

**Court No. - 19**

**Case :-** WRIT - A No. - 1000001 of 2002

**Petitioner :-** Ram Chander Jaswani

**Respondent :-** Madan Lal Yadav And Others

**Counsel for Petitioner :-** Virendra Misra,Aakash Prasad,Agendra Sinha,Alok Sinha,Amitav Singh,Madhusudan Dutt Misra,Suyash Manjul

**Counsel for Respondent :-** C.S.C.,N.K. Seth,S.K.Yadav:Warsi,Sachin Garg,Vijay Krishna

**Hon'ble Manish Kumar,J.**

1. Heard.

2. The present writ petition has been preferred for quashing of the impugned judgment and order dated 03.10.2001 passed by the learned IVth Additional District Judge, Lucknow in Rent Appeal No. 38/1998.

3. Learned counsel for the petitioner has submitted that a rent agreement was entered into between the petitioner along with his brothers with the respondent no. 2 for a shop.

4. It is further submitted that on 01.04.1989 due to family settlement, the joint family business was also determined and the petitioner had become unemployed. The petitioner- Late Ram Chander Jaswani, had moved an application on 01.10.1993 under Section 21 (1)(a) of the U.P. Urban Buildings (Regulation of Letting Rent & Eviction) Act, 1972 (hereinafter referred to as, the Act, 1972) showing his bonafide need for running a business of *kirana* Store as he is facing hardship being unemployed. The petitioner is now no more and in his place his son has been substituted in the present writ petition. The said application preferred by the petitioner-Late Ram Chander Jaswani was decided in his favour by the Rent Controller by its order dated 29.07.1998. Against the said order, the respondent preferred an appeal, which has been allowed by judgment and order dated 03.10.2001, which is under challenge in the present writ petition.

5. It is further submitted that before the substitution application was allowed, the second additional supplementary affidavit was filed by son of Late Ram Chander Jaswani in which the personal bonafide need has been mentioned that now the son and grandson of Late Ram Chander Jaswani wants to run the *Kirana* store in the same shop.

6. On the other hand, Sri N.K. Seth, learned Senior Advocate assisted by Shri Vijay Krishna Srivastava has raised a preliminary objection regarding the maintainability of the present petition as during the pendency of the present petition, the petitioner has expired and in his place his son has been substituted. After the expiry of the original petitioner, the personal/bona-fide need also vanished and the legal heirs i.e. son of the original petitioner is not entitled for any benefit or having locus to challenge the order passed in the appeal in favour of the respondent.

7. It is further submitted in the judgment passed in the appeal dated 29.07.1998 is a decree and the same cannot be interfered by this Court under Article 226 & 227 of the Constitution of India and in support thereof, he has relied upon the judgment of Hon'ble Supreme Court in the case of ***Kamleshwar Prasad Vs. Pradumanju Agarwal (Dead) by LR's.*** reported in **(1997) 4 SCC 413**.

8. It is further contended that the writ petition is not a continuation of the proceedings initiated under the Rent Act before the competent court of law and if the present petitioner i.e. the son of the original petitioner needs the property, he may file a separate application under Section 21(1)(a) of the Act, 1972, showing his personal bonafide need.

9. It is further submitted that the petitioner even at the time of substitution or after the substitution has been allowed has not filed any application amending the present petition showing his bonafide need.

10. It is further submitted that the application for release preferred by Late Ram Chander Jaswani had only shown his personal need and not asked for eviction from the shop for the purposes of any of the family members rather there is a specific undisputed finding by the Court below that the son of the petitioner is living separately and is having his own business and is not depending upon the petitioner i.e. Late Ram Chander Jaswani.

11. Shri Seth, learned Senior Advocate appearing on behalf of the respondent has opposed the submission advanced on behalf of petitioner that before the substitution application was allowed, the second additional supplementary affidavit was filed in which the personal bonafide need has been mentioned that now the son and grandson of Late Ram Chander Jaswani want to run the *Kirana* store in the same shop. Sri Seth further submits that to establish the personal bonafide need, the person has to disclose his other properties or evidence in support of his submission for requirement of particular shop which has neither been disclosed nor any evidence was adduced in the present writ petition.

12. In reply, learned counsel for the petitioner has submitted that the judgment relied by learned counsel for the respondents i.e. the case of Kamleshwar Prasad (supra), the petitioner is also relying upon the same and has submitted that even if the landlord died during the pendency of the writ petition before this Court, the bonafide need cannot be said to have been vanished as the business in question can be carried on by his widow or any elder son.

13. Learned Counsel for the petitioner has also relied upon the case of ***Sheshambal (Dead) Through LRS. Vs. Chelur Corporation Chelur Building and others*** reported in **(2010) 3 SCC 470** and has submitted that it is not necessary that if the requirement of the family members is not mentioned in the release application then the legal heirs or the family members of the landlord have no right and the bona-fide personal need vanishes with the demise of the person who has filed the application for release.

14. It is further submitted that the need is to be seen on the date an application for release was moved not subsequently and the Rent Controller by its judgment and order has accepted the bonafide personal need of the applicant Late Ram Chander Jaswani and as per the law settled, the business could be run by the petitioner being the son of Late Ram Chander Jaswani and again relied upon the case of Kamleshwar Prasad (supra).

15. After hearing learned counsel for the parties and going through the record of the case, the position which emerges out in the present case is that an application was preferred by Late Ram Chander Jaswani under Section 21 (1)(a) of the Act, 1972 for release of the shop in his favour after evicting the respondents for the purposes of running a business of *kirana* store for himself. The Rent Controller passed the order in his favour against which the appeal was preferred by the respondent-tenant which was allowed by judgment and order dated 03.10.2001. The appellate order passed in favour of the tenant is final and the said order is decree of the Civil Court and the said cannot be interfered by this Court in exercise of his power of superintendence under Article 226 & 227 of the Constitution of India as held by Hon'ble Supreme Court in the case of Kamleshwar Prasad (supra). The relevant paragraph no. 3 of the said judgment is quoted hereinbelow:-

*"3. Mr. Manoj Swarup, learned counsel appearing for the appellant in this Court urged that the person for whose bona fide requirement the order of eviction has been passed by the appellate authority having died during the pendency of the writ petition. The said bonafide requirement no longer subsists and consequently the High Court should have taken that fact into consideration and should have interfered with the order passed by the appellate authority for the eviction of the tenant. The learned counsel further urged that no doubt*

*the proceedings under Article 226 of the Constitution is not a continuation of the eviction proceedings under the Act, but all the same the High Court while exercising its power of supervisions under Article 226 of the Constitution is not denuded of its power to take into consideration the subsequent event that had happened which is necessary to be taken into consideration in the interest of justice. Accordingly, The High Court committed serious error in not taking into account the facts of the death of the landlord for whose bona fide requirement the order of eviction had been passed by the appellate authority, and therefore, this Court should interfere with the said order of the High Court. Having given and anxious consideration to the contention raised by the learned counsel for the appellant and under the facts and circumstances of this case we are of the considered opinion that this case does not warranted interference by this Court under Article 136 of the constitution. Under the Act the order of the appellate authority is final and the said order is a decree of the civil court and decree to a competent Court having become final cannot be interfered with by the High Court in exercise of its power of superintendence under Article 226 and 227 of the Constitution by taking into account any subsequent event which might have happened. That apart, the fact that the landlord needed the premises is question for starting a bushiness which fact has been found by the appellate authority. In eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the Writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder son. In this view to the matter, we find no force in the contention of Mr, Manoj Swarup, learned counsel appearing for the appellant and we do not find any error in the impugned judgment of the High Court under Article 136 of the Constitution. The appeal, accordingly, fails and is dismissed but in the circumstances without any order as to costs."*

16. The submission of learned counsel for the petitioner that demise of landlord will not affect the rights of the petitioner even in this eventuality where the applicant had not stated in his release application that he wants eviction of premises for his own benefit and for his family members. This contention of learned counsel for the petitioner is not acceptable for the reason that the application was moved for eviction on the ground of personal bonafide need and in the present case, particularly when it is undisputed fact between the parties that the son of late petitioner-Ram Chander Jaswani was living separately and running his own business and the release application given by the deceased petitioner was for his personal need not for his family members and petitioner being unemployed wanted the shop. Now his son has no locus to challenge the order passed by the appellate Court. The said issue has also been addressed by this Court in the case of **Durga Vs. IVth Additional District Judge and others** reported in **2005 (1) ARC 679**. The relevant paragraphs nos. 6, 7 & 8 are quoted hereinbelow:-

*"6. The contention of Sri Atul Dayal, learned Counsel for the petitioner is that since Madan Mohan was unmarried and obviously had no children and therefore, the need set up in the release application for running stationery shop from the premises in dispute stood completely vanished after his death. This subsequent development during the pendency of the writ petition, be taken into consideration and in view of the fact that the need has vanished, therefore, the writ petition deserves to be allowed and the heirs of Madan Mohan may set up their*

own need either by means of amendment or by filing a fresh application. It is further contended that this is exactly what is provided in Section 21(7) of the Act, which read as under:

(7) Where during the pendency of an application under Clause (a) of subsection (1), the landlord dies, his legal representatives shall be entitled to prosecute such application further on the basis of their own need in substitution of the need of the deceased.

7. Smt. Sunita Agarwal appearing for the landlord-respondent has contended that need set up on the date of the application allow is to be seen and that the application having been allowed by both the Courts below, the writ petition deserves to be dismissed being concluded by concurrent finding of fact. The further contention of learned Counsel for the respondent is that the orders passed by the Prescribed Authority, and the Appellate Authority amount to a decree of a Civil Court as defined under Section 2(2) of the C.P.C. Her contention is that the need set up for Madan Mohan had not vanished but still existed as his heirs could carry on his business. Counsel for the respondent has relied upon the judgment of Supreme Court in case of Kamleshwar Prasad v. Pradu Manju Agarwal, 1997 (1) ARC 627 (SC). In the said case where similar situation had arisen that the landlord whose need was set up for running the business, died during the pendency of the writ petition, the Supreme Court held that need could not be said to have lapsed but the business could have been carried on by the widow or any of the sons of the deceased. The case of Supreme Court in the case of Kamleshwar Prasad (supra) cannot be applied in the present case where four landlord jointly filed the application for eviction of the petitioner on the ground that the shop in dispute was required for setting up a business of Madan Mohan alone. Admittedly, Madan Mohan had not married and did not have any children. Madan Mohan was carrying on his business, which could have been carried on by any of his heirs. It was a case of setting of a new business by Madan Mohan. It has been brought on record by way of affidavits that the other landlord could set up business but this fact will need to be investigated and matter will have to be remanded. No formal amendment application has been filed by the landlord but only effort has been made through supplementary affidavit for setting up an additional need. It was open to the landlord either to file a fresh application for setting up a different need or to file amendment application for the said purpose.

(emphasis laid)

8. Sri Atul Dayal learned Counsel for the petitioner on the contrary has relied upon the following judgment:

1. Anant Ram Jain v. VIth Additional District Judge, Meerut and Ors., 2004 (2) ARC 179.

2. Trilok Nath v. Dharam Prakash Gupta and Ors., 2004 (1) ARC 443.

3. Sardar Gur Charan Singh v. Purshottam Dass, 2001 (1) ARC 98.

4. Nar Singh Das Agrawal (since deceased) now represented by Annapurna Devi and Ors. v. District Judge, Ballia and Ors. 2003 (2) ARC 742.

For the proposition that in view of the development that had taken place during the pendency of the petition, the need of the landlord stood vanished and the writ petition deserves to be allowed, taking into consideration the consequent development. In all these judgments it has been held that the subsequent events can be taken into consideration. In any case Section 21(7) of the Act clearly postulates that on the death of the landlord for whom need had been set up, the

heirs or other landlord will have to set up their own need in view of the changed circumstances and establish it to be bona fide."

(emphasis laid)

17. The judgment of the Hon'ble Supreme Court in the case of Sheshambal (dead) (supra) relied by learned counsel for the petitioner, in which Hon'ble Supreme Court has held in paragraph nos. 26, 27, 28 and 29, which are quoted hereunder:-

*"26. The decisions of this Court in Pratap Rai Tanwani case, Gaya Prasad case, Kamleshwar Prasad case, Shakuntala Bai case, G.C. Kapoor case, Shantilal Thakordas v. Chimanlal Maganlal Telwala and Pukhraj Jain v. Padma Kashyap (1990 (2) SCC 431) do not, in our opinion, lend any support to the proposition that subsequent developments cannot be noticed by the Court especially when such developments have an impact on the right of a party to the relief prayed for.*

*27. We may in particular refer to the decision of this Court in Shantilal Thakordas case in which this Court had overruled the earlier decision rendered in Phool Rani v. Naubat Rai Ahluwalia and held that the law permitted the eviction of the tenant for the requirement of the landlord for occupation of the landlord as residence for himself and members of his family and that such a requirement was both of the landlord and the members of his family so that upon the death of this landlord the right to sue survived to the members of the family of the deceased. That is not the position in the instant case.*

(emphasis laid)

*28. As noticed earlier, the requirement pleaded in the eviction petition by the original petitioners was their own personal requirement and not the requirement of the members of their family whether dependant or otherwise. Indeed if the deceased landlords had any dependant member of the family we may have even in the absence of a pleading assumed that the requirement pleaded extended also to the dependant member of their family. That unfortunately, for the appellants is neither the case set up nor the position on facts. The deceased couple did not have any dependant member of the family for whose benefit they could have sought eviction on the ground that she required the premises for personal occupation.*

*29. In the light of what we have stated above, we have no hesitation in holding that on the death of the petitioners in the original eviction petition their right to seek eviction on the ground of personal requirement for the demised premises became extinct and no order could on the basis of any such requirement be passed at this point of time."*

(emphasis laid)

18. The above-mentioned judgment relied by learned counsel for the petitioner is not applicable on the facts of the present case for the reason that the application was moved by the petitioner- Late Ram Chander Jaswani for eviction on the ground of personal bonafide need only and particularly when it is undisputed fact between the parties that the son of late petitioner-Ram Chander Jaswani was living separately and running his own business and the

release application given by the deceased petitioner was for his personal need not for his family members.

19. It is a settled proposition of law that if the release application did not speak about the personal/bonafide need for the family members then it is not open for the legal heirs to contest the case without establishing their bonafide need by adducing evidence. The writ petition is not in continuation of proceedings under the Rent Control Act, hence, the writ petition is devoid of merit and is accordingly dismissed.

20. At this stage, a request has been made by the learned counsel for the petitioner that a liberty may be given to the petitioner to move a fresh application for release of the shop, as a matter of fact no liberty is required to be given by this Court. However, it is always open for the petitioner to proceed for his rights before any appropriate forum as may be permissible under the law.

**Order Date :- 4.7.2024**

Nitesh