

RESERVE JUDGMENT

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 5004 of 2023

Petitioner :- Satya Narayan And 3 Others

Respondent :- Pawan Kumar

Counsel for Petitioner :- Surya Prakash Singh

Counsel for Respondent :- Ashutosh Singh, Hari Prasad Gupta

Hon'ble Alok Mathur, J.

1. Heard Sri Surya Prakash Singh, learned counsel for the petitioners as well as Sri Hari Prasad Gupta, learned counsel appearing for the respondent.

2. By means of present writ petition the petitioner has assailed the validity of order dated 08.09.2023, passed by Additional District Judge, Sultanpur in Rent Appeal No. 2 of 2019, directing the petitioner to vacate the property situated at House No. 1119 (Second Floor), Ward No. 9 (Old No. 317), Nagar Panchayat Musafir Khana, District - Amethi and handing over vacant possession of the same to the respondent.

3. It has been submitted by learned counsel for the petitioner that respondent has filed a suit for eviction under Section 21(1)A of the U.P. Act No. 13 of 1972, against the petitioner with regard to aforesaid property. In his application it was stated that respondents were tenants of his late father Bhawani Prasad and on previous occasion also suit for eviction being Suit No. 371 of 1982 was filed before the Civil Judge (Senior Division), Musafir Khana, Amethi, and was dismissed in default on 01/03/1995. An application for recall was filed for setting aside the order dismissing the case for want of prosecution, which is still pending. It was further stated that the said property is in a dilapidated condition and requires immediate repair and also that family of respondent has increased and that his son Praveen Kumar is

unemployed and he wants the said premises for the purpose of opening a shop for his son. It was stated that after having the property vacated from the petitioner the respondent wants to repair the said property and utilize the same for employment of his son.

4. The respondent has further stated that he has given repeated notices to the petitioner to vacate the said property but neither has he looked for any alternative accommodation nor has he vacated the said property. A legal notice was sent on 09.05.2014, in pursuance to which the petitioner has failed to vacate the said property nor has he given any satisfactory explanation to the said notice.

5. The petitioner has put in appearance in the said proceedings and contested the claim of respondent. In opposition he has submitted that the opposite party has a house in Ward No. 10 and also has a residence at Sultanpur-Lucknow highway and also owns four shops. He has further stated that neither the petitioner nor his father were ever tenants of opposite party. He had further stated that father of opposite party namely Bhawani Prasad has filed suit of eviction against petitioner but the said suit was dismissed by order dated 28.11.1987 by Additional Munsif, Sultanpur and an appeal against said order was also decided on 13.11.1992 by Ist Additional District Judge, Sultanpur remanding the matter back to the lower Court. Subsequently, the said suit has abated on 01.03.1995 against which an application for setting aside abatement is still pending.

6. The District Judge while deciding the appeal has considered all the issues in great detail and depth. The first issue considered is with regard to the multiplicity of litigation pending and also that previously suit was filed by the respondent for eviction which was dismissed on 28.11.1987. It has been submitted that in the Suit No. 371 of 1982 – Bhawani Prasad Vs. Ranji Lal, it was stated by the respondent/plaintiff that petitioner is tenant in the ground floor of the said premises on rent of Rs.30/- per month. As there was wedding of

daughter of the petitioner and for the said purpose first floor was given for short period for purposes of wedding, but it seems that the petitioner continued to retain possession of first floor and consequently a suit for eviction was filed. The said suit was dismissed only on the ground of jurisdiction holding that the petitioner could not demonstrate that first floor was given on license, and if first floor was given on rent then provisions of Act no. 13 of 1972 were applicable and consequently, suit was dismissed.

7. The District Judge while considering this aspect has held that no adverse inference of the said proceedings can be drawn against respondent and rather it supports the case of the respondent and it is in the said circumstances that the suit was dismissed. He observed that the present proceedings relate to the ground floor and dismissal of the aforesaid suit would have no adverse consequences in the present case.

8. Further it has also been considered that Suit No. 1020 of 1996 was filed by one Virendra Kumar and Suresh Kumar claiming ownership of the disputed property and claiming half portion of the said property. The said suit was dismissed by the Civil Judge (Junior Division) on 25.05.2011 and a Civil Appeal No. 122 of 2021 was also dismissed up holding the order of trial Court by means of order dated 09.11.2013.

9. Against the said orders second appeal was preferred before this Court being Appeal No. 40 of 2014, where an order of status quo has been passed. The District Judge has noticed that in the said suit dispute was regarding partition. He has further noticed that on the date of passing of said order the suit for eviction was already pending before the Prescribed Authority and in case it was the intention of the Court was to grant protection to the petitioner then same would have been specifically stated and consequently he has held that order of status quo would not effect the proceedings against the petitioner.

10. Lastly, with regard to relationship of the landlord and tenant which has been denied by the petitioner, a finding has been returned against him and it has been stated that in the pleadings in various applications filed by the petitioner, he has admitted that he is the tenant of respondent and also there was sufficient evidence available on record in the form of receipts of rent paid by the petitioner and consequently, no interference is required in the findings of the Courts below.

11. With regard to comparative hardship, the Courts have given their anxious consideration, where it has been stated that family of the landlord has increased and also that his son is unemployed and for whom he wants to open a shop and also that the house is in dilapidated condition for which immediate repairs are required.

12. On the other hand it was also shown that the petitioner has purchased land in village – Bahauli, Musafirkana and has built a house and also that he had not made any statement with regard to the finding of alternative accommodation and in the aforesaid facts the Court have returned finding in favour of the respondent and against the petitioner.

13. Heard learned counsel for the parties and perused the record.

14. The counsel of the petitioners while assailing the impugned orders has firstly disputed that the respondent is the landlord of the said premises. He submits that the disputed property was taken on rent from late Bhavani Prasad. Bhavani Prasad after his death is survived by the petitioner who is his son, his wife and daughter Malti Devi. The wife and daughter of Bhavani Prasad have not been made parties in the present case the case was likely to be dismissed on the ground of non-joinder of necessary parties.

15. Considering the arguments of the petitioners in this regard, undisputedly, the respondent is the son of the original landlord. Even if the wife and daughter of Bhavani Prasad have not filed suit for

eviction against the petitioners, then it would have no bearing on the case. At this stage it would be relevant to take note of the judgment of the Hon'ble Supreme Court in the case of **Kanta Goel vs. B.P. Pathak and Others, (1977) 2 SCC 814** wherein at paragraph no.7 the Apex Court held that the co-owner is as much as an owner of the entire property as a sole owner of the property is and a suit for eviction is maintainable in absence of the other co-owners on record. Paragraph 7 of the said judgment is quoted herein below :

“7. This Court, in Sri Ram Pasricha, (1976 4 SCC 184) clarified that a coowner is as much an owner of the entire property as any sole owner of the property is: "Jurisprudentially, it is not correct to say that a co-owner of property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner of the property It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and coowner of the premises, is not the owner of the premises within the meaning of Section 13(1) (f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of Section 13(1) (f) as long as he is a co-owner of the property, being at the same time acknowledged landlord of the defendants." That case also was one for eviction under the rent control law of Bengal. The law having been thus put beyond doubt, the contention that the absence of the other co-owners on record disentitled the first respondent from suing for eviction, fails. We are not called upon to consider the piquant situation that might arise if some of the co-owners wanted the tenant to continue contrary to the relief claimed by the evicting co-owner.” 10. From the said judgment it would therefore be clear that each

co-owner has a separate independent right to file a suit for eviction. In the instant case the respondents/present appellants before the First Appellate Court became the coowner of the property in question after the death of the original plaintiff which happened much after the suit initially was decreed by the Trial Court and as such each of the appellants/the respondents herein have an independent right to seek eviction.”

16. Accordingly, relying upon the judgement of the Apex Court in the case of **Kanta Goel vs. B.P. Pathak and Others (supra)**, this Court is of the considered view that any co-owner can also bring the suit for eviction of the tenant in as much as every co-owner is also the owner of the property and is vested with the right of eviction of the tenant. The arguments of the petitioners in this regard are rejected, and this Court is of the view that the suit for eviction did not suffer from non-joinder of necessary parties.

17. The 2nd argument which deserves consideration is the order dated 29/10/2014 whereby status quo was directed to be maintained with regard to the property in question by the High Court. The order was passed in the Second Appeal No. 40 of 2014, which is pending before this Court. The dispute in the said case was with regard to the suit for partition brought by uncles of the respondent namely Virendra Kumar and Suresh Kumar. Unable to demonstrate their right in the said property and accordingly the suit as well as the first appeal was dismissed. At the time when the order dated 29/10/2014 in the second appeal was between the petitioner and the respondents were pending, and in case it would have been intention of this Court that the status quo would apply even to the petitioners, then specific order would have been passed. Even otherwise the dispute was between the respondent and his uncles. By passing the status quo order the Court would have only sought status quo with regard to the disputed

property till the outcome of the second appeal, and unless provided the status quo order could not be extended to preserve the tenancy of the petitioners. No other cogent interpretation of the aforesaid facts in the order of this Court could be submitted on behalf of the petitioners, and accordingly the arguments in this regard are rejected.

18. It was contended that considering the comparative hardship case is made out for interference, inasmuch as the landlord has alternative accommodation as well as shops, expanded family of the landlord can be accommodated in the said property, and the business can be started in the other shops owned by the respondent/landlord. To test the arguments of the petitioner it is necessary to consider the various renditions of this Court as well as the Supreme Court in this regard.

19. Coordinate bench in the case of **Vijay Kumar Banswar vs Awadhesh Kumar Jaisawal 2023 SCC Online ALL 2640** has observed as under:-

“A tenant or the Court cannot direct the landlord how and in what manner he should live/ arrange affairs. There is no bar which can restrict a landlord from beneficial enjoyment of his own property.

14. Relying on decisions of Apex Court, the High Court further observed :-

“20. In the case of R.C Tamrakar vs Nidi Lekha AIR 2001 SC 3806 it was held by the Supreme Court that law is well settled that it is for the landlord to decide how in what manner he should live and that he is the best judge of his essential requirement. In deciding the question of bonfide requirement, it is unnecessary to make and endeavour as to how else landlord could have adjusted himself.”

20. The Apex Court in the case of **Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada, (2003) 2 SCC 320** has observed as under :-

“12. In Bega Begum v. Abdul Ahad Khan [(1979) 1 SCC 273] pari materia provision contained in the Jammu and

Kashmir Rent Act came up for the consideration of this Court. It was observed that it is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed but such an event would happen whenever a decree for eviction is passed and merely because the tenant will be ousted from the premises where he was running his activity cannot, by itself, be considered to be a hardship and be a valid ground for refusing the landlord a decree for eviction. In deciding the extent of the hardship, each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable. The owner of the property cannot be denied eviction and compelled to live poorly merely to enable the tenants to carry on their flourishing business activity at the cost of the landlord. The fact that there is no other means for the landlord to augment his income except by getting the tenancy premises vacated compared against the conduct of the tenant who having obtained the premises for a fixed number of years has overstayed and enjoyed the premises for a long period of time are relevant factors not to deprive the landlord from the possession over the tenancy premises and recording a finding of no equity in favour of the tenants continuing in possession any further. If the tenants prove that they will not be able to get any accommodation anywhere in the city, that may be a relevant consideration. However, the tenant cannot insist on getting an alternative accommodation of a similar nature in the same locality because that will be asking for the impossible. What are to be weighed as relevant factors are the comparative inconvenience, loss, trouble and prejudice.”

21. The Apex Court in ***Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada***, (supra) has further observed as under :

“13. In *Piper v. Harvey* [(1958) 1 All ER 454] the issue as to comparative hardship arose for the consideration of the Court of Appeal under the Rent Act, 1957. Lord Denning opined:

“When I look at all the evidence in this 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.”

Hodson, L.J. opined:

“The tenant has not been able to say anything more than the minimum which every tenant can say, namely, that he has 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.”

22. Considering the arguments of the petitioners in light of law as discussed above it is noticed that the petitioners are tenant for last more than 3 decades and the history of litigation starts from 1982 onwards. The tenant was unsuccessful in the previous attempt when landlord sought eviction on the grounds of non-payment of rent. The petitioner was able to demonstrate that there was no arrears of rent outstanding before the court and therefore no orders were passed on the suit preferred by the landlord.

23. In the present case eviction has been sought on the ground that the property is required for personal use on account of the fact that the family of the landlord has increased, and also that he requires to open a business for his son. The petitioner on the other hand has stated that the landlord has alternative property and shops. The petitioner either before the trial court or before this court has not been able to contest the ground on which the eviction has been sought that is with regard to the personal need of the landlord. It is undisputed that the need of the landlord is bonafide, the Court below have adequately considered

the case in its proper perspective and even the arguments of the petitioner have been adequately dealt with and the finding has been returned in favour of the landlord.

24. On the ground of comparative hardship also no case is made out by the petitioner, so as to interfere with the order of the trial court. The tenant cannot dictate as to in which of the property owned by the landlord he should reside, or where he should open the business for his unemployed son. These matters lie clearly in the domain of the landlord and tenant cannot dictate in such matters. On such state of the case, the Court answered the issue as to comparative hardship against the tenant and ordered his eviction. Question of comparative hardship certainly tilts in favour of the landlord since aforesaid circumstance has relevant bearing while deciding the question of comparative hardship. The arguments of the petitioners in this regard are also rejected.

25. In light of the aforesaid discussion no case is made out for interference with the order dated 08/09/2023 impugned in the present writ petition, and accordingly the writ petition is **dismissed**.

Order Date :- 08.01.2024

A. Verma

(Alok Mathur, J.)