case No. 23 of 2003.

The records of the writ petition indicate that the landlord-Respondent Nos. (sic)2, 3 and 4 filed an application u/s 21(1)(a) of the U. P. Urban Buildings, (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act") for eviction of the Petitioner-tenant from the premises in dispute on the ground that it was bona fide required. During the pendency of the release application, the Petitioner-tenant moved an application for issue of a Commission for inspection of the property in dispute. A report was submitted in respect of which objections were filed by the Petitioner-tenant. The Prescribed Authority on 10th January, 2008 accepted the report with the consent of the parties subject to evidence to be led by the parties. The Petitioner-tenant immediately moved an application for recall of the order stating that no such consent was given by him. This application filed by the Petitioner-tenant was disposed of by the Court by the order dated 6th February, 2008. The Court specifically in its order noticed that the contention of the Petitioner-tenant that no such consent was given was incorrect. The Court, however, clarified the order dated 10th January, 2008 that the report be accepted in the light of the objections filed by the parties and the evidence to be led and in case some more objections to the Commission report were filed by the tenant then they too would be examined at the time of hearing and it would be seen whether the Commission report was correct or not.

Learned Counsel for the Petitioner has placed reliance upon the decisions of the Orissa High Court in Kalandi Swain and Others Vs. Braja Kishore Dass and Others, and of the Vemba Gounder Vs. Pooncholai Gounder, in support of his contention that prior to accepting the report, the Prescribed Authority should have dealt with all the objections filed by the Petitioner-tenant to the aforesaid Commission report. The Court has recorded a finding that the report was accepted with the consent of the parties subject to evidence to be led by the parties. The contention of the learned Counsel for the Petitioner-tenant that no such consent was given by him was not accepted by the Court. There is no allegation of mala fide against the Prescribed Authority and, therefore, in such circumstances it is not possible to accept the version of the counsel for the Petitioner that no such consent was given by the tenant. Be that as it may, the Court has clarified its order and no prejudice will be caused to the Petitioner-tenant.

In such circumstances, there is no good reason to interfere with the orders dated 10th January, 2008 and 6th February, 2008, passed by the Prescribed Authority.

The writ petition is, accordingly, dismissed.

3. It also appears that the Respondent also moved an application for appointment of Commissioner to inspect the alleged garrage in house No. 127/1123 block W-1 Saket Nagar, Kanpur which was referred by the Court vide order dated 3.11.2008. The

Respondent Neeraj Batra then preferred a Writ Petition No. 59689 of 2008 in which the Court directed the court below to reconsider the application of the Respondent for appointment of Commissioner, by means of the order dated 19.11.2008. The order runs thus:

The present writ petition is being disposed of finally with an observation that if Petitioner makes another application for appointment of Advocate Commissioner, Prescribed Authority will take into consideration the observation made above and after hearing both the parties will pass a reasoned order within a period of six weeks from the date of filing application. It is also made clear that while considering the application filed by Petitioner for appointment of Advocate Commissioner, Prescribed Authority will not be influenced by the order dated 3.11.2008 by which application was rejected.

With these observations the writ petition is disposed of.

No order as to costs.

4. The Respondent again filed a Civil Misc. Writ Petition No. 22431 of 2009 which was also rejected by order dated 28.4.2009. It appears that after the evidence was led the Respondent for bringing on record certain evidence after the evidence of the parties had been closed and case was fixed for final hearing. This petition was also dismissed vide order and judgment dated 28.4.2009 holding that both the courts below have rightly rejected the application of the Petitioner as no fresh evidence can be taken on record in view of the fact that report of Advocate Commissioner was already on record.

5. The Prescribed Authority allowed the application of the Petitioners by order dated 12.8.2009 and directed the Respondent to vacate the disputed shop within two months. He also directed the Petitioners to pay two years" rent to the Respondent towards compensation for mitigating the hardship of vacation of the disputed accommodation. In compliance of the order dated 12.8.2008 the Petitioners deposited a sum of Rs. 14,400 in favour of the Respondent in the court below. Aggrieved by the order dated 12.8.2009 the Respondent preferred a Rent Appeal No. 77 of 2009. The appellate court also confirmed the bona fide need of the Petitioners however inspite of this he gave twist to the case illegally directing the Petitioners to give the 1st floor to the Respondent imposing a condition precedent upon the Respondent to release the disputed accommodation in favour of the Petitioners. The contention of the Petitioner is that the finding recorded by the appellate court that 1st floor is not used for residential purpose is patently illegal while report of the commission is crystal clear from which it is established wherein that the 1st floor is used as residential accommodation for the security of the shop wherein the family of Dileep Singh resides. It is stated that the view of the appellate court is without jurisdiction, against law and is patently illegal as the appellate court and the Respondent have no right to dictate the landlord how to run his business by

making out a new case and imposing such conditions as in the order impugned.

6. The contention of Sri Atul Dayal, learned Counsel for the Petitioners is that the Respondent came before the Court challenging the report of the Commissioner which is appended as Annexure-7. The writ petition filed by the Respondent was dismissed. Thereafter, the Prescribed Authority has recorded a finding that the accommodation on the 1st floor is the residential accommodation of the landlord and that the passage to the 1st floor, i.e., residential accommodation of the landlord is through the shop situated on the ground floor but the appellate authority has recorded an incorrect finding that the 1st floor is not being used for residential purpose and that the finding is intact without jurisdiction. It appears from the Commissioner's report that the 1st floor is used as residential purpose by the members of the family of Dileep Singh who resides on the 1st floor. It is also apparent from the aforesaid brief facts of the case narrated above that the Prescribed Authority as well as appellate court have passed orders in favour of the parties. However, the appellate court has confirmed the bona fide need of the Petitioners but has imposed certain condition precedent to release the disputed accommodation in favour.

7. The contention of the learned Counsel for the Petitioners that the court below cannot impose such a condition upon the Petitioners or dictate him how to run his business has force. According to him such conditions which are impossible to be complied with should not have been imposed for he would have to construct a stair case from outside the building as directed by the appellate court for compliance of the order which would require heavy financial burden upon him. Once the court below has come to conclusion that need of the landlord is bona fide, no further order was required as no useful purpose would be served by holding the need of the landlord bona fide on one hand and on the other directing the tenant to be given 1st floor on which one of the brothers was already residing.

8. Counsel for the Respondents have neither filed any counter-affidavit nor has argued or controverted the argument of the counsel for the Petitioners hence in the facts and circumstances of the case and for all the reasons stated above, the writ petition is allowed.