

D. K. Soni

Vs

P. K. Mukerjee and Others

Civil Appeal No. 6626 of 1983

(Sabyasachi Mukharji, G. L. Oza JJ)

27.10.1987

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This is an appeal by the tenant against an order upholding the order of eviction. The ground of eviction was on the landlord's bona fide need and requirement. The appeal arises out of the judgment and order of the High Court of Allahabad dated May 18, 1983 and also against the order dated May 23, 1983 dismissing a review application by the said High Court. Shri P. K. Mukerjee, respondent 1 herein had filed an application under Section 3 of the U.P. Act 3 of 1947 (Temporary Control of Rent and Eviction Act), hereinafter referred to as the old Act, seeking permission to file the suit for eviction of the tenant, the father of the appellant herein, on the ground that accommodation in dispute was bona fide required by the landlord for his personal need. In September 1971 the Rent Control and Eviction Officer rejected the application of the landlord and held that his requirement was not bona fide. On November 12, 1971 the Commissioner allowed the revision filed by respondent 1 against the order of the Rent Control and Eviction Officer dated September 5, 1971. It may be mentioned that on July 15, 1972 the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 hereinafter referred to as the new Act came into effect. On August 2, 1972 the State Government rejected the representation of the tenant namely, the father of the appellant filed under Section 7 of the old Act against the order of the Commissioner dated November 2, 1971. On or about February 7, 1975 the learned Single Judge of the High Court of Allahabad allowed the writ petition of the tenant and set aside the orders of the Commissioner and the State Government hereinbefore mentioned. On August 3, 1978 a Division Bench of the High Court of Allahabad allowed the appeal of respondent 1 and set aside the judgment of the learned Single Judge of the High Court dated February 7, 1975 and upheld the orders of the Commissioner and the State Government allowing the eviction of the tenant. In September 1978 respondent 1 moved an application under Section 21 read with Section 43(2)(rr) of the new Act. Thereafter it is alleged that respondent 1 had executed an agreement to sell the disputed premises in favour of the appellant's wife namely, Smt. Madhu Soni. It is material to refer to the said agreement in brief. The agreement is dated November 7, 1978 and was entered into between Shri P. K. Mukerjee, the landlord and Smt. Madhu Soni wife of Shri D. K. Soni (son of Shri Harbans Lal Soni the then tenant). It was stated that the landlord had filed an application against Shri H. L. Soni the father-in-law of vendee for permission to file a suit for eviction against him on account of his personal need for the aforesaid premises and permission had been granted. It also recited that a portion of the said land which was demarcated in the site plan measuring about 121' x 101.5' of the vendor which would be for the construction of a house would be in exclusive possession of the vendor and the rest of the property at 8, Panna Lal Road, Allahabad being the disputed premises would be sold to Smt. Soni. It also recited that the vendee or her family members would have no right of whatsoever

nature and the vendee, that is to say, the appellant had given up his tenancy right in respect of the same, that is to say, the portion to be kept with the vendor and the premises will be built on the vacant land with the money that would be obtained by selling the property to Smt. Madhu Soni. The property was sold for Rs. 1,00,000 out of which Rs. 5000 was paid as earnest money and it was stipulated that the rest of the money would be paid at the time of the registration. It was further agreed that the parties would move the proper authorities as early as possible for permission to transfer and the sale deed would be executed within one month of the grant of the permission and notice to the vendee. It was further stated that if the vendee failed to get the sale deed executed after one month from the date of permission and notice to the vendee by the vendor, the earnest money of Rs. 5000 would be forfeited and the right of the vendor would be as it subsisted prior to the agreement. It was further provided that in the event of non-execution of the sale deed on account of any act or failure on the part of the vendee in pursuance of the agreement to sell, the property would stand released in favour of the vendor and the earnest money of Rs. 5000 would be forfeited. It was clearly stipulated that the need of the vendor for the premises still subsisted and this agreement was being entered into since it would be possible for the vendor to construct a house for himself on the land not agreed to be transferred measuring 121' x 101.5'. On that basis the parties had signed agreement on November 7, 1978.

2. On December 12, 1978 the father of the present appellant Shri H. L. Soni who was the original tenant died leaving behind his widow and two sons including the appellant and one daughter. It was alleged that on December 18, 1978 respondent 1 sent a letter of condolence to the appellant on the death of appellant's father. On December 22, 1978 appellant informed the Prescribed Authority before whom the application under Section 21(1) (a) of the new Act read with Section 43(2)(rr) was pending about the death of Shri H. L. Soni. On March 23, 1979 respondent 1 moved an application for substitution in Case No. 53 of 1978 for bringing on record the heirs of deceased Shri H. L. Soni along with application under Section 5 of the Limitation Act. On November 10, 1979, the Prescribed Authority rejected the petitioner's application for substitution and held that respondent 1 had full knowledge of the death of Shri H. L. Soni and he did not move the application within time. On December 11, 1979 respondent 1 moved a second application under Section 21(1)(a) read with Section 43(2)(rr) of the new Act on the same ground on which the first application was moved. The second application was registered as Case No. 68 of 1979. It is alleged further that on March 12, 1981 respondent 1 executed two separate agreements to sell the property in dispute in favour of R. P. Kanodia and P. K. Kanodia respectively. The Prescribed Authority on July 7, 1981 held that the second application under Section 21(1)(a) read with Section 43(2)(rr) of the new Act being Case No. 68 of 1979 was within time and directed the tenant to be evicted from the premises in dispute. The Additional District Judge, Allahabad on October 25, 1982 dismissed the appeal of the tenant filed against the order of the Prescribed Authority dated July 7, 1981. On March 11, 1983 the appellant's wife Smt. Madhu Soni filed a suit for injunction restraining respondent 1 from dispossessing her from the premises in dispute on the strength of registered agreement and she asserted that she resided in the accommodation as a result of part performance under Section 53-A of the Transfer of Property Act, 1882. Initially injunction was granted ex parte by the trial court and thereafter it was vacated after hearing respondent 1. Aggrieved thereby an appeal was filed by Smt. Madhu Soni in which the High Court had stayed dispossession. The High Court thereafter dismissed the writ petition of the tenant against the orders of the Prescribed Authority for eviction and the order of the Additional District Judge. A review petition was filed by the appellant and the same was dismissed. This appeal by special leave is against the decision of the High Court dated May 18, 1983.

3. Behind this long tale of dates the questions involved in this appeal are short, namely, firstly in

view of the provisions of Section 43(2)(rr) was the High Court right, in the facts and circumstances of the case specially the death of original tenant being alleged, and in view of the fact that the execution of the order passed for eviction had become final before coming into operation of the new Act the order was proper and secondly, how far the subsequent events, namely, the agreement with the wife of one of the sons of the original tenant to purchase property as well as the agreement with the Kanodias mentioned hereinbefore demolish or destroy the case of a bona fide need of the landlord. In other words are these not sufficient subsequent events which destroy the landlord's bona fide need and as such should be taken note of by the appropriate courts in ordering eviction. In this appeal, therefore, we have to keep in mind two aspects of law namely, the finality of the decisions and secondly, how far and to what extent subsequent events should be taken note of in order to do justice between the parties.

4. Before we refer to the judgment of the High Court and the submissions made before us, it is necessary for us to bear in mind certain decisions of this Court on these aspects on which reliance was placed. This Court in *Pasupuleti Venkateswarlu v. Motor & General Traders* ((1975) 3 SCR 958 : (1975) 1 SCC 770 : AIR 1975 SC 1409) dealing with Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, dealt with the question as to how far the subsequent events can be taken note of. This Court held that for making the right or remedy, claimed by a party justly and meaningfully as also legally and factually in accordance with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. In the facts of that case, this Court said that the High Court was right in taking into consideration the facts which came into being subsequent to the commencement of the proceedings. Therefore the fact that in determining what justice required the court was bound to consider any change, either in fact or in law, which had supervened since the judgment was given.

5. This general principle and proposition of law is of ancient vintage. See the observations of the U.S. Supreme Court in *Patterson v. State of Alabama* (294 US 600 at 607). The actual facts, however, of this case were entirely different, and so it was not necessary to refer to those facts. In *Ramji Dayawala & Sons (P) Ltd. v. Invest Import* ((1981) 1 SCR 899 : (1981) 1 SCC 80 : AIR 1981 SC 2085), this principle was again reiterated entirely under different context. This Court also reiterated the same principle in *Hasmat Rai v. Raghunath Prasad* ((1981) 3 SCR 605 : (1981) 3 SCC 103 : AIR 1981 SC 1711) where referring to *Pasupuleti Venkateswarlu v. Motor and General Traders* ((1975) 3 SCR 958 : (1975) 1 SCC 770 : AIR 1975 SC 1409), this Court held that when an action was brought by the landlord under Rent Restriction Act for eviction on the ground of personal requirement, his need must not only be shown to exist at the date of the suit, but must exist on the date of appellate decree, or the date when a higher court dealt with the matter. It was emphasised by this Court that if during the progress and passage of proceeding from court to court subsequent events had occurred which if noticed would non-suit the plaintiff, the court had to examine and evaluate the same and mould the decree accordingly. The tenant was entitled to show that the need or requirement no more existed by pointing out such subsequent events, to the court including the appellate court. Otherwise the landlord would derive an unfair advantage, and it would be against the spirit or intendment of Rent Restriction Act which was enacted to fetter the unfettered right of re-entry. In such a situation, it was reiterated that, it would be incorrect to say that as the decree or order for eviction was passed against the tenant he could not invite the court to take into consideration subsequent events. But the tenant could be precluded from so contending when decree or order for eviction had become final. In *Syed Asadullah Kazmi v. Addl. District Judge, Allahabad* ((1982) 1 SCR 77 : (1981) 3 SCC 483 : AIR 1981 SC 1724), this Court was concerned with a residence at Allahabad. It was held by this Court that the order dated March 25, 1977 of the

appellate authority releasing a portion of the premises in favour of the third respondent therein and leaving the remaining portion in the tenancy of the appellant therein acquired finality when the proceedings taken against it by the appellant had failed. The Prescribed Authority was bound to give effect to that final order and was not acting outside its jurisdiction or contrary to law where he ordered eviction. This Court reiterated that it was true that subsequent events had to be taken into account by a statutory authority or court when considering proceedings arising out of a landlord's petition for ejection of a tenant on the ground of the landlord's personal need. But in that case the order for release of a portion of the accommodation had acquired finality before the death of the landlord and the controversy concluded by it could not be reopened thereafter. This Court further reiterated that inasmuch as the question which arose before the Prescribed Authority on the application of the appellant after the proceedings for release had acquired finality, it was not open even for this Court to reopen the proceeding for release. Not quite relevant to the present controversy, there is, however, just an observation in *Sher Singh v. State of Punjab* ((1983) 2 SCR 582 : (1983) 2 SCC 344 : 1983 SCC (Cri) 461 : AIR 1983 SC 465). It was a decision dealing with Article 21 of the Constitution. There is an observation that traditionally, subsequent events had to be taken into account in the area of civil law. It is necessary, however, to refer to a decision of the Special Bench of the Allahabad High Court in *Bansilal Sahu v. Prescribed Authority* (1980 All LJ 331) which arose under the new Act. It was held therein that the question whether the eviction of the tenant had to be ordered from any specified part of the building under tenancy was not within the jurisdiction of the Prescribed Authority, while acting under clause (rr) of Section 43(2), irrespective of the occurrence of subsequent events which might make it improper to order the eviction from the entire building or which might tend to establish that the need set up by the landlord could be satisfied by ordering eviction of the tenant from a specified part of the building under tenancy. It was held that subsequent events or facts could not be considered so as to defeat the final order and the Prescribed Authority was bound to order eviction. The Special Bench of the Allahabad High Court overruled another Bench decision of the Allahabad High Court in the case of *Smt. Sarju Devi v. Prescribed Authority, Kanpur* (1977 All LJ 251) and accepted the proposition laid down in *Tara Chand Khandelwal v. Prescribed Authority, Agra* (1976 All LJ 708). *Satish Chandra, C.J.* speaking for the Allahabad High Court observed that the opening clause of this provision entitled the Prescribed Authority to find out whether permission under Section 3 of the old act had been obtained on any ground specified in sub-section (1) or sub-section (2) of Section 21 of the present Act and that the same had become final. It was, therefore, according to the Chief Justice, the beginning as well as the end of his jurisdiction to record findings. If the conclusion was in the affirmative the Prescribed Authority had no discretion but to order the eviction of the tenant from the building under tenancy. It was further held that the jurisdiction of the Prescribed Authority was to order the eviction of the tenant from the building under tenancy. It had not expressly been conferred any power to order eviction from a portion or part of the building under tenancy. It was further held that the jurisdiction of the Prescribed Authority while deciding an application under Section 21 of the present Act could not be equated with the jurisdiction which had been conferred for giving effect to the permission granted under Section 3 of the old act. The two situations were different. Clause (rr) of Section 43(2) of the present Act specifically prohibited the Prescribed Authority from satisfying itself afresh that the grounds existed. We are of the opinion that this is the correct state of law and if that is the position the so-called subsequent events are not germane to the question to be decided by the High Court.

6. In the aforesaid light, in our opinion, in the facts of this case the High Court was right.

7. It may be mentioned that clause (rr) of Section 43(2) of the new Act provides as follows :

Where any permission referred to in Section 3 of the old Act has been obtained on any ground specified in sub-section (1) or sub-section (2) of Section 21, and has become final, either before the commencement of this Act, or in accordance with the provisions of this sub-section, after the commencement of this Act (whether or not a suit for the eviction of the tenant has been instituted), the landlord may apply to the prescribed authority for his eviction under Section 21, and thereupon the prescribed authority shall order the eviction of the tenant from the building under tenancy, and it shall not be necessary for the prescribed authority to satisfy itself afresh as to the existence of any ground as aforesaid, and such order shall be final and shall not be open to appeal under Section 22 :

Provided that no application under this clause shall be maintainable on the basis of a permission granted under Section 3 of the old Act, where such permission became final more than three years before the commencement of this act :

Provided further that in computing the period of three years, the time during which the applicant has been prosecuting with due diligence any civil proceeding whether in a court of first instance or appeal or revision shall be excluded.

8. All these aspects were considered by the High Court. We recognise that unless the statute expressly prohibits as it did in the instant case, by the aforesaid clause, cautious recognition of subsequent events to mould the relief should be taken note of. In the instant case in substance the need was there of the landlord for his occupation of his own premises. The landlord was a government servant and wanted to reside in Allahabad and for this purpose he sought eviction and had obtained an order of (sic permission for) eviction prior to coming into operation of the new Act. The hope of the landlord to come back to his origin was not defeated by the provisions of the new Act. In vain he moved from court to court and in the meantime there has been escalation of prices and restrictions on alienation of land and in order to save himself from this situation the landlord tried to sell part of the premises in question subsequent to the decree to the wife of one of the sons of the tenant. This is not material. The agreement in question further stipulated that the present need of the landlord subsisted, and out of this agreement only Rs. 5000 was advanced in 1978 and nothing was paid thereafter. The agreement for sale to Smt. Madhu Soni reads as follows :

That it is made clear that the need of the vendor for the premises still subsists and this agreement is being entered into since it will be possible for the vendor to construct a house for himself on the land not agreed to be transferred measuring 121' x 101.5'. The parties, therefore, have signed this Deed on November 7, 1978.

In view of the subsequent events, namely, non-permission of the Urban Ceiling Authorities, failure to register and execute the document, delay for permission on the part of the vendee and the escalation of prices, that is to say, if in 1979 perhaps it was possible to build some kind of accommodation with the amount of sale price to be obtained from the execution of the document which it is not possible in 1987 and further there is no readiness or willingness on the part of the vendee to execute the document, after the existence of the basic need of the landlord, for which originally the proceedings were taken and finalised, we do not find it possible to hold that subsequent events have so materially altered as to defeat the original order for possession passed in favour of the respondents.

9. We do not find perusing the records that there was any failure for substitution on the part of the

landlord to take steps. The other son of the deceased was not residing with the deceased in the premises in question, therefore, there was no need to substitute him.

10. The other agreements to which reference has been made was the alleged agreement with R. P. Kanodia and P. K. Kanodia respectively. Nothing was proved before us that agreement is valid today or given effect to in view of the provisions of the Land Ceiling Act.

11. It may be mentioned that the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 by the order dated April 20, 1979 refused permission to sell in favour of Smt. Madhu Soni. On November 7, 1978 the wife of the appellant and the landlord had entered into an agreement to sell a portion of the land as well as the house in dispute to the appellant's wife, and for that purpose a sum of Rs. 5000 had been paid as earnest money as mentioned hereinbefore, and in the agreement, it was clearly stated that the parties would move the proper authorities as early as possible for permission to transfer the property and the sale deed would be executed within one month of the grant of such permission and notice to the vendee. Clause 6 of the agreement further stipulated that if the vendee failed to get the agreement executed after one month from the date of permission and notice to the vendee the earnest money of Rs. 5000 would be forfeited and the right of the vendor will be as it subsisted prior to the agreement. The requisite permission in terms of the agreement was obtained by the landlord in the year 1979 and a registered notice consequently was also sent to the appellant's wife requiring her to get the sale deed executed in accordance with the agreement. Thereafter a reply dated September 21, 1979 was also received by the landlord. However, the appellant's wife failed to get the sale deed executed and consequently the agreement itself became infructuous and the earnest money stood forfeited.

12. The need as it has been reiterated in the agreement of the landlord for his own purpose still subsisted. There was no delay in bringing the heirs of the deceased tenant on record. In the aforesaid view of the matter there was no substance in the objection filed against the execution of the order of eviction in terms of clause (rr) of Section 43(2) of the new Act. In any event such events were frivolous after the order had become final. The subsequent events which we have examined do not in any way affect the decision of need for possession of the premises in question of the respondent-landlord. It may be mentioned that there was an application by the respondent for the review. This was heard and no order was made on that application. It was reiterated in the counter-affidavit filed by the respondent that since December 1, 1978 till date the appellant had not paid any money to the landlord nor deposited the damages in the court. At the time of his death son Shri H. L. Soni was residing in the house in dispute with his eldest son Shri D. K. Soni, the appellant, his wife, Smt. Madhu Soni and Mrs. Kailash Soni, the widow. Other son Shri A. K. Soni and daughter Mrs. Kangan Khanna were not residing with late Shri H. L. Soni at the time of his death and as such they were not heirs as contemplated by Section 3 (g) of the new Act. The landlord was a government servant and was posted at Lucknow and as such during his tenure he had to reside at Lucknow but after his retirement he wanted to settle down at his ancestral house at Allahabad and it was for this reason that the proceedings for eviction were taken.

13. It was not proved to the satisfaction of the authorities below that any agreement to sell the premises to Kanodias has been given effect to and had been acted upon or can be acted upon. In that view of the matter the need indubitably succeeds and even if the allegations made are taken into consideration do not merit any revision of the order which had become final. Finality of judicial decisions is one of the essential ingredients upon which the administration of justice must rest. In that view of the matter, we are of the opinion, even if the contentions advanced on behalf of the respondents are taken into consideration and a new look is taken because of the subsequent events,

which in our opinion cannot be done in view of the specific prohibition in clause (rr) of Section 43(2) of the new Act, the appellant has no case.

14. In the aforesaid view of the matter we are of the opinion that the High Court was right in not interfering with the order of the Prescribed Authority. After all finality of the decisions of the authorities under the Act has to be given due reverence and place in the judicial administration. Taking cautious note of the relevant subsequent events, we find no merit in the appellant's contentions inasmuch as there is nothing on record to show that the landlord's bona fide need for his residence in Allahabad has been met or can be met in the state of affairs except by the order which is impugned in this appeal.

15. In the premises, the appeal must fail and is accordingly dismissed without any order as to costs. Since, however, the appellant has been staying in the disputed premises for quite some time, we grant time till April 30, 1988 to deliver vacant possession of the premises subject of filing usual undertaking within four weeks from today. In default in filing undertaking the order would become executable forthwith.

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