

CASE NO.:
Appeal (civil) 1601 of 2007

PETITIONER:
Rishi Kumar Govil

RESPONDENT:
Maqsoodan and Ors.

DATE OF JUDGMENT: 28/03/2007

BENCH:
DR. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
JUDGMENT

DR. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the order passed by the learned Single Judge of the Allahabad High Court dismissing the Writ Petition filed by the appellant. Challenge in the writ petition was to the order passed by the Prescribed Authority as affirmed by the Appellate Authority allowing the release application of the respondent No.1-landlady.

Sans unnecessary details factual position is as follows:

Late Ram Govil was tenant of a shop situated at Ansari Road, Bulandshahr since 1941. Smt. Maqsoodan purchased the aforesaid shop on 11.12.1979 from Sri Ganesh Datt, the erstwhile landlord. She moved release application No.R.C. 31 of 1984 under Section 21(1)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the 'Act') for the need of her son-Shamshad Ahmad. In the release application, the respondent No.1-landlady prayed that the shop was urgently required as her husband intended to start business of repairing fire arms from the disputed shop for her son- Shamshad Ahmed.

The release application was contested by the appellant - tenant by filing written statement and denying the stand. She took the stand that the claim was not bona fide and genuine and the release application has been moved with the mal-intention of harassing him. It was also alleged that the landlady was in possession of two other shops, having basement as well situated at Ansari Road, Near Chowk Bazar which were in the use and occupation of Sri Imtiaz Ahmad, husband of the landlady. The appellant further alleged that the purpose of getting release of disputed shop was need for starting business of repair of fire arms whereas the same business is being run by the husband of the landlady from the aforesaid two shops. The case of the landlady was that the disputed shop was not suitable for the purpose of carrying on business of repair of fire arms and that earlier the licence of the shop-M/s B.A. Shastra Bhandar was in the name of one Shamshuddin, sister's son of the husband of the landlady, on whose death, Sri Shamshad Ahmad, for whose need the release application had been moved, was carrying on the business of repair of fire arms with his father, i.e., husband of the landlady from the aforesaid two shops.

The appellant claimed that he being a medical practitioner, he has his chamber in the disputed shop wherefrom his son Kumar Govil was carrying on the business as optician and that the situation of the disputed shop was perfect for his above business as there was no other shop of opticians in the vicinity.

In support of his case, the appellant filed his own affidavit stating

therein that son of the landlady was carrying on the business of repair of fire arms with his father i.e. husband of the landlady in two shops along with first basement in Chowk Bazar near Ansari Road, Bulandshahr. He alleged that the family of the landlady was very rich as her husband was in possession of a big shopping complex at Kala Aam Ka Churaha, Bulandshahr near D.M. Colony Road. That apart, the husband of the landlady had constructed large motor Workshop having plinth area of 1717 sq. yards.

The son of the tenant - Sri Rishi Kumar Govil also filed his affidavit stating therein that his father was a medical practitioner and he was carrying on the business as optician from the disputed shop. In another affidavit, the appellant stated that he was running the disputed shop and that he had no other source of livelihood and in case he was evicted from the shop, he would have to suffer greater hardship than the landlady. The appellant also filed an affidavit of one Sri Narendra Kumar Upadhyay in his support who stated that the tenant was in medical profession and running his business whereas from the disputed shop his son was carrying on the business as optician.

The prescribed authority vide judgment and order dated 08.05.1986 allowed the release application of the landlady and directed for eviction of the tenant - appellant. However, in appeal, the order was upset.

Against the order in appeal, aforesaid, the landlady preferred Civil Misc. Writ No. 9858 of 1998 before the Allahabad High Court, which was disposed of vide judgment and order dated 13.10.1998 and the matter was remanded to the appellate court with the observation that the appellate court shall decide the appeal afresh on merits after taking into consideration the material subsequent events.

During the pendency of the appeal, the appellant-tenant died and was substituted by the legal heirs.

On remand, the appellate authority reheard the appeal and decided the same vide judgment and order dated 21.04.2001 holding that the landlady herself had offered an alternate shop to the tenant but the appellant refused to take possession of the alternative shop offered by her with a view to remain in possession over the disputed shop. Accordingly, he dismissed the appeal and affirmed the judgment and decree passed by the prescribed authority declaring vacancy.

Aggrieved by the above-mentioned orders of the prescribed Authority and the Appellate Court, the appellant filed a writ petition.

The High Court concluded that the conclusions of the Prescribed Authority and affirmed by the Appellate Authority did not suffer from any infirmity to warrant interference.

In support of the appeal, learned counsel for the appellant submitted that the relevant factors as detailed in Rule 16 of the Rules have not been kept in view. The Prescribed Authority, the Appellate Authority and the High Court failed to consider the fact that even partial eviction would suffice. It is submitted that in terms of Rule 16 so far as the commercial premises are concerned the parameters have to be different.

Learned counsel for the respondent no.1 supported the judgment of the High Court.

It is stated by learned counsel for the respondents the premises in respect of repair of guns have to be the separate premises. The appellant has 13 shops available and in this context it is submitted that the tenant-appellant had got vacated a shop out of 13 shops situated at Khurja Bus stand from one Sri Om Prakash in a rent control case. The tenant is also carrying on business in one of these 13 shops in the name and style of Govil Optician. Therefore, the need of the landlady is more hard pressing

in comparison to the appellant-tenant. By way of reply, learned counsel for the appellant submitted that it is not a fact that there are 13 shops available, the number is much less.

Rule 16 on which reliance has been placed by both the sides reads as follows:

"16. Application for release on the ground of personal requirement: In considering the requirements of personal occupation for purposes of residence by the landlord or any member of his family, the prescribed authority shall, also have regard to such factors as the following-

- (a) where the landlord already has adequate and reasonably suitable accommodation having regard to the number of members of his family and their respective ages and his means and social status, his claim for additional requirements shall be construed strictly;
- (b) where a residential building was let out at a time when the sons of the landlord were minors and subsequently one or more of them has married, the additional requirement of accommodation for the landlord's sons shall be given due consideration;
- (c) where the tenant has, apart from the building under tenancy other adequate accommodation, whether owned by him or held as tenant of any public premises, having regard to the number of members of his family and their respective ages and his social status, the landlord's claim for additional requirements shall be construed liberally;
- (d) where the tenant's needs would be adequately met by leaving with him a part of the building under tenancy and the landlord's needs would be served by releasing the other part, the prescribed authority shall release only the latter part of the building;
- (e) where there are a number of tenants separately occupying a block of tenements and the landlord desires their eviction on ground of his personal need the prescribed authority shall, consider whether suitable alternative accommodation is likely to be available to such tenants;
- (f) where the landlord offers to the tenant alternative accommodation reasonably suitable to the needs of the tenant and his family the landlord's claim for release of the building under tenancy shall be construed liberally;
- (g) where the landlord was engaged in any employment in the same city, municipality, notified area or town area in which the building is situate and was in occupation of other accommodation by reason of such employment or where the landlord is the wife or minor son or unmarried daughter of a person who was engaged in any profession, trade, calling or employment away from the city, municipality, notified area or town area within which the building is situate and was living with such person, and by reason of the cessation of such engagement, the landlord needs the building for occupation by himself for residential purposes, such need shall ordinarily be deemed sufficient.

(2) While considering an application for release under (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.

(3) Where the tenant being servant of Government or of any local authority or any public sector corporation does not contest the application, then a reasonable opportunity of being heard shall be given to the District Magistrate, who shall have the right to oppose the application."

The parameters relating to Rule 16 of the Rules have been dealt with by this Court in *Sushila v. IInd Addl. District Judge, Banda and Ors.*, [2003] 2 SC 28. In the said judgment it was inter-alia noted as follows:

"10. A bare perusal of Rule 16 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Rules, 1972 makes it clear that the Rule only prescribes certain factors which have also to be taken into account while considering the application for eviction of a tenant on the ground of bona fide need. Sub-rule (2) of Rule 16 quoted earlier relates to the cases of eviction from an accommodation for business use. Clause (a) of sub-rule (2) provides, greater the period of tenancy less the justification for allowing the application; whereas according to clause (b) in case the tenant has a suitable accommodation available to him to shift his business, greater the justification to allow the application. Availability of another suitable accommodation to the tenant, waters down the weight attached to the longer period of tenancy as a factor to be considered as provided under clause (a) of sub-rule (2) of Rule 16. Yet another factor which may in some cases be relevant under clause (c) is where the existing business of the landlord is quite huge and extensive leaving aside the proposed business to be set up, there would be lesser justification to allow the application. The idea behind Sub-clause (c) is apparent i.e. where the landlord runs a huge business eviction may not be resorted to for expansion or diversification of the business by uprooting a tenant having a small business for a very long period of time. In such a situation if eviction is ordered it is definitely bound to cause greater hardship to the tenant.

11. In the case in hand we find that even though the period of tenancy of the respondent is no doubt long but availability of another shop to him where he can very well shift his business as found by the Prescribed Authority, neutralises the factor of length of tenancy in the accommodation in dispute. We further find that the landlady has no other shop where she can establish her son who is married and unemployed. There is nothing on the record to indicate that the business of father of Prem Prakash is so huge or that it is a very flourishing business so as to attract application of Clause (c) of Rule 16(2). As observed earlier it is clear that length of period of tenancy as provided under Clause (a) of Sub-rule 2 of Rule 16 of the Rules, 1972 is only one of the factors to be taken into account in context with other facts and circumstance of the case. It cannot be a sole criterion or deciding factor to order or not the eviction of the tenant.

Considering the facts in the light of Rule 16 pressed into service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favour of the unemployed son of the landlady whose need is certainly bonafide and has also been so accepted by the respondent before us."

In Ragavendra Kumar v. Firm Prem Machinery and Co., 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 Shrivastava, 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 (Smt.) v. 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. The bona fide personal need is a question of fact and should not be normally interfered with. The High Court noted that when the Prescribed Authority passed the order son of the respondent-landlady was 20 years old and the shop was sought to be released for the purpose of settling him in business. More than 20 years have elapsed and the son has become more than 40 years of age and she has not been able to establish him as she has still to get the possession of the shop and the litigation of the dispute is still subsisting. The licence for repairing fire arms can only be obtained when there is a vacant shop available and in the absence of any vacant shop, licence cannot be obtained by him. Therefore, the High Court came to the conclusion concurring with that of the Prescribed Authority and Appellate Authority that the need of the landlady is bona fide and genuine. Considering the factual findings recorded by the Prescribed Authority, Appellate Authority and analysed by the High Court, there is no scope for any interference in this appeal which is accordingly dismissed. However, considering the period for which the premises in question are in the occupation of the appellant time is granted till 31st December, 2007 to vacate the premises subject to filing of an undertaking before the Prescribed Authority within a period of 2 weeks to deliver the vacant possession on or before the stipulated date. There will be no order as to costs.