

Neutral Citation No. - 2023:AHC-LKO:78040

AFR

Reserved

Court No. - 17

Case :- WRIT - A No. - 6728 of 2023

Petitioner :- Vijay Kumar Banswar

Respondent :- Awadesh Kumar Jaisawal

Counsel for Petitioner :- Aakash Prasad, Amitav Singh, Himanshu Singh, Yash Joshi

Counsel for Respondent :- Shishir Chandra, Vishnu Pratap Singh

Hon'ble Alok Mathur, J.

1. Heard learned counsel for petitioner as well as learned counsel for respondents.
2. By means of present writ petition, the petitioner has challenged the order dated 13.12.2022 passed by Rent Controller and also the order dated 24.04.2023 passed by District Judge Kheri rejecting the appeal preferred by the petitioner against the order of Rent Controller.
3. The facts in brief are that the petitioner entered into a tenancy in respect of a shop measuring 18 sq. meter situated at Mela Road - Dwarikapuri, Lakhimpur, Pargana & District – Kheri by way of oral agreement with one Chandrachud Singh Rathore. In the tenanted premises, the petitioner has a small machine parts business, selling machine ware, oil, lubricant and auto parts for pump, diesel generator sets vehicles from the shop in question continuously since 1986 i.e. since last 37 years.
4. The respondent had purchased the said property from the original landlord on 02.03.2013 and subsequently the petitioner paid rent to the respondent. On 08.01.2020, the respondent has filed an application under Section 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 on the ground that the said shop was required for the bonafide need of his son who is unemployed and wanted that shop for starting a business. It was further stated that the

other shops owned by the respondent were not available for running of the business as they have been let out on temporary basis.

5. The petitioner had appeared and filed his objections before the Rent controller and resisted the application for eviction. It was stated that there were no bonafide need of the respondent or his son and it has not been stated as to what kind of business would be commenced in the disputed property and it is also stated that respondent had several other vacant shops to start his independent business and consequently prayed for setting aside the application filed by the respondent under Section 21(1)(a) of the Act.

6. The Rent Controller by means of order dated 13.12.2022 allowed the application preferred by the respondent and directed the petitioner to vacate the shop in question within 30 days from the date of order. The Rent Controller came to a finding that the petitioner has admitted the relationship of landlord and tenant between him and the respondent. He also considered the bonafide need of the respondent and also considered the comparative hardship. He considered the fact that the said shop was required by the landlord for the purpose of establishing a business for his son and that he had no other place apart from the said shop to start the said business. With regard to the claim of the petitioner goodwill of running the said shop from the particular place, the said plea was rejected on the ground that it was always open for the petitioner to establish his business elsewhere and the goodwill would be created at the new place of business and, accordingly allowed the application.

7. In appeal, the District Judge went through the entire evidence at the behest of the petitioner. He considered the fact that six months notice was given to the petitioner by the respondent for vacating the said shop and on expiry of the said period on 03.01.2020 the suit for eviction was filed. He also considered the objection of the petitioner against the application for eviction filed by the respondent.

8. With regard to the objection of the petitioner that the respondent had not given adequate opportunity and the reasons for the bonafide requirement, it was concluded that the respondent in his statement has stated that two shops which are owned by him are not vacant and are occupied by tenant and are accordingly not available for starting the business of his son. He also considered the fact that petitioner had not sought or made any effort to find an alternate accommodation. He considered the fact that from the material on record, it is clear that son of the respondent, namely, Himanshu Banswar is an unemployed youth and the respondent requires the tenanted premises for establishing his business. He has further considered that the next shop, namely, Verma Loha Bhandar is established, will also be got vacated by the petitioner as the said premises is also required along with tenanted premises of the petitioner to establish the business of his son.

9. It has further been considered that a furniture business shop would be established in the premises so vacated by the petitioner and accordingly it cannot be said that the respondent had not given any nature of business sought to be established.

10. It has also been recorded that though the petitioner had stated that the son of the respondent is not unemployed, he has not been able to show any evidence or any material or documents to show as to how the son of the respondent was employed and accordingly he was not able to demonstrate that the son of the respondent is employed. He has also considered the fact that in order to establish and run a furniture shop, a large area is required and the same cannot be run from a small shop. A big showroom is required for which purpose the disputed premises as well as adjacent shops owned by the respondent would be required.

11. After reconsidering the entire evidence on record, it was concluded that a case for eviction is made out and the premises were required for establishment of a business by the son of the respondent

and no infirmity was found in the findings recorded by the Rent Controller and consequently the appeal was dismissed.

12. Before this Court, it was again urged that respondent had adequate space and consequently it cannot be said that he requires the disputed property for bonafide need of establishing a business for his son. This Court has also looked into the evidence led by the respondent and his son as P.W. 1 and P.W. 2 from which it is clear that the son of the respondent is unemployed and in order to establish a furniture business a large floor or area is required for which the disputed premises is required to establish the business. The petitioner could not establish that the son of the respondent is already employed and consequently there was no evidence on record to dispute the claim made by the respondent. Accordingly, no ground is made out for interference with regard to the said issue.

13. In the present case it has been contended by the petitioner that there was no bona fide need of the respondent or his son. Before going into the question whether there was a bona fide need we need to go into the question of what is bona fide. The Supreme Court in the case of *Shiv Sarup Gupta v. Dr Mahesh Chand Gupta, 1 (1999) 6 SCC 222*, held as under :-

“13. ..., the term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by “requires” is much more higher than in mere desire. The phrase “required bona fide” is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejection of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the court. The judge of facts should place himself in the armchair of the landlord and then ask the question to himself — whether in the given facts substantiated by the landlord the need to occupy the premises can be said to

be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, 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.”

14. Further in B.C. Bhutada v. G.R. Mundada, 2 AIR 2003 SC 2713 the Apex Court held that,

“Requirement implies an element of necessity. The necessity is a necessity without regard to the degree of which it may be.”

15. Thus, it seems that the question of bona fides shall be satisfied if the landlord is able to show that they need the tenant’s premises for carrying out their business and the same does not need to be to the extent where no alternative is left to them. In the present case the respondent landowner has been able to show the need accordingly and thus the contention of petitioner of no bona fide ground stands denied.

16. It has also been urged by learned counsel for petitioner that he had moved an application for cross examination which was rejected by the Rent Controller by means of order dated 13.12.2022. It is stated that in his appeal he has raised the issues before the Appellate Court.

17. A perusal of the appellate order, also indicates that though the said ground was raised in the memo of appeal but it was not urged by the petitioner nor considered by the appellate court. Although once the order has not been challenged before the appellate court the same cannot be raised in the writ proceedings, this Court has still gone into the question of cross examination to prove unemployment as raised by the counsel for petitioner.

18. In this regard, a Division Bench of the Supreme Court has observed in the case of **Harish Kumar (Since Deceased) Through: Lrs. Versus Pankaj Kumar Garg, 2022 LiveLaw (SC) 239** as under:-

“Section 21(1)(a) of the Act, under which the application for release was filed, reads as under: “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”

It is quite clear that aforesaid provision seeking release of the premises on the ground of bona fide requirement does not strictly require the landlord to be “unemployed” to maintain an action. All that the provision contemplates is that the requirement so pleaded by the landlord must be bona fide.”

19. This makes it clear that even if the son was employed, the same would not have made any difference. The respondent landlord was able to make out a case for eviction the ground that the premises were required for establishing the business of furniture for his unemployed son. It was considered that the business of furniture cannot be run

from a small shop but requires more space and consequently even remaining shops which were tenanted by the landlord would be got vacated for the purposes of the establishing the said business. The contention of the petitioner that even if there is a change in circumstances during the pendency of litigation the same can be adequately considered, would not be of much help in facts of the present case. If during the pendency of the litigation certain other adjacent shops had got vacated, or had been temporary let out by the landlord, it does not change the circumstances requiring re-appreciation of evidence in the present case in as much as it is stated case of the landlord that he required large space for running a furniture shop and the same could not be run from a small shop. It cannot be doubted that the landlord has a right to determine as to how and in what manner he shall live, arranges his business etc. He has to settle his life in his own way. It cannot be guided, controlled or restricted by any 3rd person including the court. A tenant or the court cannot direct the landlord how and in what manner he should live arranges affairs. There is no bar which can restrict a landlord beneficial enjoyment of his own property.

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. The petitioner had vehemently urged that the landlord did not specify the business which was to be started by his son. This aspect of the matter was also considered by this court in the case of **K.C Kapoor vs Additional district judge Kanpur 2003(2)ARC 70** and it was held that it is not necessary that the landlord should state the nature of business sought to be commenced by his family. In the aforesaid discussion the said issue is decided in favour of the landlord and against the petitioner.

21. It was also argued by the petitioner that provisions of section 16(2) of act 13 of 1972 were not considered by the prescribed authority. It was submitted that it was mandatory for the prescribed authority to have considered the issue of comparative hardship, and it should have been considered that the petitioner had been running a business in the tenanted premises for nearly 37 years, and consequently as per the above statutory provision no order of eviction could have been passed.

22. This Court has perused the impugned judgement of the prescribed authority dated 13/12/2022. Issue No. 3 was specially framed to consider the comparative hardship. A finding was returned that the petitioner runs a very small business in the tenanted premises, and the said business can easily be shifted to any other place. On the other hand the respondent was the landlord and his bonafide need for starting a business for his son was greater than the hardship which may be faced by the petitioner. On the aforesaid facts he returned a finding against the petitioner. In view of the above the contention that the prescribed authority had failed to consider the issue of comparative hardship is clearly not made out. This Court is of the considered view that the prescribed authority has duly considered this aspect, and in its correct perspective, and even the finding returned could not be assailed by the petitioner nor any material was placed before this court which may indicate that the finding was perverse. Accordingly, this Court does not find any infirmity with the finding recorded by the prescribed Authority, and the arguments of the petitioner accordingly rejected.

23. Lastly, it was submitted the petitioner was not allowed to cross examine has been considered by this Court in various judgments including *Mahesh Kumar and Anr. v. Swami Dayal Katiyar* (Writ A No. 5387 of 2018) decided on 20.2.2018 wherein this Court relying upon the judgments in *Radha Kishan v. IVth Additional District Judge, Jalaun at Orai & Ors. 1985 (1) ARC 427, Khushi Ram Dedwal v. Additional Judge, Small Cause Court/ Prescribed*

Authority, Meerut & Ors. 1997 (2) ARC 674 (D.B), Sanjay Kumar Katyal v. Smt. Kamlesh Gupta & Anr. 2007 (67) ALR 250, Mahesh Chand v. Additional Civil Judge (S.D.), Bulandshahar/ Prescribed Authority (2005)/ ARC 558 and Satnam Singh v. Rakesh Kumar 2011 (89) ALR 560 held as under:-

" 20. The legal principle for allowing the cross examination in proceedings under [Section 21\(1\)](#) of the Act are absolutely clear. The power under [Section 34\(1\)](#) of the Act is discretionary which should be exercised sparingly by the Prescribed Authority only when he finds that cross-examination is necessary for deciding the release application. The application for cross-examination has to be decided in the context of factual back drop of the case and in the context of nature of the proceedings under the Act. The legislature has not provided for oral evidence to be adduced in support of the case as contemplated under Order XVIII Rule 4 C.P.C. but the facts are to be proved on affidavit. If unnecessary cross examination is permitted, that will only hamper the expeditious disposal of the cases and shall defeat the primary object of the Act, i.e., the expeditious disposal of the cases. When an application for cross examination is filed, the Court has to examine, in each case, as to whether on the facts and circumstance of the case, cross examination is necessary and the application filed for cross examination is bona fide. Cross examination will not be relevant as to the fact which can be proved by documentary evidence and which can be annexed with the affidavit. Under the scheme of the Act, oral examination may be allowed only as an exception. If a party wants to cross examine, he has to disclose the necessary facts in his application as to why the cross examination is necessary. Unless it is established that the veracity of facts as stated in the affidavit is necessary to be tested by cross examination, the cross examination cannot be allowed in proceedings under [Section 21](#) of the Act. The party moving the application must give reasons as to which particular part of the affidavit is incorrect and under what circumstances and for what reasons such cross examination is necessary in the context of the facts and circumstances of the case."

24. It has been submitted on behalf of the petitioner that only to test the claim of the landlord that the premises are required for bonfide purposes, the petitioner wanted to cross-examine the landlord and his witnesses. In case the petitioner wanted to contest the said facts, or wanted to bring on record some material which may indicate that the requirement of the petitioner was not bonfide or that there was altern-

ate accommodation available, the same could very well have been done by bringing on record the evidence available with the petitioner. No such material was placed by him before the prescribed authority and even if the arguments of the petitioner are to be believed that the adjacent shop was vacant, still the requirement of the landlord was much more than merely the small shop in which the petitioner was a tenant, for him to start a furniture business for which admittedly a large space is required. This court does not find any valid reason for interfering in the order of the prescribed authority rejecting the application for cross examination of the witnesses. The law in this regard as stated above is also clear, and cross-examination can be allowed only as an exception rather than the rule as the proceedings before the prescribed authority are summary in nature. No satisfactory reason could be disclosed from which it could be gathered that cross-examination was necessary in the facts of the present case and consequently the arguments in this regard are also rejected.

25. In light of the above discussion, this Court does not find merit in the writ petition, accordingly the same is **dismissed**.

26. As regards compensation considering the second proviso of Section 21(1) of the Act of 1972 and also that the tenant has been in tenancy of the premises for over three decades, this Court is of the opinion that ends of justice would be met in case the landlord / respondent is directed to pay Rs.25,000/- as compensation to the petitioner.

(Alok Mathur, J.)

Order Date :-23.11.2023.

Ravi/RKM.