

Court No. - 19

Case :- WRIT - A No. - 1000097 of 2008

Petitioner :- Shyam Chandra And Ors.

Respondent :- District Judge Sultanpur And 2 Ors.

Counsel for Petitioner :- Satya Prakash, Ashish Verma, Kumar Jaikrit, M.P. Yadav, Rajeiu Kr. Tripathi, Ram Kushal Tiwari, Sanjiv Srivastava, Shrikant Mishra

Counsel for Respondent :- C.S.C., Dinesh Kumar, Mohammad Aslam Khan, Shrikant Mishra

Hon'ble Manish Kumar, J.

1. The present writ petition has been preferred for setting aside the impugned judgment and order dated 30.04.2008 passed in Rent Appeal No. 01 of 2007 in re Shyam Chandra and another versus Ram Gopal and also the judgment and order dated 13.02.2007 passed in P.A. Case No. 249 of 1997 by the Court of Prescribed Authority/Additional Chief Judicial Magistrate, Court no. 17, Sultanpur; with a further prayer to direct respondent no. 3/private respondent to vacate and handover the peaceful possession of tenanted portion.

2. During the pendency of the present writ petition, the petitioner no. 2 has died and her legal heirs/representatives have been substituted as petitioner no. 2/1 and 2/2 as per the order dated 24.02.2011.

3. Learned counsel for petitioner has submitted that the respondent no. 3/private respondent is the tenant in the shop of which the petitioner is the landlord. The respondent no. 3 is a tenant since the time of father of petitioner no. 1.

4. It is further submitted that an application was preferred by the petitioners/landlords, under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as U.P. Act No. 13 of 1972) for evicting the tenants i.e. respondent no. 3 from the disputed shop and to release the same in favour of the petitioners as the petitioner no. 1, who is married and having children and the ingress and egress of the house of the petitioner is also through the same shop. There is also no space for storing the stock which was lying in the same.

5. It is further submitted that the respondent no. 3 had filed a written statement mentioning therein that need shown by the petitioners in their application of release under Section 21 (1) (a) is not bona-fide and genuine as the petitioners have purchased two houses separately during the pendency of the release application and using

one premises of the house as a godown. It is further stated in the written statement that another tenant Dhulai Ram had vacated the shop during the pendency of the case and the same has been joined by the petitioners in his shop so, there is no requirement for shop.

6. It is further submitted that the Prescribed Authority/Additional C.J.M. had rejected the application of the petitioners on the ground that the petitioners have a basement which can be used as a godown ignoring completely that the respondent no. 3 in its written statement had not come with a case that the petitioners are in possession of the basement which can be used as a godown and in absence of any evidence, the finding has been given.

7. It is further submitted that the subsequent development would not affect the right of the petitioners regarding bona-fide personal need as mentioned in the application preferred for release of the property in their favour and in support of his submissions learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of ***Nidhi versus Ram Kripal Sharma (dead through Legal Representatives) reported in (2017) 5 Supreme Court Cases 640***, wherein it has been held that the subsequent development will not affect the petitioners as the rights of the parties has been crystalized.

8. It is further submitted that the respondent had never ever made any effort for searching for any alternative accommodation after filing of the release application by the petitioners so the comparative hardship is in favour of the petitioners. In support of his submission, learned counsel for the petitioners has relied upon the judgment in the case of ***Smt. Bibi Begum versus Dr. Awadhesh Narain and others reported in 2008 SCC Online All 1069; (2009) 75 ALR 277*** and ***Dharmendra Singh Sonkar versus Additional District and Sessions Judge, reported in 2016 SCC Online All 3003; (2016) 115 ALR 739; (2016) 3 All LJ 23***.

9. It is further submitted that the landlord is the best judge of his requirement and the court and the tenant has no concern to dictate the landlord as to how and in what manner he should live. In support of his submissions, learned counsel for the petitioners have relied upon the judgment of Hon'ble Supreme Court in the case of ***Rishi Kumar Govil versus Maqsoodan and others, reported in (2007) 4 SCC 465***.

10. It is further submitted that the prescribed authority, on the basis of presumption that the petitioners are having basement in their possession which they can use as a godown, has rejected the release application, ignoring completely that it was not the case pleaded by the

tenant/respondent in their written statement, nor any evidence to that effect was adduced. The appellate court though on page-5 in its judgment had noted the said submission but, the said question was neither discussed nor any finding has been recorded on the same.

11. It is further submitted that the supplementary affidavit has been filed enclosing therein that the respondent is digging the soil from the basement and transporting the same by a tractor due to which there is an imminent threat to the house of the petitioners.

12. It is further submitted that the landlord is to prove the bona-fide need but does not require to establish dire or compelling need for the premises and in support of his submissions, learned counsel for the petitioners relied upon the judgment in the case of **Raghunath G. Panhale (Dead) by LRs v. Chaganlal Sundarji and Co., reported in(1999) 8 SCC 1.**

13. On the other hand, Shri Mohd. Aslam Khan, learned Advocate appearing for the respondent no. 3 has submitted that the petitioners have a basement available with them in which they can store their goods/material for which the release application has been preferred by the petitioners. He further submitted that the said fact is also mentioned in the impugned order and has said that the impugned order has been passed on the basis of the fact that the petitioners are having residential and commercial accommodation which they are using as a godown and apart from that in the said two storey house in which the respondent no. 3 is the tenant, the basement is also available which could be used as a godown to fulfil their personal need of storage as alleged in the release application. It is further submitted that another tenant Dhulai Ram, during the pendency of the case, had vacated the shop which has been joined by the petitioner in his shop.

14. After hearing learned counsel for the parties and going through the record of the case, the issue which is to be adjudicated in the present case is that the subsequent developments as mentioned above would affect the rights of the petitioners for eviction of the tenant i.e. respondent no. 3 and the plea which was neither taken nor evidence was lead by the private respondent/respondent no. 3 before the Prescribed Authority regarding the possession of the basement by the petitioners could be a ground for rejecting the application of release preferred by the petitioners.

15. The application preferred by the petitioners under Section 21(1)(a) was mainly on the ground that now petitioner no. 2 is married and having children and needed the shop in the occupation of the respondent no. 3 for his personal need and the petitioners are facing problems of

storage of goods as from the shop in possession of petitioners, there is an ingress and egress of the house. The prescribed authority in absence of any pleadings or evidence led by respondent no. 3 that the petitioner is having basement in his possession which he could use as a godown merely on the basis of presumption decided the matter, rejecting the release application. On the contrary the only averment made in the written statement is that there is a basement which is in possession of the tenants i.e. respondent no. 3.

16. Using the premises purchased during the pendency of the case as a godown will not give any right to the tenants to dictate the landlord on which property they should use as a godown. The godown is required where the shop is running. The petitioners just to avoid an adverse effect on their business as under compelling circumstances i.e. long pendency of the case, made an alternative arrangement. The law is settled that neither the tenant nor 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 Hon'ble Supreme Court in the case of **Rishi Kumar Govil (supra)**. The relevant paragraph no. 19 of the judgement of **Rishi Kumar Govil (supra)** is quoted hereinbelow:-

"19. In Ragavendra Kumar v. Firm Prem Machinery & Co. [(2000) 1 SCC 679 : 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 [(2001) 2 SCC 604: 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 Pratiba Devi 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 firearms 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 the Appellate Authority that the need of the landlady is bona fide and genuine. Considering the factual findings recorded by the prescribed authority, the 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 was in the occupation of the appellant, time is granted till 31-12-2007 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."

17. The prescribed authority has failed to consider the submission regarding comparative hardship on the point that the tenants, on learning about the submission of release application should look for an alternative accommodation. In the present case, no efforts were made by the tenants i.e. respondent no. 3 to look for an alternative accommodation. The prescribed authority has erred in giving the finding that the respondent no. 3 had approached the owners of the Lohia Market and Munna Market, who had informed respondent no. 3 that no shop is available, ignoring the fact completely that these two addresses or locations were told by the petitioners and the respondent no. 3 had approached these two places only and had not made any effort of his own to look for an alternative accommodation or move an application for allotment. There is nothing to show that any real efforts were made by the respondents to find out another accommodation as per the law settled by co-ordinate Bench of this Court in the case of **Smt. Bibi Begum (supra)**. Hence, the only one reasonable conclusion to be arrived at is that the respondent did not prove the case of greater hardship, the question of comparative hardship is to be decided against the tenants. The relevant extract of judgment of **Smt. Bibi Begum (supra)** is quoted hereinbelow:-

"4. I have gone through the judgment rendered by the prescribed authority as well as appellate authority. The appellate authority has failed to see the relevant provisions of U.P. Act XIII of 1972 and the Rules made thereunder. Right from Apex Court to this Court, the law is settled that on submission of a release application, the tenant must look for alternative accommodation/residential premises. Even as per the latest rent laws, the goodwill of a shop keeper or businessman would not play any dominant role because the good-will is like fragrance, which can travel any where, like flower's scent and the customers will go to the new location. This Court has dealt with this issue in Writ Petition No. 21 of 1999 (R/C).Bata Shoe Company v.VIIth Additional District Judge, Faizabad, which, as per learned Counsel for the petitioner, has been decided by the Apex Court."

"8. In these days, several shopping areas, malls, new markets are coming up and even in small cities, new market construction are being raised by the development authorities, which are working hard to provide residential and commercial accommodation to the urban population. The tenants on learning about the submission of release

application can look for an alternative accommodation. In fact, the process of law is abused and the tenants take advantage of the delay which takes place in adjudication of rent matters."

18. On the said same issue, the relevant extract of the co-ordinate bench of this court in the case of **Dharmendra Singh Sonkar (supra)** is quoted hereinbelow:-

"29. 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*, 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 anything 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 anything 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.

"30. In the case of *Salim Khan v. IVth Additional District Judge, Jhansi*³ has held that 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*⁴. 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. Lai Khan and Ashis Sonar v. Prescribed Authority*)."

"33. 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, Allahabad² and Rani Devi Jain v. Badloo³). So the argument as raised by learned Counsel for petitioner that Courts below have failed to compare the need between the parties has got no force, rejected."

19. As per the judgment of Hon'ble the Supreme Court in the case of **Raghunath G. Panhale (Dead) by LRs v. Chaganlal Sundarji and Co., reported in (1999) 8 SCC 1**, where the Hon'ble Supreme Court has held that in order to prove bona-fide need, a landlord does not require to establish dire or compelling need for a premises in order to establish his business and it is the choice of the landlord which would be paramount in such circumstances.

20. The submission of learned counsel for petitioner that the rights of the parties stand crystallized by institution of the suit and the subsequent development could not be seen by placing reliance upon the judgment of the Hon'ble Supreme Court in the case of **Nidhi versus Ram Kripal (supra)**. The relevant extract of the said judgment is quoted herein below:-

'16. Ordinarily, the rights of the parties stand crystallised on the date of institution of the suit. However, the court has power to take note of the subsequent events and mould the relief accordingly. Power of the court to take note of subsequent events came up for consideration in a number of decisions. In *Om Prakash Gupta v. Ranbir B. Goyal*, this Court held as under:

"11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In *Pasupuleti Venkateswarlu v. Motor & General*

Traders this Court held that a fact arising after the lis, coming to the notice of the court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court cannot be blinked at. The court may in such cases bend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed."

21. From the perusal of the judgments as mentioned above, it is undisputed that subsequent event/developments are not affecting the ground taken in the release application preferred by the petitioners as in the release application for personal bonafide need, the ground taken was that now the petitioner no. 2 has become major and got married and requires shop as through the same shop there is ingress and outgress of the house and the petitioners are short of space for keeping the stock of the goods. During this long period of litigation, such requirement has not changed. The business is running in the same shop, the entry of the house is from the same shop and with the passage of time, the business would have been increased and there is more requirement of godown for keeping the stock. The petitioner no. 1 is married having children thus, the family has expanded, so none of the circumstances have changed by subsequent developments as discussed above hence, in the present case, the rights of the parties stand crystallized on the date of the institution of the suit.

22. The prescribed authority, in absence of any pleading in the written statement filed by the tenant/respondent or adducing any evidence that the petitioners are having basement in their possession which can be used as a godown, merely on the basis of presumption rejected the release application of the petitioners, which has not been the case of the tenant. On the contrary, in the written statement in para-26 and 27 of the written statement filed before the prescribed authority, the respondent/tenant took up the case that they are in possession of the basement in their tenancy and the owner of the same is the petitioner. Before the appellate authority, the said plea was taken and argued and the same has been mentioned at page-5 of the appellate order/judgment but neither there

was any discussion nor any finding has been recorded on the said plea.

23. The appellate court has erred in deciding the appeal by taking a new ground/plea i.e. the petitioners had not disclosed the nature of the business which they are running in the shop in how much space and which type of goods they are storing for which the godown is required. The said objection was never ever raised by the respondent no. 3 either by the Prescribed Authority or before the Appellate Court, rather the respondent no. 3, throughout admitted in the proceedings before the court below that the petitioner is running the shop and doing his business, meaning thereby there is no denial of the running of the shop and doing the business by the petitioners. So, on this frivolous new ground, the appellate court has decided the matter against the petitioners. As a matter of fact, the appellate court has gone into the irrelevant question as to in what item the petitioner was carrying on his business, such questions were never raised nor were in dispute, more so, for the purpose whether a godown is required or not. In the facts & circumstances as on the record, the appellate court mislead itself in entering into such questions foreign to the merits of the case.

24. In view of the facts, circumstances and discussion made hereinabove, the writ petition is **allowed**.

25. The impugned orders dated 30.04.2008 and 13.02.2007 are hereby quashed.

26. The respondents pray for eighteen months' time for vacating the premises, which is opposed by the learned counsel for petitioners and thereafter, an undertaking was given on behalf of the respondents that the premises in question will be vacated within a period of 9 months.

27. As such, the respondents are directed to vacate the premises in question within a period of 9 months and handover the same to the petitioners.

Order date:- 11.07.2024
DiVYa