

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.7796-7797 of 2014

(Arising out of S.L.P(c) Nos.34694-34695 of 2013)

KRISHNA KUMAR RASTOGI

....APPELLANT

VERSUS

SUMITRA DEVI

....RESPONDENT

JUDGMENT**PRAFULLA C. PANT, J.**

1. Leave granted.
2. These appeals are directed against the judgment and order dated 12th October, 2006 passed by the High Court of judicature at Allahabad in Civil Misc. Writ Petition No.34997 of 2000 whereby the writ petition filed by the landlord has

been dismissed, and the order dated 13th February, 2012 passed on Review Application No.225618 of 2006, whereby the said application has also been rejected.

3. Brief facts of the case are that the present appellant (landlord) filed an application under Section 21(1)(a) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred as U.P. Act No.13 of 1972) against the respondent Sumitra Devi (tenant) for release of the shop in question situated in Shivaji Market (Chhota Bazar), Shyohara, District Bijnor, before the Prescribed Authority/Addl. Civil Judge(Senior Division), Nagina. It is pleaded on behalf of the appellant that the respondent was tenant of the appellant in the shop on rent @ Rs.125/- per month. The appellant further pleaded that he needed the shop in question to establish his son Amit Kumar in the business by opening a General Merchant Shop in it. It is also alleged by the appellant that vide notice dated 11th March, 1985, the appellant asked the respondent to vacate the premises occupied by her as the same was required by the landlord/appellant as above, and since the

respondent did not vacate the shop, the application for release of the shop was moved by the appellant before the Prescribed Authority/Addl. Civil Judge (S.D.), Nagina.

4. The respondent/tenant contested the application for release of the accommodation and denied the allegations contained in it. It is pleaded by her that she has three sons and four daughters apart from her husband in the family, and her hardship is more than that of the appellant. It is further stated by her that the need of the appellant is not genuine. It is further stated by her that the respondent through her son sells shoes in the shop, and does not use the shop as store, as alleged by the appellant. It is also alleged that the appellant actually wants enhancement of rent, and the answering respondent is ready to pay Rs.300/- per month instead of Rs.125/- per month as rent. It is also pointed out by the respondent in her pleading that earlier suit No. 198 of 1980 (Krishna Kumar vs. Sumitra Devi) was instituted by the appellant for vacation of the shop, and when he failed in it, the present proceeding has been drawn.

5. By way of amendment on 11th August, 1995 respondent further took the plea that during the pendency of the proceedings, Jayanti Prasad, brother of the appellant had filed proceedings No.6 of 1987 against Chaturpal Gupta – husband of the respondent on personal ground of necessity and said application has been allowed against which the appeal is pending. Lastly, it is pleaded by the respondent that the respondent has attempted to search another shop but the same was not available near the disputed shop.

6. In reply to the amended plea of the respondent, the appellant pleaded that even if the application of his brother Jayanti Prasad is allowed, it does not fulfill the necessity of the appellant and his son for the shop in question. It is also pleaded by the appellant that actually husband of the respondent is running the business in another shop of shoes belonging to one of his relatives.

7. The affidavits were exchanged and after recording evidence and hearing the parties, the Prescribed Authority

accepted the case of the appellant/landlord and allowed the application for release of shop in his favour vide order dated 21st September, 1999 against which the tenant (present respondent) Sumitra Devi filed Rent Control Appeal No. 9 of 1999 before Additional District Judge, Bijnor, and said Authority after hearing the parties vide its order dated 23rd April, 2000 allowed the appeal and set aside the order passed by the Prescribed Authority/Addl. Civil Judge(S.D), Nagina. Aggrieved by the said order dated 23rd April, 2000, the appellant filed Civil Misc. Writ Petition No. 34997 of 2000 before the High Court of judicature at Allahabad, and said petition, after hearing the parties, was dismissed. Hence these appeals are before us.

JUDGMENT

8. We have heard learned counsel for the parties and considered their submissions.

9. Before further discussion, we think it just and proper to quote the relevant provisions of law under which the release application was moved:

“21. Proceedings for release of building under occupation of tenant. –(1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely, –

- (a) that the building is *bona fide* required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;
- (b) that the building is in a dilapidated condition and is required for purposes of demolition and new construction:

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds, mentioned in clause (a), unless a period of three years has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years:

Provided further that if any application under clause (a) is made in respect of [any building let out exclusively for non-residential purposes] (subs by U.P. Act 28 of 1976 (w.e.f.5.7.1976)) the prescribed authority while making the order of eviction shall, after considering all relevant facts of the case, award against the landlord to the tenant [an amount not exceeding two years' rent] (subs by U.P. Act 28 of 1976 (w.e.f.5.7.1976)) as compensation and may, subject to rules, impose such other conditions as it thinks fit:

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Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed] Ins. by U.P. Act 28 of 1976 and shall be deemed always to have been inserted.

Explanation – In the case of a residential building:-

(i) Where the tenant or any member of his family [who has been normally residing with or is wholly dependant on him] has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained;

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- (4) An order under [sub-section(I) or sub-section(I-A) or sub section (2)], may be made notwithstanding that the tenancy has not been determined:

Provided that no such order shall be made in the case of a tenancy created for a fixed term by a registered lease before the expiry of such term.

- (5) On an order being made under [sub-section(I), or sub-section(I-A) or sub section (2)], the building or part or appurtenant land, as the case may be, shall stand released in favour of the landlord:

Provided that on the occurrence of any of the circumstances mentioned in Section 24, any building or part thereof (but not appurtenant land alone) released as above, shall, without prejudice to the provisions of Section 24, be deemed to become again subject to allotment in accordance with Chapter III.

- (6) On the expiration of a period of thirty days from an order under [sub-section(I) or sub-section(I-A) or sub section (2)], the tenancy of the tenant shall stand determined in its entirety or, as the case may be, in respect of any part of appurtenant land released in favour of the landlord, and in the latter case, the rent payable for the remainder of the building under tenancy shall be such as may be agreed upon between the parties and in the absence of such agreement as may be determined under Section 8.”

10. Sub-Rule (2) of Rule 16 of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 framed under U.P. Act 13 of 1972 reads as under:

“16. Application for release on the ground of personal requirement [Sections 21(1)(a) and 34(8)]. –

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(2) While considering an application for release under clause (a) of sub-section(1) of Section 21 in respect of a building let out for purposes of any business, the prescribed authority shall also have regard to such facts as the following:-

(a) The greater the period since when the tenant opposite party, or the original tenant whose heir the opposite party is, has been carrying on his business in that building, the less the justification for allowing the application;

(b) where the tenant has available with him suitable accommodation to which he can shift his business without substantial loss there shall be greater justification for allowing the application;

(c) the greater the existing business of the landlord's own, apart from the business proposed to be set up in the leased premises, the less the justification for allowing the application, and even if an application is allowed in such a case, the prescribed authority may on the application of the tenant impose the condition where the landlord has available with him other accommodation (whether subject to the Act or not) which is not suitable for his own proposed business but may serve the purpose of the tenant, that the landlord shall let out that accommodation to the tenant on a fair rent to be fixed by the prescribed authority;

(d) where a son or unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant of the landlord

has, after the building was originally let out, completed his or her technical education and is not employed in Government service, and wants to engage in self-employment, his or her need shall be given due consideration.”

11. In **Mohd. Ayub and Another vs Mukesh Chand**

(2012) 2 SCC 155, while interpreting the above provisions of

law, this Court has observed in para 15 as under:

“ **15.** It is well settled the landlord’s requirement need not be a dire necessity. The court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start. It was wrong on the part of the District Court to hold that the appellants’ case that their sons want to start the general merchant business is a pretence because they are dealing in eggsSimilarly, length of tenancy of the respondent in the circumstances of the case ought not to have weighed with the courts below.”

12. In para 17 of the case of Ayub Khan (supra), this Court

further observed:

“**17.** It is also important to note that there is nothing on record to show that during the pendency of this litigation the respondent made any genuine efforts to find out any alternative accommodation”.

13. In **Rishi Kumar Govil** vs. **Maqsoodan and Ors** (2007)

4 SCC 465, on the plea and evidence relating to bona fide need of landlord, this Court in para 19 observed as under:

“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 Prativa Devi vs 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.”

14. In the present case, on going through the papers on record we find that the High Court has given too much emphasis to the affidavit filed by the witness Vijay Pratap Singh that the appellant attempted to sell disputed shop to him. It is relevant to mention here that the said fact was denied by the appellant. In our opinion, merely for the

reason that some witness has stated that the landlord attempted to sell the property his statement cannot be said to be reliable, as has been believed by the High Court or the Appellate Court, unless such fact is supported with documentary proof. There appears no document on record to support the bald statement of the witness Vijay Kumar Singh to dislodge the case of bonafide requirement of the shop claimed by the appellant for his son who was unemployed.

15. Another fact relied by the High Court pertains to the fact that elder son of the appellant was running a business as a tenant in a shop opposite to the disputed shop. Had it been found that the son for whom the landlord needed the shop had already got his own shop, it could have been said that the need for the landlord is not genuine, but in the present case if one of the sons was running his business that too in a rented accommodation, it cannot be said that the need of the landlord was not bonafide. The sons of the appellant are not supposed to starve on street till the shop is actually vacated for them.

16. For the reasons as discussed above, we are of the view that the High Court has erred in law in dismissing the petition of the appellant. We further find that the Appellate Court has allowed the appeal of the tenant against the weight of the evidence on record. We concur the view taken by the trial court /Prescribed Authority. Accordingly, we allow these appeals and set aside the orders challenged before us. However, considering the facts and circumstances of the case, we allow the respondent / tenant to vacate the premises by 31st December, 2014 whereafter the landlord/appellant shall be at liberty to get executed the order dated 21st September, 1999 passed by the Prescribed Authority/Addl. Civil Judge (S.D), Nagina. However, there is no order as to costs.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J
(PRAFULLA C. PANT)

New Delhi
August 20, 2014