Amar Nath Mehta Vs Special Judge (Bhrastachar Nivaran) and Others

Court: Allahabad High Court

Date of Decision: Aug. 21, 2006

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: (2006) 7 ADJ 318 : (2006) 4 AWC 3575

Hon'ble Judges: Sanjay Misra, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sanjay Misra, J.
This writ petition has been made by the tenant who seeks quashing of the judgment and orders of the courts below

whereby the tenanted portion has been released in favour of the landlady in proceedings u/s 21(1)(a) of the U. P. Act No. XIII of 1972.

2. The prescribed authority while considering the bona fide need of the landlady found that she had 10 members in her family whose need has to

be seen. They are living in the house of Sampati Devi who is the landlady''s husband''s maternal grandmother. The accommodation consists of two

rooms and it was found to be Insufficient. The need of the landlady was held to be bona fide. The prescribed authority considered the plea of the

tenant that one portion of the house was in the tenancy of one Tejinder Singh and in a S.C.C. Suit No. 34 of 1988 the said portion was made

available to the landlady by virtue of a compromise arrived at between them and in proceedings u/s 16 of the Act it was released in her favour for

commercial purposes. It found that in the said portion the landlady''s son Vinod Kumar is doing business under the name and style of Gautam Tent

House and hence the portion in qrestion is required by her for residence. On the issue of comparative hardship it has been found that the tenant''s

son has acquired a house in the city and the family is also residing there, hence if the tenanted portion is released it would not cause hardship to the

tenant and if it is not released then hardship would be of the landlady.

3. In the appeal filed by the tenant the appellate court formulated seven questions to be decided. It found the need of the landlady to be bona fide

which had not been adequately met even after another portion in the tenancy of one Tejinder Singh was made available to her for commercial

purposes. A finding was recorded that the landlady''s husband had not inherited the house of his maternal grandmother and they are living in the

said house with the permission of her husband''s maternal grandmother and after her demise, with the permission of his mother. She is in

occupation of only two rooms in the said house. On the question of comparative hardship the appellate court found that the tenant''s son had

acquired a house In the same city and the entire family was also living there hence it recorded its finding in favour of the landlady.

4. Learned Counsel for the petitioner Sri M.K. Gupta has contended that affidavits being paper Nos. 190Ga, 192Ga and 193Ga were filed on

behalf of the landlady to which he was not given any opportunity for rebuttal. His request for time was refused by the order dated 4.12.1996. As

such the impugned orders having been passed by placing reliance on them is liable to be set aside. He has relied upon decision of this Court in the

case of Kalpnath Pandey v. XIth Additional District Judge 1993 (2) ARC 67, and argued that an opportunity for reply should have been given.

Citing a decision of this Court in the case of Yogendra Nath Jain v. IIIrd Additional District Judge Meerut 1998 (1) ARC 444, he has submitted

that for applicability of the Explanation of Section 21(1) the word ''or'' has to be read as ''and'' and therefore, both the conditions provided therein

have to be shown to exist. His submission is that in the present case the courts below have committed an illegality by holding that the said

Explanation was fully attracted to the facts and circumstances. For this very submission he has also referred to the decisions of the Hon''ble

Supreme Court in 1985 (2) ARC 85 and 1995 (1) ARC 220.

5. Sri R.C. Singh learned Counsel for the respondent has submitted that once the provisions of the Explanation in Section 21(1) is attracted the

objection of a tenant against a release application is not maintainable. He states that the courts below have rightly concluded that the son of the

tenant having acquired a house in the city the comparative hardship was decided in favour of the landlady. He has placed reliance on the decisions

in the case of Wajid Ali v. XIIth Additional District Judge 1994 (1) ARC 502 and in the case of Ram Prakash v. IInd Additional District Judge

1990 (1) ARC 329. He has further submitted that when concurrent findings of fact have been recorded by both the courts below then this Court

would not interfere in the same in a petition Under Article 226 of the Constitution of India.

6. In so far as the question of applicability of the provisions of the Explanation to Section 21(1) in the present case is concerned the trial court has

not rejected the objection of the petitioner on that ground. It has proceeded to decide the objection on its merits and has concluded on the basis of

evidence that the son of the petitioner who was normally residing with him from the beginning of the tenancy had acquired a house in the city after

being employed. It has also found that the petitioner and his other family members have given the address of this other house for various purposes

such as the Gas Connection No. 2538 in the name of the petitioner, Sudhir Kumar a son of the petitioner has given this address in his scooter

driving licence, the wife of his other son Balram is a teacher in H.P. Academy has given her address as this house, a daughter of his son Sudhir

who studies in Nehru Inter College has also given the same address, the petitioner and his family members are shown in the voters list as residents

of this house. The petitioner had failed to adduce any evidence to controvert the said facts. The courts below therefore, found that the petitioner

and his family members were also living in the other house and as such had an accommodation in the city under their occupation and under the

ownership of one son. Therefore, since the objection of the petitioner was entertained and considered on its own merits, the contention of learned

Counsel for the petitioner regarding non-applicability of the said provision loses its significance and in fact such a question does not at all arise for

consideration in this writ petition.

7. The other argument raised by Sri Gupta of not being given opportunity to rebut the affidavits being papers Nos. 190Ga, 192Ga and 193Ga, it is

found from the order dated 4.12.1996 that the court below had refused his request. While doing so it had recorded that only those portions of the

said affidavits would be considered which related to the query of the Court made by an earlier order dated 29.11.1996. In this earlier order

passed during the course of arguments the Court had found that the petitioner had amended his written statement and the landlady had not been

given any time to file its replication. By the amendment the petitioner had for the first time pleaded that Sampati Devi was the maternal grandmother

of the landlady''s husband. It was also found that the petitioner had filed two applications paper Nos. 186 Ka and 188 Ga to which also the

landlady was entitled for an opportunity to submit her reply. The Court then proceeded to formulate two queries in the light of amended written

statement and required the landlady to give her reply. The said queries are reproduced hereunder:

1- lEikrh nsoh ds edku esa dqy fdrus dejs gSa rFkk izkfFkZuh ds ifjokj ds vfrfjDr vkSj dkSu&dkSu O;fDr jgrs gSa rFkk bldk edku uEcj D;k gS

vkSj uxj egkikfydk esa bl edku ij fdldk uke crkSj ekfyd ds ntZ gS A rFkk bl edku esa tks Hkh dejs gSa mldh yEckbZ ,oa pkSM+kbZ Hkh crk;h

tkosA

2- tax uD"kk esa eSa izkfFkZuh ds ifr dk tks iqLRkSuh edku gS mlesa dqy fdrus dejs gSa rFkk mldh yEckbZ o pkSM+kbZ D;k gS A

8. It was in pursuance of the aforesaid order and query made by the Court that the landlady filed the affidavits being paper Nos. 190Ga, 192Ga

and 193Ga. Whether the petitioner was entitled to file his reply under such circumstances is required to be answered herein. In the case of

Kalpnath Pandey (supra) a preliminary objection had been raised about the maintainability of the release application and several dates were fixed

for its disposal. The Court then fixed a date for disposal of the preliminary objection as well as for deciding the release application both together. It

was held that such a course had deprived the petitioner therein an opportunity to file his written statement. The facts of the present case are totally

different. The petitioner amended his written statement to which a replication was allowed to be filed. There is no provision under law for filing a

further reply to even the replication. Permitting the parties to file reply and then further replies to replies would lead to an unhealthy procedure

particularly in proceedings, which are summary in nature under the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972. On

the facts of the present case no opportunity was required to be given to the petitioner to reply to the replication filed in answer to his amended

written statement.

9. The affidavits indicated above were filed by the landlady in compliance of the courts order dated 29.11. 1996. The queries of the Court were

required to be answered by the landlady. These two queries made by the Court arose only from the amendment of the written statement. In order

to effectively adjudicate a controversy the Court has power to require any party to answer. When an answer is being sought only on the basis of an

additional plea raised by amending the written statement, the answer has to be specific to the query. Upon the affidavits being filed the Court

recorded that only those portions would be seen which related to the query. An affidavit dated 2.12.1996, was filed by Shanker Lal Gupta,

husband of the landlady. A perusal thereof shows that it was in reply to the paper Nos. 186Ga and 188Ga filed by the petitioner. Therefore, this is

not a case where an affidavit was filed and the same was read in evidence without giving any opportunity to the other party. There is, therefore, no

illegality in the order dated 4.12.1996 of the trial court. It cannot be held that the petitioner was deprived of an opportunity to which he was

entitled under law or even for the purpose of effective adjudication of the controversy involving factual issues.

10. The findings of fact recorded by both the courts below are based on the evidence on record. The evidence led by the parties were appreciated

by the courts and no instance of misappreciation or misreading has been pointed out before this Court. Upon going through the record the findings

of fact recorded by the courts below cannot be said to be erroneous or illegal.

11. For the reasons as aforesaid there is no merit in this writ petition. It is accordingly dismissed. No order is passed as to costs.