

(1995) 07 AHC CK 0139

Allahabad High Court

Case No: C.M.W.P. No. 10237 of 1990

Ram Kishun

APPELLANT

Vs

Addl. District Judge and Others

RESPONDENT

Date of Decision: July 28, 1995

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21, 21(1)
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 18, 18(2)

Hon'ble Judges: T.P. Garg, J

Bench: Single Bench

Advocate: Sankatha Rai, for the Appellant; Nomwar Singh and S.C., for the Respondent

Final Decision: Dismissed

Judgement

T.P. Garg, J.

This writ Petitioner has been filed by Ram Kishun, tenant, against the order of prescribed authority dated 3.5.1986 (Annexure 11 to the writ petition) allowing the release application u/s 21(1)(a) of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972, (Act No. 13 of 1972) (hereinafter referred to as the "Act"), being application No. 148 of 1983 and the judgment dated 29.3.1990 (Annexure 13 to the petition) passed by the X Rh Addl. District Judge, Varanasi, dismissing the Petitioner's appeal against the aforesaid order of the prescribed authority.

2. Brief facts giving rise to the present petition are as under:

3. Nand Lal alias Nanda and Lalji. sons of Laxman landlord filed an application u/s 21(1)(a) of the Act in the court of prescribed authority, Varanasi on the allegations that they are the sons of Laxman, that the wife, sons, daughters grand-sons and grand-daughters, of the said Laxman were living in house No. CK 63/145 Mohalla

Chhoti Piyari, Varanasi; that sometimes in the year 1968 Laxman had. in his lifetime given one shop and one room in dispute of the aforesaid building, detailed fully in the application to the Petitioner on a monthly rent of Rs. 40 in order to meet his financial needs. Laxman had received a sum of Rs. 550 as advance rent. It was agreed between the landlord and the tenant that the tenant would not sub-let the demised premises and the landlord would have a right to get the demised premises vacated as and when he requires the same. It is alleged that the said Laxman died about 13 years ago. At that time Munnoo (son), Smt. Sukha Devi (daughter) and Smt. Patti Devi (wife) were all majors. The other sons and daughters of Laxman were minors; that on the death of Laxman an agreement was executed between Smt. Patti Devi, wife of Laxman and Ram Kishun Petitioner/tenant, to increase the rent from Rs. 40 to Rs. 50 ; that Smt. Patti Devi, mother of the applicants, filed a release application u/s 21 of the Act on the ground that the demised premises were required for doing business, but the same was rejected. It was further alleged that the Petitioner along with Jhurl and Harihar filed Suit No. 325 of 1982 against Smt. Patti Devi and they also started criminal proceedings against her, which were still pending. It is alleged that in the ground floor of the house in dispute, there are three rooms, temple of Shree Radha Kishanji, Aangan (courtyard), Rasta (Passage), staircase and latrine, while on the first floor, there are three rooms. In one room on the ground floor, Laxman aforesaid was living while Jhurl and Harihar occupied the same unauthorisedly although they were living in another house bearing No. CK 63/144. It is alleged that the family of the landlord is living in three rooms on the first floor and one room on the ground floor, while the remaining one room and the shop is in possession of Ram Kishun, Petitioner, as tenant. After the death of Laxman, his sons went on becoming major; Munnoo has two children while Ganesh had also been married. Smt. Sukha, daughter of Laxman has since been deserted by her husband and she was also living in this very house along with her son. In this manner, as many as 11 members of the family are living in the accommodation available in house No. CK 63/145. The accommodation available to them is comprised of three rooms on the first floor and one room on the ground floor. Smt. Patti Devi, Munnoo, Ganesh and Smt. Sukha were impleaded as proforma Respondents. The application was filed on the ground that the applicants required the demised premises for starting their own business and that Nand Lai, applicant No. 1, was also to be married and would require additional accommodation. It was alleged that Ram Kishun tenant, had also taken another premises on rent in front of the shop in dispute and the use of the demised premises is only symbolic. Jhuri and Harihar, Respondents, were brokers and were living as sub-tenants without the permission of the landlord, who never permitted Ram Kishun to sub-let the premises. The need of the landlord was stated to be bonafite and genuine.

4. Ram Kishun, Jhuri and Harihar filed a Joint reply to the release application wherein while admitting the tenancy, the remaining allegations were denied. It was, inter alia, pleaded that they were tenants of the demised premises since the year 1966

and paying rent at the rate of Rs. 50 per month. Further that Nand Lal is engaged in the work of electric fitting and decoration and was having sufficient income from that business ; that Jhurl and Harihar were dependant upon Ram Kishun and were real brothers; that the earlier petition filed by Smt. Patti Devi was in fact pursued by Nand Lal and the same was dismissed. The appeal against that order was also dismissed by the IInd Addl. District Judge on 8.9.1981. After having failed in the earlier litigation, the landlords were now trying to get the demised premises vacated in one way or the other. It was admitted by the tenant that he has taken a small room on rent from one Ramji in front of the shop in dispute in order to prepare sweets and the size of which was 5' x 5' (feet) which was not sufficient to run a shop. The need of the landlord was stated to be neither Just nor bona fide. Further that Lalji was working with his brother, Nand Lal and both of them were doing the work of electric fitting and did not require any extra accommodation for their business. It was admitted that on account of paucity of space Harihar, Respondent, had taken one small room in the nearby house where he was living with his wife and children. It was denied that Jhurl was a sub-tenant in the demised premises. It was contended that the release application had been filed in order to put pressure on the Petitioner.

5. After affording opportunity to the parties to lead evidence and hearing the counsel for the parties, the prescribed authority vide order dated 3.5.1986, allowed the application of Respondent-landlords and directed the Petitioner to vacate the demised premises within a period of one month. The Petitioner preferred an appeal against the said order which was heard by the XIth Addl. District Judge. Varanasi, who vide his order dated 29.3.1990 dismissed the same.

6. In the present petition, the tenant has challenged both the aforesaid orders, inter alia, on the ground that the earlier order of the prescribed authority dated 3.2.1981 and the order of the appellate authority dated 8.9.1981 were binding upon the parties and subsequent release application was thus barred by principle of res Judicata. The need of the landlord was also stated to be neither genuine nor bone fide and that the comparative hardship to the tenant was more than the landlord.

7. I have heard the learned Counsel for the parties and also gone through the record of the case.

8. It was urged by the learned Counsel for the Petitioner that earlier the landlord filed an application for release of the property in dispute but the same was dismissed by the prescribed authority vide its order dated 3.2.1981 and the appeal filed by the landlord was also dismissed by the appellate authority vide its order dated 8.9.1981. According to him, both these orders were binding upon the parties and subsequent release application filed by the landlord on 3.10.1983 was thus barred by the principles of res Judicata. Reliance has been placed by him on the authority cited as Dr. Sita Ram Gandhi v. I Vth Addl. District Judge, Meerut and Anr. 1983 (1) ARC 782. In my opinion, the said argument is not tenable because the

principles of res judicata apply only to the situations which are static and not to changing situations. The bona fide need of the landlord must be considered with reference to the time when a suit for eviction was filed and it cannot be assumed that once the question of necessity is decided against the Plaintiff. It was to be assumed that he will not have a bona fide and genuine necessity even in future. I am fortified in this view by the authorities cited as *Janki Prasad v. VIth Addl. District Judge*, 1978 ARC 137 and [Surajmal Vs. Radheyshyam](#),. Even in *Dr. Stla Ram Gandhi's* authority, (supra), relied upon by the learned Counsel for the Petitioner, it has been held that in a case where no new facts have come into existence and there have been no intervening change or circumstance, the second application may not be maintainable on the principles of res judicata but where the landlord establishes a change of situation since the first application, the said case would require the court trying second application to reinvestigate not only the question of bona fide requirement but also of the greater hardship and to find out the basis of intervening change in circumstances as to whether the landlord is entitled to a release to be made in his favour u/s 21 of the Act. The test is whether the second proceeding involves a new cause of action or whether it is merely an attempt to reiterate the same facts and to get a judgment in his favour on the same old cause of action. Whether or not, the matter of res Judicata must depend solely upon where the Issue to be decided by the court has already been litigated and decided between the parties. If the circumstances had changed, it could not be contended that the issue between the parties remains the same. It is quite clear that a court can, upon fresh evidence, alter and vary the judgment previously made, If cause of action of the subsequent proceedings is different than what it was in former, but, of course, If there is no evidence of any fresh circumstance, the second application may be barred by the principles of res Judicata. A trivial or insignificant change will not oust the applicability of the principles of res Judicata. The question of greater hardship which is required to be decided under the proviso is also one, which can change with the lapse of time. Every sort of circumstance may arise to change the relevant facts on which the issue of greater hardship is required to be decided. In deciding the question of greater hardship, the court must bear in mind that the change of circumstance may occur from day-to-day and a court will consider changed circumstances while deciding the second application for release by the landlord. Each case will have to be decided on Its own facts for finding out as to whether the change is of a nature which has altered the position of the parties.

9. Coming to the instant case, it will be seen that the earlier release application was dismissed by the prescribed authority on 3.2.1981 and appeal of the landlord was dismissed on 8.9.1981. The second release application was filed on 3.10.1983, i.e., after a period of more than two years. In this view of the matter. Rule 18 of the Rules framed under the Act do not apply to the facts of the present case. Rule 18(2) of the Rules says that where an application of landlord against the tenant u/s 21 of the Act for release of any building or any specific part thereof or any surplus land

appurtenant to the said specific building is rejected and a fresh application on the same ground is made within a period of one year from that decision, the Prescribed authority shall accept the findings in those proceedings as conclusive. But the facts and circumstances of the present case being entirely different, Rule 18 has no application.

10. As stated above, the second release application was filed after the expiry of a period of more than two years of the dismissal of the first application by the prescribed authority and appeal by the appellate authority. The basis on which the second release application was filed is also entirely different. In the earlier release application filed on 26.2.1960 (Annexure 14 to the petition) by Smt. Patti widow, Munnoo, Ganesh and Nandlal, major sons and Laljee, minor son of Laxman, the grounds were that the sons of widow of Laxman had become major and they wanted the premises for opening some petty shop. Further that the daughter of landlord had been deserted by her husband and was living along with her son with the landlord. It was also pleaded that one of her sons, Nand Lal was of marriageable age but on account of paucity of space, his marriage was not being settled and hence their need was bona fide.

11. The tenant/Petitioner had opposed the aforesaid application which was subsequently dismissed. However, at the time of filing of second application," the situation has changed. Nand Lal, who was earlier unmarried, has since been married and so he requires a separate room. In the earlier application, there was no averment as to what type of business was sought to be started in the demised shop, but now It is the clear and unambiguous case of the landlord that they would start their own electric fitting business in the demised premises. Obviously, therefore, the circumstances have thus entirely changed after the dismissal of the earlier application. The prescribed authority in its order dated 3.5.1986 (Annexure 11 to the petition) has given details of the business proposed to be started in the shop In dispute. It is stated that the landlords were engaged In the work of electric fittings and decorations, etc., at the time of filing of first release application Laljee was minor and was getting training In the work of electric fittings, etc., and now he has become major and is fully trained to do the aforesaid work. Obviously, therefore. If one of the landlords is a trained electrician and engaged in the work pertaining to electric fittings and decorations, etc., he would certainly require some place to sit so that he can operate and manage his business from there. The need has, therefore, been fully justified and both the courts below have found the same to be bona fide. In the earlier release application, it had not been stated as to what type of shop or business would the landlord start after getting the shop vacated. There was a general averment that they would start some petty shop and so It was held by both the courts below that In the absence of detailed particulars as regards the nature of the business sought to be started, their need cannot be said to be bona fide. But then as stated above, in the second release application, they have clearly stated about the specific business sought to be started and they have also led evidence to

prove the same. Moreover, Nand Lal was earlier unmarried and has since been married and so a separate room was also required for his living. All this will show that circumstances have entirely changed after the dismissal of first release application and so the principles of res judicata will not apply in the present case and for the same reason. Dr. Sita Ram Gandhi's authority (supra) is of no assistance to the Petitioner. On the other hand, the ratio of Suraj Mai's case (supra) and Janki Prasad's case (supra) will be applicable to the facts of the instant case. It is held that principles of res Judicata do not apply to the present case. .

12. Coming now to second point raised on behalf of tenant-Petitioner that need of the landlord was neither genuine nor bona fide and that comparative hardship to the tenant was more than the landlord. Here again, I do not agree with learned Counsel for the Petitioner. The concurrent findings arrived at by the prescribed authority and appellate authorities are that the need of the landlord was bona fide and genuine. These findings have been arrived at after the appraisal of the entire evidence on record. Both the courts below have further held that the comparative hardship will be more to the landlord than to the tenant in case demised premises are not got vacated from the tenant. This Court in Arun Kumar Misra v. Addl. District Judge, Kanpur and Ors. 1990 (1) ARC 397, has held that the concurrent findings on issue of bona fide need and comparative hardship cannot be interfered when arrived at after appraisal of evidence. The prescribed authority in Its order dated 3.5.1986 (Annexure-11 to this petition) has held that the family of the landlord consists of 12 members; that during the pendency of the proceedings Nand Lal had also been married and another member, Le., the wife of Nand Lal has also joined the family, thus raising the number of members of family to 13. The fact that the family of the landlord consists of 13 members had not been denied by the Petitioner-tenant. It has also come In the evidence on record that in one room on the ground floor, the brother of landlord, namely Ganesh lives with his wife; that out of three rooms on first floor available to the landlord, one room is being used jointly as kitchen ; that in second room another brother of the landlord ; namely, Munna lives with his wife and two children, while in third room, the two applicants ; namely, Nand Lai alias Nanda and Laljee live with their mother and sister along with sister's child besides the wife of Nand Lal married during the pendency of the proceedings. As stated above, this contention of the landlord has not been refuted by the tenant except that the sister of applicants does not live with them. But then, the testimony of the applicant that his sister has since been deserted by her husband and so she lives along with them with her child, has gone un rebutted.

13. In this view of the matter, having regard to the entire accommodation available to the landlord, It will be seen that they have one room and a temple on the ground floor and three rooms on the first floor. From the report of the Commissioner, it is further made out that towards the west of the temple and in between the temple and shop of the tenant, there is situated a room which is used as Caliyara (passage) for ingress and outguess jointly. In this view of the matter, the room or

accommodation used as Caliyara cannot be put to any other use except for the purpose it is being used at present. The prescribed authority himself inspected the demised premises and found that the portions of the house In possession of the parties were as stated above; and In this manner confirmed the same. It is further observed by the prescribed authority that Ram Kishun, Petitioner admitted that his brother Harihar (also a tenant and Respondent No. 3 in the release application) had taken a small room in a neighboring house and was living there with his wife and children. It was also admitted by the Petitioner-tenant that he and his brothers Jhuri and Harihar were Joint In business and the son of his brother Jhuri had been looking after the business in the shop in dispute. It has also been admitted by the Petitioner that his son Ram Dular had been living with his wife in a separate house belonging to one Sukhram. which makes it clear that the Petitioner has alternative accommodation. It is the case of the Petitioner that he prepares sweets and puries, etc., in the shop in dispute and their customers also sit there. Further that there are four sons and three daughters in his family; that he had taken a small room in a house belonging to one Ramjee in front of demised premises to install his Bhatti where he prepares sweets and brings them to the shop in dispute. This further shows that the Petitioner has not only alternative residential accommodation but also an alternative shop where he can easily shift in case he is evicted. On the other hand, having regard to the size of the family of the landlords, they must indeed be finding it quite hard and difficult to live in the accommodation presently available with them. Thus, the comparative hardship will be more to the landlords than to the tenant In case their application for release of the accommodation in dispute is not allowed. The need propounded by the landlords is thus bona fide and genuine and has been rightly so held by both the Courts below. The argument advanced by the learned Counsel for Petitioner is thus held to be without any merit.

14. In view of the foregoing, there is no merit in the present petition, which is dismissed and the impugned orders of the prescribed authority dated 3.5.1986 (Annexure 11 to the petition) and 29.3.90 passed by XIth Addl. District Judge, Varanasi (Annexure 13 to the petition) are both upheld. The tenant-Petitioner is given three months" time to vacate the premises in dispute and hand over vacant possession to the landlord. The parties are left to bear their own costs. The stay order dated 25.4.1990 is vacated.