

(2016) 02 AHC CK 0028

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

Case No: Rent Control No. 87 of 2008

Arvind Kumar Mishra

APPELLANT

Vs

Jitendra Kumar Gupta
And Ors.

RESPONDENT

Date of Decision: Feb. 8, 2016

Acts Referred:

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

Citation: (2016) 1 ARC 634

Hon'ble Judges: Anil Kumar, J.

Bench: Single Bench

Advocate: C.S.C, Ankur Sinha, Avadhesh Kumar, Advocates, for the Respondent

Final Decision: Allowed

Judgement

Anil Kumar, J. - Heard learned counsel for the petitioner, learned Standing Counsel and perused the record.

2. Facts in brief of the present case are that the landlord/petitioner moved an application for release of the shop situated at Main Road, City-Lakhimpur near Tandon cycle Bhandar which is bounded as East-Main Road, West-Puri Jewellers, North-Tandon Cycle Bhandar and South-Siddiqui Paints Shop under Section 21 (1) (a) of U.P. Urban Buildings (Regulation of letting, Rent and Eviction) Act, 1972 (hereinafter referred to as Act) under the tenancy of opposite party no.1/Jitendra Kumar Gupta on a monthly rent of Rs. 600/-.

3. Need as set up by the landlord/petitioner in the release application is that he is required the shop in order to do a business and earn livelihood for his family along with his son, accordingly, a Rent Eviction Case No.7/04 has been registered before the Prescribed Authority/Civil Judge (S.D.), Lakhimpur Kheri.

4. On behalf of the opposite party no.1, written statement has been filed denying the need as set up by the landlord/petitioner in the release application and defence was also taken to the effect that landlord/petitioner has a shop adjacent to the shop which is under the tenancy of the opposite party no.1 and from where he can start his business. So a commission was issued by the Prescribed Authority, Amin Commissioner submitted his report inter alia stating therein that there is no other shop in possession of the petitioner.

5. The Prescribed Authority/Civil Judge (S.D.), Lakhimpur Kheri, after taking into consideration the pleadings, document and evidence on record as led by the parties, allowed the release application by order dated 28.02.2007, challenged by filing Rent Appeal No.1/2007 under Section 22 of the Act by the opposite party no.1, allowed by order dated 26.02.2008 passed by Special Judge/Upper District Judge, Lakhimpur Kheri.

6. Learned counsel for the petitioner while challenging the appellate order submits that the court below has failed to appreciate that the need of landlord/petitioner is genuine and bona fide and in this regard, on the basis of the material on record, the finding of fact has been given by the trial court/Prescribed Authority in favour of the petitioner regarding his bona fide need without reversing the said finding.

7. He further submits that the finding given by the appellate court is totally contrary to law as no effort has been made by the tenant in order to search out any other accommodation since when an application for release was moved. So keeping in view the above said facts, bona fide need and comparative hardship will tilt in favour of the landlord/petitioner.

8. Shri Vivek Manishi Shukla, learned counsel for the petitioner on the basis of the supplementary affidavit, submits that one Shri Mukhtyar Ali, s/o Shri Danish Ali who is tenant of opposite party no.1 had vacated the shop in question and handed over the same to him. Accordingly, taking into consideration the said facts, the impugned order dated 26.02.2008 passed by Special Judge/Upper District Judge, Lakhimpur Kheri is liable to be set aside.

9. Shri Avadhesh Kumar, learned counsel for the respondent while defending the judgment passed by the appellate court submits that as the shop in question is under the tenancy of opposite party no.1 since 1991, so keeping in view the provisions as provided under Rule 16 (2) (A) of U.P. Urban Buildings (Regulation of letting, Rent and Eviction) Act, 1972, there is no justification or reason to allow the release application moved by the landlord/petitioner. Hence, taking into consideration the said facts as well as comparing the bona fide need and comparative hardship between the parties, the order passed by appellate court dated 26.02.2008 is perfectly valid and need no interference.

10. After hearing learned counsel for the parties and taking into consideration the provisions as provided under Section 21 (1) (a) of the Act, the first question which is

to be considered in the present case as to whether the need as set up by the landlord/petitioner is required to get the shop in question in order to set up his own business and to earn livelihood of his family is genuine and bona fide or not ?

11. From the material on record, the position which emerges out is that landlord/petitioner, who has got no other shop and the shop under the tenancy of opposite party no.1 is the only shop available with him from which he wants to run the business. Further, during the pendency of the present litigation, the shop owned by opposite party no.1 under the tenancy of Mukhtiyar Ali was vacated and handed over to him. The said fact has not been denied by the opposite party no.1 and it is stated in the supplementary affidavit filed on his behalf that after getting possession of the said shop Mukhtiyar Ali has filed an objection under Section 34 of the Act and appeal is still pending. So it is undisputed fact that the tenant has got the shop in his possession.

12. Taking into consideration the said facts as well as Section 21(1)(a) of U.P. Act No. XIII of 1973 formulates the mandatory condition for moving an application for release of the building under the tenancy of tenant by the landlord that there must be "bona fide need". The word "bona fide need" was received vide useful meaning rather struck on narrow.... and court should adopted practical meaning breach guided by the realistic of life.

13. The word "bona fide" has been interpreted by his Lordship of the Hon"ble Supreme Court in the case Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222 : 1999 SCFBR 330, has held :-

"The term bona fide or genuinely refers to a state or mind. Requirement is not mere desire. The degree of intensity contemplated by "required bona fide" is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the absence of felt need which is an outcome of sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the Court. The judge of facts should place himself in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord."

14. This Court in the case of Pramod Kumar v. VI Additional District Judge, Bijnor and others, 2000(1) ARC 185, has defined "bona fide need" on the basis of decisions of the Hon"ble Supreme Court rendered in Muttu Lal v. Radhey Lal, AIR 1974 SC 1596 and Bega Begum v. Abdul Ahad Khan, AIR 1979 SC 272 : 1986 SCFBR 346, as under :-

"The word "bona fide" means genuinely and sincerely i.e. in good faith in contradiction to mala fide. The requirement of an accommodation is not bona fide if it is sought for ulterior purpose but once it is established that the landlord requires the accommodation for the purpose which he alleges there is of ulterior motive to evict the tenant that requirement should be bona fide"

15. In the same manner the word "bona fide" has been interpreted in the case of Jagdish Chandra v. District Judge, Kanpur Nagar and others, 2008 2 ARC 756 and 2009 (2) ARC 802, Hariom v. Additional District Judge and others.

16. Apex Court in the case of Sarla Ahuja v. United India Insurance Company Ltd.,(1996) 5 SCC 353, held as under :-

"The rent controller should not proceed on the assumption that the landlord's requirement is not bona fide. When the landlord shows a prima facie case a presumption that the requirement of the landlord is bona fide is liable to be drawn. It is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without giving possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlords, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

17. In the case of Gulab Bai v. Nalin Narsimonia, (1993) 3 SCC 483, the Hon"ble Supreme Court has held as under :-

"The words "reasonable requirement" undoubtedly postulate that there must be an element of need as appeared to more desire or wish. The Distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire."

18. This Court in the case of Smt. Tara Devi v. District Judge and Others, 1979 ARC 382, has held on the basis of the Hon"ble Supreme Court decision rendered in Muttu Lal v. Radhey Lal, AIR 1974 SC 1596 as under :-

"It is for the Court to determine the truth of the assertion and also whether it is bona fide. The test which has to be applied is an objective test and not a subjective one and merely because the landlord asserts that he wants the accommodation for his personal use would not be enough to establish that he requires it for his personal use."

19. Keeping in view the above said facts as well as facts of the present case that in the instant matter release application has been moved by the landlord on the

ground that he wants that his one son should live separately in the accommodation which is under the tenancy of the petitioner in order to maintain peace in the family, is a good ground for moving release application in view of the law as laid down by this Court in the case of Pyare Lal v. XIIth Additional District Judge, Allahabad and others, 1990 (1) ARC 157, in paragraph No. 8 held as under:-

"As regards the first submission of learned Counsel for the Petitioner that the Additional District Judge has not considered the evidence on record while recording the finding on the question of comparative hardship I find no merit in this submission. The family of the landlady consists of herself, her husband, one married son with a daughter in-law, one unmarried son and one unmarried daughter. The total accommodation in the tenanted house of the landlord i.e. house No. 336, Katra is three rooms which, under the circumstances, has been held to be totally insufficient to accommodate the family members of the landlady. Moreover, strained relations between the mother-in-law and daughter-in-law necessitating the need to provide a separate accommodation for the daughter-in-law in order to keep mental peace in the family has been held by this Court to be a sufficient need justifying the release of the independent accommodation for the daughter-in-law. Further it is undisputed that the Petitioner has already been evicted from the disputed premises in the year 1986 in pursuance of a decree of arrears of rent and ejectment and in the earlier writ petition No. 19976 of 1987, Savitri Devi v. IXth Addl. District Judge, Allahabad, the address of the Petitioner was given as I/I Katra Road, Madhav Kunj Allahabad City and while filing the counter affidavit the Petitioner appears to have not raised any objection to it. It is also contended by learned Counsel for the Respondent that the Petitioner in fact lives with his family members in house No. I/I Old Katra, Allahabad and is doing business of Kerosene oil and license to sell Kerosene oil has also been granted on his address 1/1 Old Katra Allahabad. Hence the Additional District Judge on consideration of evidence held that the Petitioner having been evicted as far back as 1986 had already arranged an accommodation. It is not in dispute that house No. 336 Old Katra in which the landlord is living as a tenant, has been purchased by Salig Ram who is trying to eject the landlady Savitri Devi Respondent No. 3 to this writ petition, in proceedings under Section 21(1)(a) of the Act. Thus after considering the evidence on record, and applying his mind to the same the Additional District Judge Respondent No. 1 in my opinion rightly held that in the circumstances of this case the landlady Respondent No. 3 Smt Savitri Devi would be put to greater hardship if her release application is not allowed. Thus the finding on the question of bona fide need and comparative hardship has been arrived at on consideration of the evidence on record and hence it cannot be interfered with under Article 226 of the Constitution. In the case of Baga Bagum v. Abdul Ahad Khan: AIR 1979 SC 272, the Supreme Court observed that it is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed but such an event would happen whenever a decree for eviction is passed and this by itself would not be a valid ground for refusing decree for

eviction."

20. In the present case, courts below have given categorical finding of fact that the tenant did not make any effort to search an alternative accommodation immediately after filing of the release application and even during the pendency of appeal, so the said facts were sufficient to tilt the balance of the comparative hardship against the tenant, in view of the law as laid down by Hon'ble Supreme Court in the case of B.C. Bhutada v. G.R. Mundada, A.I.R. 2003 SC 2713, wherein it was held that bona fide requirement implies an element of necessity. The necessity is a necessity without regard to the degree to which it may be. For the purpose of comparing the hardship the degree of urgency or intensity of felt need assumed significance.

21. In the above authority it has also been held in para 13, that tenant must show as to what efforts he made to purchase or take on rent other accommodation after filing of the release application which is quoted below:-

" In Piper v. Harvey, 1958(1) All ER 454, the issue as to comparative hardship arose for the consideration of Court of appeals under the Rent Act, 1975. Lord Denning opined; "when I look at all the evidence in his case and see the strong case of hardship which the landlord put forward, and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to buy or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and that is that the tenant did not prove (and the burden is on him to prove) the case of greater hardship." Hudson, L.J., opined: " the tenant has not been able to say any thing more than the minimum which every tenant can say, namely, that he was in fact been in occupation of the bungalow, and that he has not at the moment any other place to go to. He has not, however, sought to prove any thing additional to that by way of hardship such as unsuccessful attempts to find other accommodation, or, indeed, to raise the question of his relative financial incompetence as compared with the landlord." On such state of the case, the Court answered the issue as to comparative hardship against the tenant and ordered his eviction."

22. In the case of Salim Khan v. IVth Additional District Judge, Jhansi and others, 2006(1) ARC 588 has held the in respect of comparative hardship, tenant did not show what efforts they made to search alternative accommodation after filing of release application. This case sufficient to tilt the balance of hardship against them Vide Bhutada v. G.R. Mundada, 2003 Supreme Court 2713; 2005(2) ARC 899. Moreover, rent of Rs. 6/- per month which the tenants are paying is virtually as well as actually no rent. By paying such insignificant rent they must have saved a lot of money. Money saved is money earned. They must, therefore, be in a position to take another house on good rent. Further, they did not file any allotment application for allotment of another house. Under Rule 10(3) of the Rules framed under the Act, a tenant, against whom release application has been filed, is entitled to apply for allotment of another house immediately. Naturally such person is to be given

preference in the matter of allotment. Respondents did not file any such allotment application. Thus, the question of comparative hardship has also to be decided against the tenants. (See. also Raj Kumar v. Lal Khan, 2009 (2) ARC 740 and Ashis Sonar and other v. Prescribed Authority and others, 2009 (3) ARC 269.)

23. In the case of Jagdish Chandra v. District Judge, Kanpur Nagar and others, 2008 2 ARC 756, this Court after relying on the judgment given by the Apex Court in the case of Bega Begam and others v. Abdul Ahad Khan, 1979 AIR SC 272 held as under :-

"In every case where an order of eviction is passed the tenant will come on the street. The fact that all tenants will come on street if eviction is ordered, is not at all relevant for consideration of a comparative hardship of the respective parties. It is for the tenant to find out alternative accommodation. In absence of any material to show that any attempt was made by the such tenant to find out alternative accommodation release application cannot be rejected on ground that such tenant would suffer greater hardship if the release application is allowed."

24. Further, Under Rule 16 of the Rules framed under the Act, various parameters have been provided while considering the comparative hardship of the landlord qua the tenant. The Apex Court in the case of Ganga Devi v. District Judge, Nainital and others, 2008(2) ARC 584, while considering the said scheme provided in Rule 16 has held that :-

"The Court would not determine a question only on the basis of sympathy or sentiment. Stricto sensu equity as such may not have any role to play."

25. In the instant case as stated above, the appellate court had held that the tenant has not made any effort for search of alternative accommodation and it is settled proposition of law that the equity follows law and so does sympathy. If the factors mentioned in Rule 16 are considered, taking into consideration the facts of this case, no doubt it is an old tenancy but there is nothing to show that any real efforts were made by the tenant to find another accommodation, since the date of moving of release application. (See also Govind Narain v. 7th Additional District Judge, Allahabad and others [2008(1) ARC 526] and Rani Devi Jain v. Badloo and another[2008 (3) ARC 351]) and he has already got a shop in his possession during the pendency of litigation. So the argument as raised by learned counsel for petitioner on the basis of the Rules 16 (2) (A) of the Rules has got no force, rejected.

26. For the foregoing reasons as well as taking into consideration the settled position of law as stated herein above, the finding given by the appellate court while allowing the appeal filed by the tenant on the ground that his comparative need is more genuine, than the petitioner being contrary to law, liable to set aside.

27. Accordingly, the writ petition is allowed and the impugned order dated 26.02.2008 passed by opposite party no.2 is set aside.

28. However, looking into the peculiar facts of the case, the tenant/opposite party no.1 is directed to vacate the shop in question on or before 31.08.2016 and also pay the rent each and every month.