

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (M/S) No. 1283 of 2022

Keshav Chandra Dobhal	...	Petitioner
Vs.		
General Manager GMOU Limited	...	Respondent

Advocate: Mr. Navnish Negi, Advocate, for the petitioner
Mr. Raman Kumar Shah, Advocate, for the respondent

Hon'ble Sharad Kumar Sharma, J.

It's a landlord writ petition, preferred by him against the Appellate Order rendered under Section 22 of the U.P. Act No. 13 of 1972 in a Rent Control Appeal No. 1 of 2021, whereby by the impugned Appellate Order under challenge, the Appeal has been allowed and as a consequence thereto, the judgement of the learned Prescribed Authority, as it was rendered in P.A. Case No. 1 of 2019, Keshav Chandra Dobhal Vs. General Manager GMOU Ltd. on 21.09.2021, has been set aside and consequent to which the application for release preferred by the petitioner under Section 21(1)(a) of UP Urban Building (Regulation of Letting Rent and Eviction) Act (hereinafter to be called as 'the Act'), has been allowed.

2. Brief facts of the case are, that there happens to be a shop, (hereinafter called as to be 'the tenement in question'), which is commonly called as 'Dobhal Bhavan' Main Market, Rudraprayag. The tenement in question is having two floors and is also having a verendah. In accordance with the description of *chauhaddi* of the tenement in question, in the North lies shop of Mr. Rajendra Dobhal; in the East, is the ancestor's house of the landlord;

in the West, there is a national highway and in the South, there is an other tenanted shop.

3. The case of the landlord/petitioner herein, in the release application, as it was filed by him before the learned Prescribed Authority under Section 21(1)(a) of the Act, it was on the ground, that the applicant who was initially working in the paramilitary forces, as soon as he had attained the age of superannuation, he wanted the tenement in question to be vacated and be released in his favour, so that he and his unemployed son may be profitably engaged in an independent business.

4. The landlord's case in the release application was that the tenancy was created in favour of the respondent/tenant, which happens to be a fixed term tenancy and the tenement in question was supposed to be utilised for the purposes of a 'booking office', and it was contended that this fixed term tenancy was extended from time to time by the landlord /petitioner.

5. It was contended by the landlord /petitioner in the release application that the tenement in question was being utilised for the purposes of operating the buses, being operated by the respondent union herein and the rent was to be made payable @ Rs. 1500/- per month as per the covenants of the Agreement. The landlord /petitioner has filed the release application, expressing therein that he needs the disputed accommodation for his personal bonafide need for profitably engaging himself, because he having retired from the paramilitary forces in 2015, apart from the fact, that his son Karki Dobhal, who is educated

and unemployed, both of them have to be settled in the tenement in question.

6. For the aforesaid purpose, the petitioner had issued a notice to the respondent/tenant on 24th May 2019, directing the respondent/tenant to vacate the premises, but when the same was not complied with, a second notice was issued to the respondents to vacate the premises in question and on the receipt of the second notice, the respondent tenant offered for the enhancement of rent instead of vacating the premises which was not acceptable by the landlord. In that eventuality, the landlord had issued the third notice, giving 30 days' time to the tenant/respondent to vacate the tenement in question.

7. The release application thus filed by the landlord/petitioner was opposed by the respondent tenant by filing a written statement on 17th March 2021, wherein following plea was taken in defense. He contended that the tenancy was not under the terms of the written agreement, but rather it was based on an oral tenancy and he contended that he attempted to remit the rent which was due from 1st July 2019 to March 2021 to the wife of the landlord by money order, but the same was not accepted. Apart from it, it was contended that the landlord's needs cannot be said to be bonafide because according to the tenant, in the written statement, he was said to be already working in a private company.

8. What is most important here is that the tenant respondent, in para 17 of the written statement, has accepted the fact of the receipt of notices as given by the

landlord to vacate the premises. The initial notice was sent to the respondent tenant being that of 24th May 2019. The notice which was issued and as admitted by the tenant respondent in the written statement, that he had responded to the notice and had offered to enhance the rent, but the same was not acceptable by the landlord, because of his personal need to engage himself and his son, who is unemployed.

9. The landlord's in the release application has come up with the case that within a short distance from the tenement in question, the respondents have already taken a shop from where they are presently operating their business and in an eventuality, allowing of the release application they would not suffer from any hardship, as such, the release application deserves to be allowed.

10. What is important is that in a proceeding under Act No. 13 of 1972, the tenant does not have an indefeasible right to continue to occupy the premises for all times to come and that is why the law postulates that once the release application has been filed, it's incumbent on part of the tenant to plead and established by evidence, that after issuance of notice to him giving him a prior information to vacate the premises, so that he may have a breathing time to put his house in order, if he does not makes or establishes by evidence to have taken any steps to look after for an alternative accommodation or substantiate the same of having made an efforts to look for an alternative accommodation by placing the documents on record, the presumption would be that in an event of vacating the

premises, the comparative hardship of the tenant would be lesser than that of the landlord.

11. In the release application thus filed and the response given to it by the respondent tenant, the plea which has been raised by him was in the context of the aforesaid subject is from the prospective that he is **making an effort** to look for an alternative accommodation. The said expression of making an effort to look for an alternative accommodation, would not justify, that there was any positive effort made by the tenant to look for an alternative accommodation which according to Act No. 13 of 1972, looking for an alternative accommodation has had to be in consonance to the provisions contained under Section 12 to be read with Section 16, and in fact, there is nothing on record brought by the respondent tenant that after filing of the release application as back as in 2020 and his written statement on 17th March 2021, he has made any efforts for looking for an alternative accommodation and that too an effort by making a substantive and positive efforts as per law to look for an alternative accommodation otherwise the assertion would be too vague.

12. Merely raising a plea that he is not getting a proper accommodation in and nearby about the vicinity of the tenement in question, that would itself be a vague ground which will automatically lead to an inference that the in an event of eviction of the tenement in question, the hardship being faced by the tenant would not be more grievous than that of the landlord if the release application is rejected.

13. The landlord has specifically come up with the case and which is not refuted too by any positive evidence either documentary or oral, that about 500 to 600 meters away from the tenement in question, the respondent has already occupied an another accommodation from where they are operating their Union of Motor Operators and thus since they are already occupying the premises, their need would be not bonafidi as compared to that of the landlord, who after having superannuated from the paramilitary forces, wanted to profitably engage himself along with his unemployed son.

14. At the stage when the release application itself was being considered, the landlord in support of his contention has placed on record the document paper No. 6C1 by virtue of which the tenancy was created i.e. the Rent Deed and what is important is that and clever too on part of the respondent tenant that in order to oust the applicability of Act No. 13 of 1972, its during the pendency of the proceedings, he has issued a money order of unilaterally determining the rent @ of Rs. 3000/- p.m. but there was no proof, as such, on record to show that it was ever accepted by the landlord to oust the applicability of the Act. Nor there was any basis on record to show that rent was ever proved to be settled to be paid @ Rs. 3000/- p.m. as claimed by the respondent.

15. Apart from it, merely issuance of the money order is not sufficient enough to oust the applicability of the Act No. 13 of 1972, until and unless the tenant establishes by placing the assessment order of the local body being placed on record, as to at what rate he was occupying the

premises and which is mandatorily required for the purposes of assessment of local tax which has to be levied by the local body. Since having not done so and carving out a ground to create an exception of applicability of Act No. 13 of 1972 and that too at a belated stage, merely on the pretext of issuance of money order which has been an isolated pleading raised by the respondent that in itself will not suffice to enable him to sustain his occupancy or the maintainability of the proceedings under the Act No. 13 of 1972, that the tenement in question would be ousted from the exceptions provided under Section 2 of the Act No. 13 of 1972.

16. The evidences in relation to the three notices, which were given by the landlord to the respondents tenant to vacate the tenement in question, i.e. paper No. 16C1/7, 16C1/9 which were placed on record. It is needless to say that the proceedings under the Act No. 13 of 1972 which are summary in nature and detailed evidence is not required to be undergone as per the provisions contained under Section 34 to be read with Rule 22 of the Act No. 13 of 1972.

17. The contentions raised by the petitioner/ landlord in the release application or it's contravention by a written statement could be sufficiently made by filing an affidavit in support thereto. Apparently, as per the affidavit which was placed on record, the Rent Deed i.e. paper No. 16C1 which too subsisted till 30th June 2019, the execution of which not denied, was never extended and a such the analogy would be that when it is a fixed term tenancy and the same is not extended by a subsequent rent deed to be executed

interse between the landlord and tenant based on specified terms of tenancy, the cessation of valid occupancy under the deed of tenancy automatically would be against the tenant.

18. The matter was taken up by the learned Prescribed Authority on the these three aspects about the bonafide need, the learned Prescribed Authority formulated point of determination and after appreciating the evidence placed on record and dealing with an aspect about fixed term tenancy of 5 years ending on 30th June 2019! and about the rate of rent as determined to be made payable i.e. paper No. 16C! the learned Prescribed Authority has observed that since the landlord has expressed his need, that he wants to accommodate himself as well as his unemployed son in a business that itself would be sufficient enough to determine that the need of the landlord was bonafide.

19. The learned Prescribed Authority, based upon the aforesaid assertion, and while dealing with the issues has observed that the so-called theory of ousting the applicability of Act No. 13 of 1972 from the tenement in question was not a fact, which was ever attempted to be established by evidence by the tenant to derive the benefit about the so called philosophy developed by him as an afterthought about the remittance of rent @ of Rs. 3000/- per month, until and unless the said fact is established beyond doubt the argument extended merely on the pretext of paper No. 5C1 to 16C1, would not suffice the purpose to arrive at any logical conclusion that the tenement was at all ever carrying a rent of Rs. 3000/- per month as pleaded by the tenant.

20. The learned Prescribed Authority had further observed that so far as the need of the tenant is concerned, though initially they were operating the business from the tenement in question, but subsequently they themselves had got themselves shifted to an alternative accommodation from where they are operating the buses as of now, as such, the tenement in question was being simpliciter occupied by the petitioner without the same being actually put into use, consequently, the release application was rightly allowed by the judgement dated 21.09.2021.

21. The tenant respondent being aggrieved against the said judgement as it was rendered by the learned Prescribed Authority, had preferred an Appeal under Section 22, being Rent Control Appeal No. 1 of 2021. The Appeal thus preferred by the respondent /tenant had been allowed by the learned Appellate Authority vide its impugned judgement dated 26th April 2022 which is now being defended by the landlord petitioner by preferring this writ petition.

22. A very peculiar ground has been taken by the tenant respondent before this Court and that too for the first time, that the proceeding under Section 21(1)(a) of the Act was not maintainable. First of all, he is estopped to raise this plea, because there is nothing on record or pleaded in the written statement that he has ever raised this plea at the first available opportunity when he was contesting the release application, before the Prescribed Authority

23. If that be so and when he the tenant has attempted to address the Prescribed Authority on merits of the matter, it means that he by his conduct has accepted the sustainability of the proceedings and the competence of the Prescribed Authority to decide the proceedings under Section 21(1)(a) of the Act and the reason being that in a proceeding, if at all, any of the parties have a slightest doubt about the competence of the Court to decide the matter, it is his responsibility that the said plea of maintainability has had to be taken at the first available opportunity, so that the long drawn judicial proceedings may be curbed and once the issue of maintainability is decided as a preliminary issue, the scores would be settled at that stage, but once without raising a plea to the said effect if the party chooses to participate in the proceedings on merit and proceeds to address so accordingly on merits then later on, at any stage they cannot take a plea that the proceedings under Section 21(1)(a) of the Act was not maintainable and the logic behind is that according to the principles of submission, once a litigant to a proceeding had submitted to the jurisdiction of a Court and steps into to contest the proceeding on merit and ultimately he succeeds or loses, he may not be permitted to raise a question of competence of the Court, for the reason being that there could be a converse situation, that had he succeeded in the proceeding he might not have raised such a plea about the maintainability of the proceeding and if that be the situation, a party raising a plea of jurisdiction for the first time at the stage under Article 227 of the Constitution of India, cannot be permitted to be an opportunist to participate in the proceedings by raising a plea of jurisdiction and that too for the first time under

Article 227 of the Constitution of India, though the question of jurisdiction under Act No. 13 of 1972, under the given set of circumstances will depend upon an appreciation and establishment of evidence by the parties who is taking a shelter about the maintainability of proceedings and once the respondent tenant who now contends that the proceeding was not maintainable, he has not established or led an iota of evidence on the same by adducing an evidence before the learned trial Court or by raising a plea to the said effect, he could not be permitted to raise the same for the first time under Article 227 of the Constitution of India and that is the principles which has been laid down by the Hon'ble Apex Court as reported in **2011 (8) SCC 249, *Ramrameshwari Devi and Others Vs. Nirmala Devi and others*** wherein the Hon'ble Apex Court has observed that in order to curb a prolonged trial by raising a frivolous plea about the maintainability of the proceedings permitting the parties to participate in the same lead evidence, in that eventuality the question of jurisdiction has to be first raised at the initial stage, as it has been observed in para 25 of the said judgement which is extracted hereunder:-

“25. Sub-rule (2) refers to the discretion given to the court where the court may try an issue relating to the jurisdiction of the court or the bar to the suit created by any law for the time being in force as a preliminary issue. It further relates to disposal of the suit treating these points as preliminary issues and also relates to deferring the settlement of other issues, but there is no such case. The entire evidence has been led, the matter is at the stage of final arguments and the point raised does not relate to the point pertaining to sub-rule (2). Neither does it relate to the bar created by any law nor the jurisdiction of the court to entertain the suit. It is just an averment made in the plaint. Contention of the appellants for treating the said issue as a preliminary issue is against the spirit of law as referred in Order 20 Rule 5 and Order 14 Rule 2 CPC. These observations of the courts below are correct and in pursuance of the provisions of the Act.”

24. It has been observed that when the question of maintainability it goes to the root of the competence of the Court deciding the matter it has had to be raised at a preliminary issue by invoking the underline principals provided under Order 41 Rule 2 and not at the stage when the proceedings have crossed the appellate stage and reached the stage of Article 227 of the Constitution of India and that too in the absence of pleading raised to the said effect when all the parties to the proceedings have already disclosed their respective defense. This plea under the principles of submissions cannot be raised at this ripe stage

25. Under the Kerala Building Lease and Rent Control Act, a proceeding travelled up to the Hon'ble Apex Court and the three Judges Bench in a judgment as reported in **AIR 1993 SC 1616, Rukmini Amma Saradamma Vs. Respondent: Kallyani Sulochana and Ors.** has almost dealt with similar issue about the stage at which an adversary to the proceedings can raise a question of jurisdiction. The Court in its para No. 22 has observed as under:-

“22. As to whether a second revision lay to the High Court this Court by the judgment in Aundal Ammal's case (supra) held that no such revision lay. On this point the High Court referring to this very judgment held that the jurisdiction under Article 227 of the Constitution is not taken away. Therefore, the earlier order dated 21.8.86 passed in exercise of revisional jurisdiction under Section 115 of the Act is not void. We need to pause to consider this because this point ought to have been urged by the appellant immediately after the order of remit was made. Pursuant to the order of remit the appellant took a chance by participation in the proceedings before the Rent Controller, taking up the matter in appeal. Thus, having acquiesced in these proceedings she cannot question the first remit order.”

26. The Hon'ble Apex Court has observed that when any of the parties having participated in the proceedings without

initially raising a plea of its maintainability at the first available opportunity he has acquiescence his rights and he cannot be permitted to raise a question at a later stage and the said principles has been based upon yet another earlier judgement of the Hon'ble Apex Court as reported in **AIR 1987 SC 203, *Aundal Ammal Vs. Sadasivan Pillai***, the acquiescence is a basic principle which will be identically attracted in the instant case, since the respondent has acquiescence his rights at the first available opportunity when he filed his written statement, and when he has acquiescence his rights when he was participating in the proceedings before the learned Prescribed Authority! And when he has acquiescence his rights, when he has filed his written statement! when he has acquiescence his rights at the stage of contesting the writ petition for failing to raise the plea of jurisdiction! He may not be permitted to abuse the process of law by raising it for the first time under Article 227 of the Constitution of India. Thus this plea raised by the learned counsel for the respondent about the maintainability of the proceedings is answered against him.

27. Learned counsel for the respondent had addressed the Court about the perversity. The question of perversity is as perverse as the pleadings before the trial Court. Perversity cannot be decided without the said plea being supported by a comparative analysis of the pleading raised by the parties. Merely using the word 'perversity', will not make the judgement to be perverse, until and unless the person pleading perversity ventures to substantiate the same and establishes the perversity in a judgment, because the factum of perversity could be in a vacuum, but it would rather be a reality to be established by comparative

scrutiny of the evidence to be led by the parties who pleads perversity. In fact, no such effort has been made by the learned counsel for the respondent to substantiate the plea of perversity in the instant case. Thus this plea of perversity is also answered against the respondent.

28. The learned counsel for the respondent had raised a very peculiar argument that the father, who has expressed the need of the tenement in question for his son would be a third person and that too in the proceedings of Act No. 13 of 1972. This plea raised by the respondent is totally contrary to the definition of 'family', as provided under sub Section (g) of Section 3 of the Act, which includes all male lineal descendants of a family to be falling within the ambit of definition of 'family', and thus a father under any given set of circumstances, cannot be said to be a third party, when he raises a plea of a need of accommodation to engage his son who is said to be unemployed.

29. The learned counsel for the respondent has contended that since the son for whom the need was expressed in the release application, had not appeared in the witness box to record his statement, the proceedings would stand vitiated. This Court should not be thoughtless of the fact, that if the release application in its entirety is taken into consideration, the landlord has taken a specific plea that the tenement in question is required for two purposes one, that since he has superannuated from the paramilitary forces, he needs it for himself and a corresponding need of his son.

30. Here the need is a joint need of father and son not an exclusive need of his son, which could have necessitated the son to be brought into the witness box in order to establish the factum of need expressed by the landlord in his release application. Hence merely because of the fact that the son was not brought in the witness box will not vitiate the proceedings as conducted before the trial Court. Apart from it, this Court has consistently called upon the learned counsel for the respondent to substantiate his plea that bringing of a son in the witness box for whom the need has been expressed in the release application is mandatory in nature.

31. In fact, despite of repeated calls, the learned counsel for the respondent had not been able to place any credible material or law, either based on facts and law, which could have substantiate his argument that bringing of a son in a witness box is a necessary feature to consider the bonafide need of the landlord in a proceedings under Section 21(1)(a) of the Act thus, the respondent has failed on this count also.

32. What is peculiar in this case is, if the Appellate Court's order is taken into consideration, the Appellate Court has carved out an additional ground that too without a pleading for reversing the judgement of the Prescribed Authority, observing thereof that the nature of employment of the son upon the release of tenement in question since has not been expressed that would vitiate the judgement rendered by the learned Prescribed Authority.

33. This Court is of the view that a landlord when he seeks a release of the tenement for meeting the need of his son, he has not to specifically express as to in what manner his son is to be engaged in the tenement upon its release because it is exclusively falling within the domain and the decision making process of the landlord to decide as to in what manner he wants to utilize the released premises because the tenant cannot be permitted to dictate the landlord as to in what manner he would utilize the tenement in question upon its release because the landlord is the master of his own requirement and he cannot be deliberated and dictated upon by the tenant, thus the judgement of the Appellate Court since being a judgement of reversal has not dealt with the conclusive finding recorded by the learned Prescribed Authority, would be vitiated in the eyes of law, as such, it cannot be sustained, the same is accordingly quashed. The judgment, as rendered by the learned Prescribed Authority releasing the tenement in question is hereby affirmed. The Release Application is hereby allowed. The petitioner is granted 30 days' time from the date of receipt of the certified copy of this order, to vacate the tenement in question to the landlord/petitioner.

(Sharad Kumar Sharma, J.)

21.09.2023