

Neutral Citation No. - 2024:AHC-LKO:34953

Court No. - 17

Case :- WRIT - A No. - 1000013 of 2010

Petitioner :- Sardar Amarjeet Singh And Ors.

Respondent :- Additional District Judge Sultanpur And Ors.

Counsel for Petitioner :- Mohd. Aslam Khan, Mohiuddin Khan

Counsel for Respondent :- C.S.C., Bhaskar Misra, Prabht Kumar, Pradeep Kumar Singh, Rajiv Kumar Bajpai, Shailesh Pathak

Hon'ble Manish Mathur, J.

(1) Heard Mr. Mohammad Arif Khan, learned Senior Counsel assisted by Mr. Mohammad Aslam Khan, learned counsel for the petitioners and Mr. Shailesh Pathak, learned counsel for opposite party nos.2 to 5.

(2) Notice to opposite party no.1 stands dispensed with.

(3) Petition has been filed challenging order dated 01.12.2009 passed by the Additional District Judge, Sultanpur in Rent Appeal No.1 of 2009, allowing the same and setting aside the judgment and order dated 12.02.2009 passed by the prescribed authority.

(4) It has been submitted that petitioners are tenants of the shop in dispute for past 35 years since the time of predecessor in interest of the opposite party nos.2 to 5, who are heirs of the original landlord. Application for release under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 was filed by the opposite party nos.2 to 5 on the ground of bonafide need. The said application was contested by the petitioners and was dismissed vide order dated 12.02.2009, whereafter the opposite parties filed the appeal, which has been allowed by means of impugned judgment.

(5) It has been submitted that it was specifically pleaded by the petitioners that the need of landlords was neither genuine nor bonafide and it was in fact merely a wish to get the property under tenancy vacated. It is submitted that for applicability of bonafide need, the application should exhibit something more than mere desire or wish of the landlord. It is submitted that in the present case, it was evident that the landlords already had other vacant premises in their possession and despite the said fact, were insisting on release of the shop in question and the said fact having been noticed by the prescribed authority, their application was rightly rejected.

(6) It has been further submitted that the prescribed authority has correctly reached a finding that there was no bonafide need on the part of landlords since they already had a vacant shop in their possession for which they had also made an offer for interchanging with the tenant and therefore, this fact was rightly recorded that since the landlords already had vacant shop in their possession with which they were ready to interchange, their bonafide need failed. It has been submitted that the issue regarding comparative hardship has therefore also been validly decided by the prescribed authority.

(7) Learned counsel has placed reliance on the following judgments :-

(i) Mst. Bega Begum & Others Vs. Abdul Ahad Khan & Others, AIR 1979 SC 272.

(ii) Smt. Maul Shree Devi Jain & Others Vs. VIII Additional District Judge, Agra & Others, Civil Misc. Writ Petition No.3794 of 1986.

(iii) M/s. Jawahar Lal Ratan Chand Nagar & Anr. Vs. VIIth Additional District Judge, Varanasi & Others, Civil Misc. Writ Petition No.2926 of 1988.

(iv) Ram Chandra Vs. XIIth Additional District & Sessions Judge, Moradabad & Others, 2008 (9) ADJ 362 : 2009 (1) All WC 225.

(8) Learned counsel appearing on behalf of opposite party nos.2 to 5 has refuted submissions advanced by learned counsel for petitioners with the submission that the prescribed authority had erroneously rejected the release application merely placing reliance on the offer of interchangeability of premises in possession of landlord with that of tenant whereas there was no specific offer which indicated that the shop in question was vacant. It is submitted that compelling need of the landlords particularly with regard to the plaintiff no.4, Shalabh Kumar, was clearly indicated. It is submitted that each and every member of a family has an independent right to conduct business and it is not for the tenant to dictate terms with regard to utilization of premises. It is submitted that the prescribed authority clearly fell in error in rejecting the release application, which has been corrected by means of impugned order, which does not require any interference particularly under Article 226 of the Constitution of India since it pertains to questions of fact.

(9) Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that trial court framed two issues; one pertaining to bonafide need and the other pertaining to comparative hardship. While deciding the question of bonafide need, trial court has specifically rejected the submission of landlords that a partition between them had been effected due to which the plaintiff no.4, Shalabh Kumar, required the premises for his own use for

commercial activity. The trial court held that the landlords had failed to produce any evidence to substantiate the plea of partition and therefore, held the partitions said to have been effected between them as suspicious.

(10) On the question of bonafide need, the trial court reached a conclusion that the plaintiff no.4, Shalabh Kumar, did not have any separate business and was in fact working with his brother-Alok Kumar and on that basis, reached a conclusion that the said Shalabh Kumar could not be said to be unemployed.

(11) The trial court thereafter considered the plea of tenants that the landlord had two other shops in their possession, which were vacant and came to a conclusion that there are four shops in possession of the landlords in which one shop was in the use and occupation of one brother, Brijesh Kumar for the business of hosiery, with another shop also in his possession as godown and the third shop was also in possession of the wife of Brijesh Kumar in which a boutique for ladies attire was being conducted, whereas the fourth room was being used as a godown for articles sold by another brother, Alok Kumar. The trial court thereafter came to a conclusion that the landlords had not approached the court with clean hands since they suppressed the aforesaid information. However, the aspect of bonafide need tilted in favour of the tenants with the trial court specifically advertent to an affidavit filed by plaintiff no.2, Brijesh Kumar to adjudicate that since the aforesaid person has clearly offered in paragraph 12 of the affidavit regarding interchanging of one shop in possession of landlords with that of the premises in occupation of tenant, no bonafide need stood established since the plaintiff no.4 could very well establish his business in the shop which was being offered by the landlords for purposes of interchanging.

(12) Since on that aspect, bonafide need was not found established, the trial court held that need of the landlords was not bonafide but only a desire and on that aspect, the issue number two pertaining to comparative hardship was also decided against the landlord. The order dated 12.02.2009 passed by the prescribed authority was thereafter assailed by the landlords in appeal, which has been allowed by means of impugned judgment and order in which the affidavit of plaintiff no.2, Brijesh Kumar was discussed.

(13) The appellate court also conducted an independent commission for inspection of the properties and came to a conclusion that the disputed shop was situated in front portion of accommodation, whereas all the four shops in possession of the landlords were situated behind it and were, therefore, not conducive for conducting business. The appellate court also recorded a finding that the shop for which an offer by the landlords was said to have been made was in fact residential in nature and could not be utilized for purposes of business. The appellate court also recorded a finding that the plaintiff no.4 did not have any separate business and was also unemployed and therefore, had a right to conduct independent business activities, which could not be said to be mala fide or a mere desire for which purpose he did not have any other alternative accommodation. It is on that ground that the appellate court reversed the finding of trial court and allowed the appeal holding comparative hardship also in favour of landlords.

(14) It is thus evident that both the courts below have recorded a concurrent finding that the plaintiff no.4, Shalabh Kumar, for whom release was being sought, did not have any separate business and was in fact engaged in helping his brother, Alok Kumar.

(15) The only aspect on which trial court found the need of landlords not to be bonafide was the affidavit of plaintiff no.2, Brijesh Kumar on which heavy reliance was placed by the trial court to record a finding that since the landlords already had alternative accommodation available with them, which they were ready and willing to exchange with the tenant, the bonafide need did not stand substantiated.

(16) The appellate court has adverted to aforesaid affidavit of Brijesh Kumar to hold that there was no such substantive offer made by the landlord particularly since the shop, which was sought to be exchanged was residential in nature not having any commercial value.

(17) On the aforesaid, it is explicit that the affidavit of plaintiff no.2, Brijesh Kumar is the pivot around which the aspect of bonafide need of landlords has been adjudicated by the trial court and has also been considered by the appellate court.

(18) The affidavit of the said plaintiff no.2, Brijesh Kumar has been brought on record as Annexure No.SA-1 to the supplementary affidavit filed by the petitioners dated 23.05.2011. A perusal of paragraph 12 of the aforesaid affidavit indicates that in paragraph 8, it has been stated that the shop said to be vacant was in fact a residential accommodation and can be handed over to the tenant in the same capacity. In paragraph 12 of the affidavit, it has been stated as follows :-

"पारा-12 यहकि मोहल्ला बढैयावीर शहर के कारोबारी इलाके में स्थित है और सड़क के दोनो तरफ आवाद है और सड़क के किनारे नाना प्रकार की दूकाने तथा कारोबारी प्रतिष्ठान होटल क्षीर सागर होटल पुष्पांजली प्रतिवादी के मकान से 50 मीटर के अन्दर है। होटल पुष्पांजली के किनारे किनारे बहुत सारी दुकाने बनी है और होटल पुष्पांजली के पश्चिम तरफ एक विजनेस काम्पलेक्स बना हुआ है जिसके मालिक राकेश कुमार सिंह है और उसमें कई दुकाने खाली है। शहर सुल्तानपुर में अनेक विजनेस काम्पलेक्स बने हुए है। प्रतिवादी ने किसी दूकान को

किराये पर लेने का कोई प्रयास नहीं किया। विवादित दुकान पहले से ही व्यवसायिक उद्देश्य से बनी हुई है और उसके अलावा मुजहिर के मकान नं० 128 में कोई बिजनेस काम्पलेक्स नहीं बना हुआ है। मुजहिर का सम्पूर्ण मकान विवादित दुकान को छोड़कर रहाइशी बना हुआ है। केवल यह सही है कि हम लोगों ने प्रतिपक्षी से दुकान खाली करने के लिए कई बार प्रार्थना किया। हम लोगों के पास कोई भी दुकान न तो खाली है और न तो उसका प्रश्न है। मकान नं० 128 में कोई भी दुकान नहीं बनी है और न तो खाली है। बहरहाल प्रतिपक्षी जिस रहाइशी कमरे को खाली होना समझता है उस कमरे को मुजहिर तथा उसके भाई और माँ प्रतिवादी को किराये पर बतौर वैकल्पिक व्यवस्था के देने को तैयार है। "

(19) Loosly translated the averments of paragraph 12 state that *'we do not have any other shop in vacant possession. House No.128 does not have any shops nor are they vacant, however, in case the defendants thinks that the said room is vacant then the landlords are ready and willing to exchange the same with the shop in his possession'*.

(20) It is thus evident from paragraph 12 of the affidavit that there is no specific averment made by the landlords that the room in their possession is either vacant or is a shop. The averments clearly indicate that in case the tenant feels that the room, which even otherwise is residential, is vacant, then the same can be exchanged. There is no categorical statement made by the landlords that the room in question in their possession is a shop, the vacant possession of which can be exchanged with the tenants for purposes of conduct of business.

(21) It is thus evident that the prescribed authority has completely misconstrued the averments made in the affidavit filed by plaintiff no.2, Brijesh Kumar to come to a conclusion that they already had vacant possession of a shop, which they were ready and willing to exchange with the tenants.

(22) A perusal of the trial court judgment also indicates that it has considered the accommodation available in House No.128

and itself indicates that there are four shops in possession of the landlords. One shop is shown in the possession of Brijesh Kumar, who is conducting his business in the name and style of *Alok Brothers* for selling hosiery material with another shop also in his possession as a godown for the said business. The third shop is shown to be in the possession of the wife of Brijesh Kumar in which she conducts the business of boutique. The fourth shop has been indicated as a godown for storage of material for the business conducted by another brother, Alok Kumar in the name and style of *Paridhan Kendra*.

(23) Once the trial court itself has recorded the aforesaid usage of the four shops, it is incomprehensible as to how the trial court come to a conclusion that any of the four shops were in vacant possession of the landlords. Thus, the entire premise of trial court is erroneous.

(24) Learned counsel for petitioners has placed reliance on judgment rendered by Supreme Court in the case of **Mst. Bega Begum** (*supra*) to submit that the words 'bonafide need' postulate an element of need as opposed to a mere desire or wish and that there should be a genuine need by a landlord for premises under tenancy, which is missing in the present case since there was no real requirement or genuine need.

(25) However, even if the aforesaid judgment is made applicable in the present facts and circumstances of the case, it is evident that a concurrent finding has been recorded by both the courts below that the plaintiff no.4, for whom shop in question was sought to be released has been held not having any separate business. While both the courts below have recorded a finding that the said plaintiff is working with his brother, Alok Kumar, they have reached different findings regarding his employment with the trial court indicating that he

is otherwise employed and the appellate court not finding it employment but merely helping out the brother.

(26) Even on that aspect, the trial court if it was recording a finding that plaintiff no.4 was employed by his brother, should have adverted to the fact whether the plaintiff no.4 was in receipt of any remuneration for on that aspect only it could have been said that the plaintiff no.4 working with his brother was employed and not merely helping out. However, there is no such finding recorded by the trial court.

(27) In view of aforesaid, it is quite evident that the plaintiff no.4 was admitted to be a member of the family of landlords with the concurrent finding that he did not have any separate business in his name, the release application cannot be said to have been filed without any bonafide need.

(28) In the said judgment of **Mst. Beg Begum (supra)** itself, however, in paragraph 22, the following has been held :-

"22. On the other hand the defendants have been running the hotel for the last 30 years and must have made sufficient profits. To begin with, the defendants had taken the lease only for 10 years which now by virtue of the statute has been extended to 30 years which is a sufficiently long period for which the plaintiffs have been deprived of the possession of the house. There is thus no equity in favour of the respondents for continuing in possession any further."

(29) Thus, it is quite evident that in the aforesaid judgment itself Hon'ble Supreme Court has held that since the tenant has been in occupation of the property in question for a period of 30 years, there is no equity in their favour for continuing in possession any further. In the instant case, it is admitted that the tenants have been in possession of the property in question for a period of 35 years.

(30) Learned counsel has also placed reliance on judgment rendered by Coordinate Benches of this Court in the case of

Smt. Maul Shree Devi Jain (*supra*) and **M/s. Jawahar Lal Ratan Chand Nagar (*supra*)** to submit that the expression 'bonafide need' indicates an element of need and not a mere desire. The aforesaid aspect has already been considered as indicated here-in-above.

(31) Learned counsel for opposite parties has placed reliance on the judgments rendered in the case of **Zareena Haider & Others Vs. Special Judge E.C. Act/ ADJ, Lucknow & Others**, reported in 2013 (31) LCD 2396, **Mohd. Iliyas Vs. Additional District Judge & Others**, reported in 2016 (34) LCD 905 and **Mohammad Azam & Others Vs. District Judge, Barabanki & Others**, reported in 2013 (31) LCD 1331. Upon applicability of aforesaid judgments, it is evident that there is consistent enunciation of law that the landlord is the best judge of his requirements for residential or business purpose and the tenant cannot dictate terms and conditions for use of same.

(32) In the case of **Ram Chandra (*supra*)**, it has also been held as noticed in the case of **AIR 2003 SC 532 "Akhileshwar Kumar v. Mustaqim," AIR 2003 SC 780 "Sushila v. IInd Addl. District Judge, Banda"** and **Rishi Kumar Govil v. Maqsoodan and others, 2007 (4) SCC 465** by Hon'ble Supreme Court that every member of landlord's family is entitled to conduct independent separate business and cannot be compelled to participate in the family business.

(33) Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is thus evident that the need indicated by the landlords was in fact bonafide and genuine and not a mere desire to evict the tenants. The trial court has clearly fell in error in adjudicating bonafide need against the landlords placing reliance and misconstruing the

affidavit filed by the landlords. In view of discussion made here-in-above, it is evident that error of trial court has been corrected by means of the impugned judgment and order dated 01.12.2009, with which no exception can be taken.

(34) In view of aforesaid, the petition being devoid of merits is **dismissed**.

(35) Parties to bear their own costs.

(36) At this juncture, learned counsel for petitioners on the basis of instructions submits that one year time may be granted to the tenants to vacate the premises in question. The same has been opposed by learned counsel for private opposite parties, who is not willing to provide more than six months time.

(37) Balancing needs of both the parties, it is directed that the tenants/ petitioners shall handover the vacant and peaceful possession of the premises as indicated in the plaint within eight months from today i.e. latest by 06.01.2025. It is also directed that admitted rent of the accommodation in question being Rs.150/- per month shall be continued to be paid by the tenants to the landlords within first week of every month.

(38) Affidavit of undertaking shall be furnished by the petitioners within two weeks from today.

(39) In case of default by the tenants/ petitioners to adhere to the conditions indicated here-in-above, the opposite parties are at liberty to bring the same to the notice of this Court by means of an affidavit or to seek execution thereof.

[Manish Mathur,J.]

Order Date :- 6.5.2024

Mohd. Sharif