

AFR

Neutral Citation No. - 2024:AHC-LKO:48203

Court No. - 19

Case :- WRIT - A No. - 1000071 of 2013

Petitioner :- Mohd. Talaha

Respondent :- Special Judge Ayodhya Prakaran/
Addl.D.J.Lko.And Ors.

Counsel for Petitioner :- G.S.Nigam,Abhisht Saran,Manish
Jauhari

for Respondent :- A.S.G.,Ankit Srivastava,Pankaj Khare

along with

Case :- WRIT - A No. - 1000077 of 2014

Petitioner :- Chief Post Master General U.P. Circle And
Another

Respondent :- Spl. Judge Ayodhya Prakran/Addl. District
Judge Lko. And Anr.

Counsel for Petitioner :- Pankaj Khare,Ankit Srivastava

Counsel for Respondent :- Manish Kumar,Abhisht
Saran,Manish Jauhari

Hon'ble Manish Kumar,J.

1. As the questions involved in the present two writ petitions are the same and inter-connected, therefore, both the writ petitions are decided together.

2. The WRIT - A No. - 1000071 of 2013 has been filed by the landlord with the following prayer:-

a) A writ direction or order in the nature of Certiorari quashing the judgment and order dated 20/02/2013 passed by opposite party no. 1 contained in Annexure No. 1 of the writ petition.

3. The WRIT - A No. - 1000077 of 2014 has been filed by the tenant with the following prayer:-

(i) Issue a writ, order or direction in the nature of certiorari thereby setting aside the impugned judgment and order dated 20.02.2013, passed by the Special Judge, Ayodhya Prakran Additional District Judge Lucknow partly allowing the Rent Appeal No. 30 of 2010 and judgment and order dated 05.04.2010, passed by Prescribed Authority / First Additional District Judge, Small Causes, Court No. 18, Lucknow relating to P.A. Case No. 19 of 2008, as contained in Annexure Nos. 1 and 2 respectively to the writ petition.

4. Learned counsel for the petitioner in WRIT - A No. - 1000071 of 2013 i.e. the landlord has submitted that the respondent no. 3 is in the tenancy of the ground floor of the building of the petitioner situated at Aminabad, Lucknow since 1941 on the rent of Rs. 425 per month. The petitioner has two sons and to establish them independently in the business, the shop rented to the respondent no. 3 was required hence an application under Section 21 (1) (a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction), 1972 (in short " U.P. Act No. 13 of 1972") was moved before the Prescribed Authority and the Prescribed Authority accepted the bonafide need of the petitioner and granted an order in favour of the petitioner i.e. landlord, directing the respondent no. 3 to vacate the premises.

5. It is further submitted that against the order of the Prescribed Authority, the respondent no. 3 preferred an appeal under Section 22 of the U.P. Act No. 13 of 1972 which was decided in favour of the tenant/respondent no. 3 by placing reliance that earlier petitioner had issued a notice on 02.06.2003 for enhancement of rent which was not accepted by the respondent no. 3. Again a request was made in 2006 to enhance

the rent @ Rs. 25 per square feet and total area of tenancy is 2150/- square feet. The said request of the petitioner was turned down by the respondent no. 2 on 7.12.2007 and again reiterated for the enhancement of rent from Rs. 425/- to Rs. 20,000/- per month, which was not accepted by the petitioner on 10.12.2007. After three months an application under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 was moved by the petitioner on 10.3.2008 showing the bonafide need i.e. area is required for establishing his sons for running their business independently.

6. Learned counsel for the petitioner further submitted that the Appellate Court had come to the conclusion that the said application for release moved after three months from the date of rejection of offer of enhancement of rent by the tenant i.e. respondent no. 3 would show that the need was not bonafide, it was artificial but at the same time in the last part of its judgment had accepted the need of the petitioner rejecting the submissions made by the tenant i.e. respondent no. 3 that suggestion made by the tenant that the applicant i.e. a petitioner is man of sound financial condition and is capable of finding out appropriate commercial buildings/space for his sons to run their business and in the ground floor apart from the area under the tenancy of the respondent no. 3 the other shops are also available which was not accepted by the Appellate Court by giving a finding that the applicant is residing at the first floor of the building along with his family. The said building is situated in commercial area hence ground floor is more proper and convenient for running a business for his sons and as per settled proposition of law the appellant i.e. tenant would not suggest the landlord to look for the alternative commercial accommodation nor the tenant can suggest for evicting the another shop in the same building under the tenancy of some

other persons and thereafter had come to conclusion for running the business of his sons the area of 700 square feet is sufficient from the total area of 2150 square feet, which is under the tenancy of the respondent no. 3 and passed an order of release in favour of the petitioner, meaning-thereby the bonafide need was accepted by the Appellate Authority. Once it has been accepted then there was no occasion to take a decision to release only some part of the property under the tenancy of the respondent no. 3 and interference in the order passed by the Prescribed Authority is not at all required, hence the order passed is bad in the eyes of law and liable to be quashed.

7. On the other hand Sri Ankit Srivastava, learned counsel for the respondent no. 3/counsel for the petitioner in WRIT - A No. - 1000077 of 2014/tenant has submitted that when the petitioner failed to get the rent enhanced as per their desire within three months, he preferred the application under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 meaning-thereby an application preferred by the petitioner is not bonafide it was in vengeance for not enhancing the rent at the rate of Rs. 25/- per square feet. When they have not achieved the enhanced rent as per their desire and the finding given by the Appellate Court in this regard does not require for any interference. It is further submitted that once the finding was given by the Appellate Authority that the need was not bonafide and thereafter passing of the order of release of the 700 square feet of the property from the area of the tenancy of the respondent no. 3/petitioner/tenant is bad in the eyes of law and liable to be quashed as far as part of release of 700 square feet of the land from the tenancy of the tenant out of total area of 2150 square feet.

8. In reply learned counsel for the petitioner has submitted that it is an undisputed fact that after moving the application of release under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 by the petitioner the tenant/respondent/petitioner had not made any effort to look out for an alternative accommodation. He also submitted that demand of increase of rent is wholly irrelevant to determine the bonafide requirement of the premises by the appellant and in support of his submission learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble Supreme Court in the case of ***Surendra Singh Dhillon and others Vs. Vimal Jindal reported in 2022(4) ICC 842*** and judgment dated 26.7.2023 of the ***Bombay High Court in the case of Mangalserry Vs. Sukumar decided in Writ Petition No. 715 of 2018.***

9. After hearing learned counsel for the parties, going through the record of the case and the judgments relied by the learned counsel for the petitioner, the position emerges out in the present case is the case of the tenant/respondent/petitioner in WRIT - A No. - 1000077 of 2014 for denying the need of the petitioner/landlord are:-

- (i) Firstly, that when they failed to receive the rent as per their desire, an application was moved showing the bonafide need which is in-fact artificial in nature,
- (ii) Secondly, the petitioner is a financially sound person and he could make arrangement for alternative commercial accommodation of his sons for running their business,
- (iii) Thirdly, the petitioner has other shops in the same premises which is also rented and can be opted for eviction.

(iv) Fourthly, the respondent no. 3/tenant is a post office, which is a public utility service and shifting of the same is inconvenient to the public at large.

10. As far as learned counsel for the tenant/respondent no. 3/petitioner in WRIT - A No. - 1000077 of 2014 regarding the status and capability for looking for alternative accommodation etc. there is a specific finding in the impugned Appellate Order rejecting the said submission on the settled proposition of law that the tenant cannot dictate the landlord to act in what manner, as held by the Hon'ble Supreme Court in the case of ***Shiv Prasad Jaiswal Vs. Ist ADJ Azamgarh; 2006 (1) ARC 602*** and the relevant para 10 of the said judgment is quoted herein-below:-

"10. The Supreme Court in Sarla Ahuja v. United India Insurance Company Ltd... AIR 1999 SC 100., and S.N Kapoor v. B.L. Khatri. 2002 46 ALR 209 SC., has held that it is unnecessary to make an endeavour as to how else the landlord could have adjusted himself. It has also been held that in the matter of choice of accommodation some discretion and latitude has to be given to the landlord and tenant cannot dictate that landlord shall satisfy his need in the manner suggested by him. In the latter authority it has also been held that Courts cannot impose their own wisdom in advising the landlord the manner in which he can satisfy his need without disturbing the possession of the tenant."

11. By passing an order for release of 700 square feet from the tenancy of the tenant means that the bonafide need was accepted by the Appellate Court otherwise release of the part of the tenanted accommodation could not have been passed.

12. The law is settled that neither the tenant or the Court could direct the landlord. It is the choice of the landlord to choose the place for business which is more suitable for him as

per the law settled by the Hon'ble Supreme Court in the the case of Rishi Kumar Govil vs Maqsoodan And Ors;2007 (4) SCC 465. The relevant para 19 is quoted herein-below:-

"In Raghavendra Kumar v. Firm Prem Machiner & Co. AIR (2000) SC 534 it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In Gaya Prasad v. Pradeep Srivastava, AIR (2001) SC 803 it was held that the need of the landlord is to be seen on the date of application for release. In Prativa Devi (Smt.) v. T.V. Krishnan, [1996] 5 SCC 353 it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally interfered with. The High Court noted that when the Prescribed Authority passed the order son of the respondent-landlady was 20 years old and the shop was sought to be released for the purpose of settling him in business. More than 20 years have elapsed and the son has become more than 40 years of age and she has not been able to establish him as she has still to get the possession of the shop and the litigation of the dispute is still subsisting. The licence for repairing fire arms can only be obtained when there is a vacant shop available and in the absence of any vacant shop, licence cannot be obtained by him. Therefore, the High Court came to the conclusion concurring with that of the Prescribed Authority and Appellate Authority that the need of the landlady is bona fide and genuine. Considering the factual findings recorded by the Prescribed Authority, Appellate Authority and analysed by the High Court, there is no scope for any interference in this appeal which is accordingly dismissed. However, considering the period for which the premises in question are in the occupation of the appellant time is granted till 31st December, 2007 to vacate the premises subject to filing of an undertaking before the Prescribed Authority within a period of 2 weeks to deliver the vacant possession on or before the stipulated date. There will be no order as to costs.

13. As far as the submission that when the petitioner has failed to get the rent as per his desire, the release application was moved thereafter deprived the petitioner to move such

application as the said application is not bonafide but the need is artificial, the said submission is also against the law settled in the case of ***Surendra Singh Dhillon and others (Supra) Vs. Vimal Jindal*** relied by the learned counsel for the petitioner and the relevant para nos. 3 is quoted herein-below:-

"3. The The learned Counsel appearing for the Appellants argued that the Rent Controller and the Appellate Authority have passed an order of eviction finding bonafice requirement of the landlord. The demand of increase of rent is wholly irrelevant to determine the bonafide requirement of the premises by the Appellant.

14 In another Judgment of Hon'ble Bombay High Court relied by the learned counsel for the petitioner in the case of ***Mangalserry Vs. Sukumar (Supra)*** and the relevant para no. 13 is quoted herein-below:-

"13. As far as settlement is concerned, it has come on record that the petitioners have failed to act upon the terms and conditions of the settlement. Even this Court repeatedly granted opportunity to the petitioners in that regard, however, the petitioners failed to avail such opportunity. In the said backdrop, subsequently change of decision by the landlords not to sell the property does not amount to cessation of a need of the landlords."

15. From the record the position is clear that the need of the petitioner was ultimately found bonafide by the Appellate Court. The Appellate Court should have ordered for the release of the whole accommodation to meet the bonafide need of the landlord instead of only a part of it to the extent of 700 square feet and secondly, it is also clear that the petitioner had moved the application for release on not getting the desired amount of rent will not be relevant factor though for the question of bonafide need is concerned and on that ground it could not be said that the need of the petitioner was artificial in nature.

16. As far as the finding recorded that the tenant carries on functions of public convenience therefore, the accommodation may not be released in favour of the landlord since it will cause the inconvenience to the public has no relevance and it will not undo the bonafide requirement of the landlord on the basis of which he is entitled to get the tenanted accommodation release in his favour.

17. In view of discussion made above the challenge of judgment/order passed by the Prescribed Authority by the tenant does not require any interference.

18. In view of the facts discussion made hereinabove the WRIT - A No. - 1000071 of 2013 preferred by the landlord is hereby allowed and the impugned order dated 20.02.2013 is hereby quashed and the WRIT - A No. - 1000077 of 2014 filed by the tenant is dismissed.

Order Date :- 16.7.2024

Anuj Singh