

SUPREME COURT OF INDIA

Deep Chandra Juneja

Vs.

Smt. Lajwanti Kathuria (Dead)Thr.Lrs

C.A.No.7300 of 2005

(C. K. Thakker and Lokeshwar Singh Panta JJ.)

10.07.2008

JUDGMENT

Lokeshwar Singh Panta, J.

1. This appeal is directed against the judgment and order dated 06.02.2004 passed by the learned Single Judge of the High Court of Judicature at Allahabad dismissing the writ petition filed by the appellant-tenant. Challenge in the writ petition was to the order passed by the prescribed authority as affirmed by the learned Additional District Judge, Court No. 1, Kanpur Nagar (Appellate Authority) allowing the release application of Smt. Lajwanti Kathuria respondent-landlady. Facts, in brief, leading to the origin of this case, are asunder:-

2. Smt. Lajwanti Kathuria, respondent-landlady was the owner of house No. 251 Ghao Khera Post, Chakeri, Harjinder Nagar, Kanpur. The appellant herein is the tenant on the ground floor of the demised premises consisting of one room with doo-chatti (store), courtyard, one bathroom, one toilet and kitchen since the year 1972 on a monthly rent of Rs. 60/-. The landlady filed release application No. 18 of 2001 under Section 21(1)(a) of the *U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972* [for short 'the Act'] for the need of her sons, daughters-in-law and grand children. In the release application, respondent-landlady stated that her husband Shri Chaman Lal Kathuria, before his death, was carrying on kiriyana business in small portion of the premises. She stated that she has a large family to support comprising herself, two married sons and their children and one daughter and her children. According to the landlady, she urgently needed additional accommodation to provide proper and comfortable living rooms, kitchens and bathrooms for her children who are facing tremendous inconvenience and hardships on account of shortage of accommodation.

3. The release application was contested by the appellant- tenant by filing written statement and denying the claim of the landlady. He, inter alia, took the stand that the claim of the landlady 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 sons of the landlady were residing with her and the landlady did not need more accommodation because other tenants who were

living in the building had vacated the accommodations, which were again let out by her to new tenants on higher rent. He also stated that the landlady was having one more house No. 377, N-2 Road, Lal Bungalow, Harjinder Nagar, Kanpur.

4. Both the parties were directed by the prescribed authority to submit their affidavits in support of their claims and counter-claims.

5. The prescribed authority vide order dated 05.03.2003 allowed the release application of the landlady and directed the appellant-tenant to hand over vacant possession of the rented accommodation to the landlady within one month.

6. Against the said order, Rent Appeal No.17 of 2003 was filed by the appellant-tenant before the Appellate Authority, which was dismissed on 05.01.2004.

7. Being aggrieved against and dissatisfied with the judgment and order of the Appellate Authority, the appellant-tenant preferred Civil Misc. Writ Petition No. 3132 of 2004 before the High Court of Allahabad, which was dismissed by the learned Single Judge by impugned judgment. The relevant paragraph of the judgment is extracted as under:-

"The courts below after taking into consideration the entire material on record, recorded finding of bona fide need and comparative hardship in favour of landlord. The impugned order requires no interference in exercise of writ jurisdiction.

Accordingly, the writ petition is dismissed.

However, the petitioner is granted one year's time to vacate the premises, provided that within one month from today, he files an undertaking before the Prescribed Authority that on or before expiry of aforesaid period of one year he will willingly vacate and handover the possession of the house in dispute to the landlord."

8. Now, the appellant-tenant has preferred this appeal by way of special leave challenging the correctness and validity of the order of the High Court.

9. During the pendency of the appeal, the respondent-landlady died and was substituted by her legal heirs. Mr. Z. M. Naiyer, learned counsel appearing on behalf of the appellant-tenant, contended that the approach of the High Court in dismissing the Writ Petition in slipshod manner without recording reasons is erroneous. He submitted that the courts below have committed manifest error of law and jurisdiction in entertaining and allowing second application for release of the demised premises as her first application for the same relief was already allowed by the Appellate Authority in Appeal No.4 of 1983 and two release orders in respect of the same accommodation, one conditional and other blanket, cannot co-exist and that being the position, the impugned orders are vitiated in law. He next contended that the second application for the release of the demised premises filed by the landlady was an abuse of process of law and the courts below should not have entertained the second release application of the landlady to perpetrate a fraud in judicial proceedings to achieve her

nefarious designs. It was also contended that the landlady before her death had possessed 11 cozy rooms with other allied accommodation for the need of her 5 adults and 4 minor members of the family, which are quite sufficient for their peaceful living, but while determining the bona fide need of the landlady the courts below have ignored the comparative hardship of the appellant-tenant.

10. Mr. Anil Kumar Gupta-II, learned counsel appearing on behalf of the respondents-legal representative of landlady, on the other hand, contended that the prescribed authority on proper and careful consideration of the evidence led by the parties before it, passed a reasoned order of eviction against the appellant-tenant, the said order has been affirmed by the Appellate Authority and also by the High Court. He submitted that this Court ordinarily should not interfere with the concurrent findings of facts recorded by the competent courts/authorities in exercise of its power and jurisdiction under Article 136 of the Constitution of India.

11. We have duly considered the respective contentions of the learned counsel for the parties and perused the entire material on record.

12. The facts narrated hereinbefore are not in dispute to the extent that the landlady rented the demised premises to the appellant-tenant for residential purpose. It appears from the record that on 26.11.1982/27.11.1982 an application bearing R.C. No.67 of 1982 was filed by late Smt. Lajwanti Kathuria - landlady against the appellant-tenant for release of the demised premises. The said application was dismissed by the prescribed authority predominantly on the ground that the premises earlier vacated by some tenants were not utilised by the landlady for the use and occupation of her family members, but in fact those were let out to new tenants. However, the appeal filed by the landlady against the impugned order of the prescribed authority was allowed by the Appellate Authority on 21.05.1983, whereby the appellant-tenant was directed to vacate the demised premises and shift to an alternate accommodation being offered by the landlady. It was also ordered that in case the appellant-tenant failed to vacate the premises in question within the stipulated period, the landlady would get possession of the accommodation through Court proceedings. The appellant-tenant submitted that the landlady did not provide the alternative accommodation in terms of the order of the Appellate Authority and allowed the stalemate to continue. The landlady filed second release application which was registered Rent Case No.18 of 2001 on the file of the prescribed authority, Kanpur Nagar. From the pleadings of the parties, both the prescribed authority and the Appellate Authority have noted that the landlady at the time of filing of the release application in the year 2001 was residing in the same house with her elder son, Satish Kathuria, his educated wife Smt. Namita and her grandsons Abhishek, Rajat and grand-daughter Karishma and younger son Joginder Kathuria, his educated wife Smt. Rajani, grand-daughter Tanu; her married daughter Smt. Neelam Khanna, son-in-law Manish Khanna and their daughters Kum. Kirti and Kum. Neha. She filed affidavit in support of her release application stating inter alia that her elder son is a Contractor/Builder, and he needs separate room for his educated wife and children who are studying in convent school; she needed room for her second son Joginder Kathuria, an Advocate and his educated wife and daughter and separate accommodation for her married daughter, son-in-law and their

children who have frequently been paying visits to her house because of her old age. She also stated that she needed one room for her old lady friends, one room for prayer purpose and one room to be used as a Museum to preserve some articles of her late husband. She stated that the appellant-tenant took the demised premises on rent in July 1972 with clear understanding that being a member of Indian Air Force, he would be transferred from his place of posting within a period of 3 to 4 years and then he would vacate the premises forthwith. The appellant-tenant retired in the year 1984 and thereafter he started running a small provision store in the name and style of 'Juneja Provision Store'. Rajiv Juneja, the elder son of the appellant-tenant, is doing construction work in the name of M/s Juneja Engineering and also doing the business of chemical sale and purchase in one portion of House No.229 Patel Nagar, Shanker Nagar. He is living in rented accommodation along with his wife and children at 140-C Ramgali, Harjinder Nagar, Kanpur, where he is in occupation of three rooms, one bathroom, latrine, kitchen and verandah. He is also doing travel agency business in the name of Juneja Travels at Pardemanpura, Harjinder Nagar, Kanpur. It was stated that Ajay Juneja, the second son of the appellant-tenant, is a teacher in Virendra Swaroop Education Centre and his wife is doing some business and they are living in House No. 124A/272, Block 11, Govind Nagar, Kanpur, having five rooms, latrine, bathroom, kitchen, verandah and courtyard.

13. One more son of the appellant-tenant, namely, Vijay Juneja, is working as a T.V. Engineer in Thomson Co. and his educated wife is a teacher. They are occupying two rooms, latrine, bathroom, kitchen and verandah as tenants in premises No. 1-A Ghaoo Khera Post Chakeri, Kanpur. The landlady also contended that the appellant-tenant had sub-let the rented accommodation to one R. N. Singh on monthly rent of Rs.300/-, in respect of which Civil Suit No. 1112 of 2000 titled R. N. Singh v. D.C. Juneja is pending in the Court of Civil Judge (J/D), Kanpur Nagar. The landlady also stated that she filed Civil Suit No.397 of 1997 against the appellant-tenant in the Court of J.S.C.C., Kanpur Nagar, for ejection of the appellant-tenant inter alia on the grounds of default in payment of rent, sub-tenancy and damage to the demised house and the said suit is still pending. It was also stated that the appellant-tenant has constructed a house over one plot at Gandhi Gram and the appellant-tenant and his family members are financially very sound. The daughter of the appellant-tenant is married and she is residing at Lucknow.

14. The appellant-tenant denied the genuine requirement of the landlady. However, he submitted that in fact there are only nine family members of the landlady and not ten to thirteen members as alleged by her. He stated that in the past over several years, the landlady had evicted many tenants and thereafter she let out the accommodations to other persons during the pendency of the present eviction application. Looking to the strength of the family members of the landlady and accommodation available with them, the landlady did not need any additional accommodation as per the version of the appellant-tenant. He stated that he is living in the demised premises with his wife, son Rajiv and his wife Gayatri, grandson Nikhil and his second son Vijay and his wife Rinku, whereas his third son Ajay Juneja is living in a separate house No.124A/272, Block 11, Govind Nagar, Kanpur, which was owned by Ajay's grandfather late Shri Sant Ram Juneja. He stated that he has no other accommodation in the city of Kanpur. He denied the allegation of sub-letting the rented accommodation to one R.N.

Singh at the rate of Rs.300/- per month and stated that the landlady got false suit instituted against him through R.N. Singh. He submitted that as the landlady refused to accept the rent he, therefore, has been regularly depositing the settled rent under Section 30(1) of the Act in the Court of Civil Judge, Junior Division, Kanpur Nagar. He pleaded that if he is ordered to be evicted from the demised premises, he will suffer irreparable injury and hardship as compared to the landlady.

15. The prescribed authority, on assessment of the entire evidence on record, came to the conclusion that the appellant-tenant has failed to establish that the landlady had let out some portions of the house to the new tenants on higher rent. The prescribed authority stated in its order that the landlady has filed on record Paper No.28 in which residential address of the appellant-tenant is mentioned as 1A, Ghao Khera, and other Paper Nos.29, 30, 31 and 32 also reveal the same address of the appellant-tenant. On the basis of the oral as well as documentary evidence on record, the prescribed authority came to the conclusion that the appellant-tenant is residing with his son Vijay Juneja and his family members.

16. The averments of the landlady in her eviction application that the appellant-tenant has got House No.140-C Ramgali, Harjinder Nagar, 220, Patel Nagar, 1/382 N-2 Road, Harjinder Nagar, has been supported by Ashok Kumar and Rakesh Kumar in their affidavits. On comparative scrutiny of the statements pleaded by both the parties in their pleadings and supported by their evidence, the prescribed authority has noticed that in the Voter List Paper Nos. 45 and 46 for the year 1995-99 name of Ajay Juneja, son of the appellant-tenant, has not been shown as occupant of premises No.124A/272, Block 11, Govind Nagar, as contended by the appellant-tenant in his written statement and deposition in the affidavit. In fact, Ajay Juneja at the relevant time, was residing at house No. 251 and later on he shifted to premises No. 124A/272. The appellant-tenant, during the pendency of the eviction proceedings, has not made any attempt to secure alternate accommodation and he has been found living with other members of the family in some other house and the prescribed authority as also the Appellate Authority on scrutiny of the evidence have concluded that House No.124A/272 was owned by the father of the appellant-tenant, which was transferred in the name of Ajay Juneja, son of the appellant-tenant, by executing a collusive Will with clear intention to show that the appellant-tenant does not own any house in Kanpur City and in order to frustrate the need of the landlady. Both the courts below recorded concurrent findings of facts that the appellant-tenant and his family members have got separate accommodation in Kanpur City and on the basis of the evidence on record, the requirement of the accommodation of the landlady is bona fide and genuine and the comparative hardship also is more pressing to the landlady in comparison to the appellant-tenant. In that view of the matter, the High Court in its jurisdiction under Article 226 of the Constitution has rightly dismissed the writ petition of the appellant-tenant on the premises of concurrent findings of facts.

17. In the backdrop of the facts, indisputably, the landlady could file an application before the prescribed authority for the eviction of the appellant-tenant from the premises under tenancy or any specified portion thereof and the prescribed authority after satisfying itself that the ground as stipulated in Section 21 of the Act does exist, the eviction order has been

validly passed against the appellant-tenant. Rule 16 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, prescribes certain factors which have also to be taken into account by the prescribed authority while considering the application for eviction of a tenant on the ground of bona fide need. Sub-rule (1) of Rule 16 relates to the cases of eviction from an accommodation for the purpose of residence by the landlord or any members of his family. Considering the facts in the light of Rule 16 pressed into service on behalf of the appellant-tenant that taking into consideration the length of the period of tenancy, the eviction of the appellant-tenant from the premises in question is in violation of the provision of Rule 16, in our opinion, cannot be accepted.

18. In *Gaya Prasad v. Pradeep Srivastava*¹, this Court held that the need of the landlord is to be seen on the date of application for release. In *Prativa Devi v. T.V. Krishnan*², 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. In *Rishi Kumar Govil v. Maqsoodan & Ors.*³, this Court while dealing with the provisions of Section 21(1)(a) of the *U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972* and Rule 16 of the *U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972*, held that the bona fide personal need of the landlord is a question of fact and should not be normally interfered with.

19. Having regard to the well-reasoned concurrent findings and reasoning recorded by the prescribed authority and the Appellate Authority, which are affirmed by the High Court in writ petition, we are of the opinion that the impugned judgment warrants no interference inasmuch as no illegality, infirmity or error of jurisdiction could be shown before us by the appellant-tenant.

20. In the result, for the above-stated reasons, we find no merit in this appeal and it is dismissed, accordingly.

21. However, considering the period for which the premises in question was in the occupation of the appellant-tenant, time is granted till 31.06.2009 to vacate the premises, subject to filing of an affidavit by way of usual undertaking before the prescribed authority within a period of four weeks to deliver the vacant possession on or before the stipulated date. There will be no order as to costs.

¹[*(2001) 2 SCC 604*]

²[*(1996) 5 SCC 353*]

³[*(2007) 4 SCC 465*]