

CASE NO.:
Appeal (civil) 1394 of 1999

PETITIONER:
G. C. KAPOOR

Vs.

RESPONDENT:
NAND KUMAR BHASIN & ORS.

DATE OF JUDGMENT: 20/11/2001

BENCH:
Syed Shah Mohammed Quadri & S.N. Phukan

JUDGMENT:

Phukan, J.

This appeal, by special leave, arises from the judgment of the High Court of Allahabad, Lucknow Bench dated January 12, 1998 passed in Writ Petition No.02 (RC)/1998. By the impugned judgment the High Court dismissed the writ petition filed by the landlord.

The suit premises was let out by the appellant to the contesting respondent No.1 and at that time his son Rohit was a minor. In the year 1992, Rohit obtained a post-graduate diploma in computer science and thereafter the appellant filed an application under clause (a) of sub-section (1) of Section 21 of the Uttar Pradesh Urban Buildings (Regulation of Lettings, Rent and Eviction) Act, 1972 (for short the Act) for the eviction of the respondent from that suit premises on the ground that it was required bonafide for starting a computer consultancy centre as Rohit acquired necessary qualification and was unemployed. It was contended that the appellant has no other alternative accommodation. It was further pleaded that other portion of the building, which was let out to M/s. J.K. Industries would also be required for the above purpose, as the total requirement of space for starting such a centre was 2000 sq. ft. and an eviction petition was also filed against M/s. J.K. Industries. It may be stated that said M/s. J.K. Industries has vacated that portion of the building and is now available to the appellant.

The contesting respondent opposed the application inter alia on the grounds that (1) neither the appellant nor his son has sufficient resources to set up such a centre, (2) the suit premises is neither suitable nor sufficient for the above purpose and (3) that it is only a dream of the appellant to start the computer consultancy centre. It was averred that respondent No.1 has got dealership of tractors, motorcycles and scooters and the suit premises have all along been used for the said business purpose. As the suit premises eminently situated at the market place, the contesting respondent will suffer irreparable loss and hardship in case of eviction.

Affidavits and counter affidavits were filed by the parties, as required under the provision of the act and rules framed thereunder. After due consideration the prescribed authority, by order dated 19.3.1996, dismissed the application. The appeal filed by the landlord was also dismissed by the XIIIth Additional District Judge

by judgment dated September 11, 1997. As stated earlier, the writ petition was also dismissed and that is how the parties are before us.

We have heard Mr. Kavin Gulati, learned counsel for the appellant and Mr. Chandra Shekhar, learned counsel for the respondents.

It may be stated that after the application for eviction was filed on January 18, 1993, a proposal was sent by the appellant on November 10, 1993 to the Bureau of Information, Technology and Science (shortly BITS) for franchise to open the above centre which was granted by BITS. However, this letter was subsequently withdrawn by a letter dated 14th December, 1994.

Both the courts below rejected the eviction petition inter alia on the following grounds:

(1) the appellant did not have capacity to generate a fund of Rs.10 Lakh for running the proposed centre which would be necessary to set up the business;

(2) since BITS had refused to grant franchise to Rohit, the bonafide need of the suit premises for running the business was not established;

(3) no affidavit was filed by Rohit to show that he has technical know-how or inclination to run the business; and

(4) since Rohit did not start business between 1992 and 1997 by taking any other property on rent, it could not be said that he did not need the suit premises to run the business.

Clause (a) of sub-section (1) of Section 21 of the Act inter alia provides that the prescribed authority may, on an application of the landlord, order eviction of a tenant from the building under tenancy on the grounds mentioned in the said sub-section. Clause (a) is relevant for our purpose which inter alia provides that an application for eviction can be filed by the landlord if the building is bonafide required by the landlord for occupation by himself or by any member of the family or by any person for whose benefit the premises is held by him, either for residential purposes or for purposes of any profession, trade or calling. Section 41 of the Act empowers the State Government to make rules to carry out the purposes of the Act. Exercising powers under the said provision, Government have framed a set of rules viz. the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent or Eviction) Rules, 1972. Rule 16 is the relevant rule for release of a premises on the ground of personal requirement. Sub-rule (2) lays down that while considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of building let out for purposes of any business, the prescribed authority shall also have due regard to the facts stated in the clauses in the sub-rule. We are concerned with clause (d) which runs as follows:

(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.

It is settled position of law that bonafide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In Dattatraya Laxman Kamble versus Abdul Rasul Moulali Kotkunde and

Another [1999 (4) SCC 1], this Court while considering the bonafide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for presuming that his need is not bonafide. It was also held that while deciding this question, Court would look into the broad aspects and if the Court feels any doubt about bonafide requirement, it is for the landlord to clear such doubt.

In Raghunath G. Panhale (D) By Lrs. versus Chaganlal Sundarji and Co. [1999 (8) SCC 1] this Court inter alia held that it was not necessary for landlord to prove that he had money to invest in the new business contemplated nor that he had experience of it. It was a case for eviction on the ground of bonafide requirement of the landlord for non-residential purpose, as he wanted to start a grocery business in the suit premises to improve his livelihood.

Regarding financial capacity of the appellant, the courts below have held that appellant did not have financial capacity. From records we find that the appellant produced revenue records to show his ownership over agricultural land in addition to the suit premises and made a categorical statement that he would be able to raise fund from financial institutions. Both the courts below with mathematical precision considered this aspect while coming to the fact that he does not have financial capacity. We are of the view that these are irrelevant consideration as the question of having necessary fund to start the business is not at all necessary in view of the law laid down by this Court in the above decision namely Dattatraya Laxman Kamble (supra). That apart, as the appellant has got immovable property it would not be difficult for him to raise necessary fund and, therefore we hold that the finding on this point of the courts below is not sustainable.

Regarding second finding of the withdrawal of the letter for franchise by BITS of the courts below, we find from the record that there is a clear averment made by the appellant that his son wanted to open a computer consultancy centre on his own and only to make the business viable, he made an application for franchise after the eviction suit was filed. Merely because the franchise was withdrawn by BITS, it will be incorrect to come to the conclusion that the son of the appellant would not be able to start the business when he has the requisite qualification being a holder of post degree diploma in computer science and has the capacity to arrange funds. It was not the case of the appellant that his son would be able to start the business only after obtaining franchise. It has also been urged on behalf of the appellant that letter from BITS was produced before the Court only to show the requirement of 2000 sq. ft. of space for the purpose of running the business in question. We are, therefore, of the opinion that the findings of the courts below are erroneous. Courts below have taken adverse note, as Rohit did not file any affidavit to show his technical know-how and inclination to run the business. Such an affidavit is not necessary as regarding technical know-how, a copy of the diploma of Rohit has been filed and his father has made a categorical statement that his son would run the business in the suit premises.

Another reasoning of the courts below is that as Rohit did not start the business between the year 1992 and 1997 by taking any property on rent, it could not be said that the appellant needed the suit premises to run the business. There is a categorical averment by the appellant that the business was to be started in the suit premises and the appellant would not be able to take any other premises on rent. Not starting the business in a rented premises during the above-mentioned period, cannot be a ground to deny decree for eviction of the suit premises. This Court in Gaya Prasad versus Pradeep Srivastava [2001 (2) SCC 604] relying on early decisions of

this Court held that the crucial date for deciding as to bonafide of requirement of landlord is the date of his application for eviction. It was a case of bonafide requirement of the premises in question for starting a clinic by the son of the landlord. The litigation continued for 23 years and during that period the son of the landlord joined Provincial Medical Service and was posted at different places. The Court refused to take notice of the subsequent event holding that crucial date was the date of filing of the eviction petition.

The courts below completely overlooked clause (d) of sub-rule (2) of Rule 16 of the rules while deciding the eviction petition. From the rule extracted earlier, the court has to ascertain whether the son of the landlord has completed technical education and is not employed in the government and wants to engage in self-employment. All the criteria laid down in the said clause have been proved and, therefore, appellant is entitled to get the decree for eviction.

It is on record that the tenant has purchased the adjoining property. He has stated in the written statement that he is a prosperous businessman. From the report of the commissioner appointed by the court we find that in the property purchased by the tenant a mazanine floor has been constructed and that suit premises is used only to store spare parts. The tenant has got other premises wherefrom he is running his business. On the other hand the appellant has no other premises except the suit premises to start the proposed business of his son. We, therefore, hold that landlord would suffer greater hardship if eviction is refused.

We find merit in the present appeal and accordingly it is allowed by setting aside the impugned judgments of the courts below.

The eviction petition filed by the appellant is allowed and a decree for eviction would follow. Cost on the parties.

..J.
[Syed Shah Mohammed Quadri]

..J.
[S.N. Phukan]

November 20, 2001