

CASE NO.:
Appeal (civil) 5483 of 2007

PETITIONER:
Yadvendra Arya & Anr

RESPONDENT:
Mukesh Kumar Gupta

DATE OF JUDGMENT: 28/11/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5483 OF 2007
(Arising out of SLP (C)No. 19545 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Uttranchal High Court allowing the writ petition filed by the respondent. Said respondent undisputedly is the landlord of the premises which were let out to the present appellants.

3. An application under Section 21(1)(a) of U.P. (Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972, (Act No.13 of 1972) (hereinafter referred to as the 'Act') was filed by the respondent against the appellants praying for the release of the Shop situated at Mohalla Bazar Ganj (Park Road), Kashipur, District Udham Singh Nagar, which was under tenancy on the ground that the respondent has passed High School Certificate Examination and is unemployed and he has no independent business to earn his livelihood and, therefore, he wants to do the business of Electrical Goods, T.V., V.C.R., Music System, Cooking Range etc. in the said Shop.

4. It was, further, stated by the landlord in his release application that his father Sri Mithilesh Kumar Gupta is doing the independent business in the name of Mithilesh Kumar and Brothers of which his father is the sole owner and there is no possibility of employing any other person, as the shop in possession of his father is not so elaborate 'so as to accommodate the respondent also. It was also stated that he also does not want to join the business along with his father, as he wants to do the independent business. It has further been stated in the release application that he has already been married in 1994 and is separate from his father and as such, the shop in dispute is required for his own use and occupation for settling himself in the independent business.

5. A written statement was filed by the present appellants in which it was stated that the landlord can be accommodated in the business of the father.

6. An affidavit was filed by the respondent who has

deposed that he wants to run the independent business and he cannot settle himself along with his father. So far as the availability of the other shops are concerned, it was specifically stated that all other shops are rented accommodation and the tenants are occupying the same.

7. The prescribed authority, Kashipur District Udham Singh Nagar allowed the application of the respondent directing the appellants to vacate the shop within a period of 30 days.

8. Being aggrieved the appellants preferred an appeal which was allowed by the appellate authority. The respondent filed Writ Petition under Article 227 of the Constitution of India, 1950 (in short the 'Constitution'). The High Court as noted above allowed the writ petition of the respondent and directed the appellants to vacate the premises.

9. In support of the appeal, it was contented by learned counsel for the appellants that the parameters relating to bonafide needs and comparative hardship have not been considered in the proper perspective.

10. Learned counsel for the respondent on the other hand supported the judgment of the High Court stating that the High Court has kept in view the factual scenario and applied the appropriate and applicable principles and, therefore, no interference is called for.

11. So far as the basic need concept is concerned in Akhileshwar Kumar and Others v. Mustaqim and Others [AIR 2003 SC 532] it was inter alia held as follows:

"In our opinion, the approach adopted by the High Court cannot be countenanced and has occasioned a failure of justice. Overwhelming evidence is available to show that the plaintiff No. 1 is sitting idle, without any adequate commercial activity available to him so as to gainfully employ him. The plaintiff No. 1 and his father both have deposed to this fact. Simply because the plaintiff No. 1 is provisionally assisting his father in their family business, it does not mean that he should never start his own independent business. What the High Court has overlooked is the evidence to the effect, relied on by the trial Court too, that the husband of plaintiff No. 4, i.e. son-in-law of Ram Chandra Sao, was assisting the latter in his business and there was little left to be done by the three sons. 4. So is the case with the availability of alternative accommodation, as opined by the High Court. There is a shop in respect of which a suit for eviction was filed to satisfy the need of plaintiff No. 2. The suit was compromised and the shop was got vacated. The shop is meant for the business of plaintiff No. 2. There is yet another shop constructed by the father of the plaintiffs which is situated over a septic tank but the same is almost inaccessible inasmuch as there is a deep ditch in front of the shop and that is why it is lying vacant and unutilized. Once it has been proved by a landlord that the suit accommodation is required bona fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then

choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot thrust upon its own choice on the needy. Of course, the choice has to be exercised reasonably and not whimsically. The alternative accommodation which have prevailed with the High Court are either not available to the plaintiff No. 1 or not suitable in all respects as the suit accommodation is. The approach of the High Court that an accommodation got vacated to satisfy the need of plaintiff No. 2, who too is an educated unemployed should be diverted or can be considered as relevant alternative accommodation to satisfy the requirement of plaintiff No. 1, another educated unemployed brother, cannot be countenanced. So also considering a shop situated over a septic tank and inaccessible on account of a ditch in front of the shop and hence lying vacant cannot be considered a suitable alternative to the suit shop which is situated in a marketing complex, is easily accessible and has been purchased by the plaintiffs to satisfy the felt need of one of them."

12. In Ragavendra Kumar v. Firm Prem Machinery & Co. [2000(1) SCC 679] it was held as follows :

"It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. (See: Prativa Devi (Smt.) v. T.V. Krishnan, [(1996)5 SCC 353]. In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted."

13. In Joginder Pal v. Naval Kishore Behal [(2002(5) SCC 397) it was held as follows:

"In Malpe Vishwanath Acharya and Ors. v. State of Maharashtra and Anr. (1998) 2 SCC 1) this Court emphasized the need of social legislations like the Rent Control Act striking a balance between rival interests so as to be just to law. "The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society". While the shortage of accommodation makes it necessary to protect the tenants to save them from exploitation but at the same time the need to protect tenant is coupled with an obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed. Socially progressive legislation must have a holistic perception and not a shortsighted parochial approach. Power to legislate socially progressive legislation is coupled with a responsibility to avoid arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section, at the cost of constraints by placing

shackles on the other section, not only entails miscarriage of justice but may also in constitutional invalidity.

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The need for reasonable interpretation of rent control legislations was emphasized by this Court in *Bega. Begum v. Abdul Ahad Khan* (1979 AIR SC 273). Speaking in the context of reasonable requirement of landlord as a ground for eviction, the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. In *Kewal Singh v. Lajwanti* (1980) 1 SCC 290 this Court has observed, while the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance, one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. Recently in *Shiv Sarup Gupta v. Dr Mahesh Chand Gupta* (1999) 6 SCC 222 the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

9. The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords - both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control

legislations to take care of those situations where the landlords too are weak and feeble and feel humble.

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In providing key to the meaning of any word or expression the context in which it is set has significance. Color and content emanating from context may permit sense being preferred to mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the expression. Requirement of landlord for his own use, is an expression capable for attributing an intention to the legislature that what was intended to be fulfilled is such requirement as would persuade the landlord to have the premises vacated by the tenant, to forego the rental income, and to put the premises to such use as the landlord would deem to be his own use and in the given facts and circumstances of a case the Court too would hold it to be so in contradistinction with a mere ruse to evict the tenant. The legislature intending to protect the tenant also intends to lift the protection when it is the requirement of landlord to put the accommodation to such use as he intends, away from leasing it out.

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32. If we do not meaningfully construe the concept of requirement the provision may suffer from the risk of being branded as unreasonable, arbitrary or as placing uncalled for and unreasonable restrictions on the right of the owner to hold and use his property. We cannot place a construction on the expression 'for his own use' in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well in his life. We have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words, which the Legislature has not itself chosen to define. The Indian society, its customs and requirements and the context where the provision is set in the legislation are the guides leading to acceptance of the meaning which we have chosen to assign to the words 'for his own use' in Section 13(3)(a)(ii) of the Act.

33(1) In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord 'for his own use' within the meaning of Section 13(3)(a)(ii)."

14. Again in G.C. Kapoor v. Nand Kumar Bhasin (AIR 2002 SC 200) it was noted as follows:

"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 v. Abdul Rasul Moulali Kotkunde and Anr. (1999 (4)SCC1) 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 Courts feels any doubt about bonafide requirement, it is for the landlord to clear such doubt.

10. In Raghunath G. Panhale G. Panhale (D) By Lrs. v. Chaganlal Sundarji and Co. (1999(8)SCC1)his 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 bona fide requirement of the landlord for non-residential purpose, as he wanted to start a grocery business in the suit premises to improve his livelihood."

15. In Mst. Begam Begum & Ors. V. Abdul Ahad Khan (d) by Lrs & Ors. (1979(1) SCC 273) this court had occasion to deal in detail with the comparative hardship's aspect as follows: "Moreover Section 11(h) of the Act uses the words 'reasonable requirement' which undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term 'need' or 'requirement' should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for one landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other State in the country. This Court has considered the import of the word requirement and pointed out that it merely connotes that there should be an element of need.

In this connection our attention was drawn to the evidence led by the defendants that the main source of their income is the hotel business carried on by them in the premises and if they are thrown out they are likely to get any alternative accommodation. The High Court has accepted the case of the defendants on this point, but does not appear to have considered the natural consequences, which flow from a comparative assessment of

the advantages and disadvantages of the landlord and the tenant if a decree for eviction follows. 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 was fully in contemplation of the legislature when Section 11(1)(h) of the Act was introduced in the Act. This by itself would not be valid ground for refusing the plaintiffs for eviction.

Thus, on careful comparison and assessment of the relative advantage and disadvantages of the landlord and the tenant it seems to us that the scale is tilted in favour of the plaintiff. The inconvenience, loss and trouble resulting from denial of a decree for eviction in favour of the plaintiffs far outweigh the eviction from that point of view."

16. It is to be noted that learned counsel for the appellants submitted that the matter should have been remanded to the authorities for further consideration. Such a practice has been deprecated by this court in a large number of cases. [See: R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple and Anr. (2003 (8) SCC 752)].

17. Considering the factual background in the light of the principles as stated above, the inevitable conclusion is that this appeal is without merit. Considering the fact that the appellants are carrying on the business in the premises, time is granted to them to vacate the premises in question by the end of June, 2008 subject to filing the usual undertaking with the prescribed authority within a period of four weeks from today.

18. Appeal is dismissed but without any order as to costs.