

SUPREME COURT OF INDIA

Vinay Kumar Gupta

Vs.

Gomti Devi

C.A.No.6690 of 2005

(C.K.Thakker and Aftab Alam JJ.)

05.11.2008

ORDER

1. The appellant-landlord has questioned the legality of the order passed by the High Court of Judicature at Allahabad dated July 30, 2003 passed in Civil Misc.Writ Petition No. 31938 of 2002. By the said order, the High Court affirmed the finding of fact recorded by the Court of prescribed authority and confirmed by the appellate authority recording bona fide requirement of the landlord for getting possession of the suit premises from the respondent-tenants under Section 21 of the *Utter Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972* (for short, the Act).

2. The High Court, however, observed in the impugned judgment that during the pendency of proceedings before the appellate forum, the landlord had made an offer to grant alternative accommodation to the tenants of which the landlord has got possession in pursuance of a decree passed in another suit. The High Court observed that the learned counsel for the tenants fairly accepted that such a relief may be granted in favour of the tenants and, accordingly, an order was passed directing the appellant-landlord to make available to the tenants, the alternative accommodation in respect of which he has obtained a decree of possession from another tenant.

3. The case of the appellant is that he is the landlord. He required suit premises for his bona fide requirement and hence he initiated the proceedings under Section 21 (1) of the Act. The prescribed authority considered the case of the landlord as also the defence put forward by the defendant-tenants and held that on the facts and in the circumstances, it was proved by the landlord that he required the premises for his bona fide use. Accordingly, an order of eviction was passed against the tenants and in favour of the landlord.

4. Being aggrieved by the said order, the tenants preferred an appeal under Section 22 of the Act. The appellate authority confirmed the finding recorded by the trial Court and order was affirmed.

5. Looking to the relevant provisions of the Act, there is no doubt that there is no further remedy so far as the Act is concerned. In view of the said fact, the respondent-tenants approached the High Court by filing a writ petition. The High Court observed that both the authorities have held in favour of the landlord with regard to bona fide requirement and there was no infirmity in the said finding.

6. The High Court, however, observed as under:

" In the judgment of the appellant court typed of which is annexure 7 to the writ petition, from page 93 to 130, it is mentioned at page 111 that landlord offered an alternative accommodation to the tenant of which the landlord had got possession in pursuance of decree passed in SCC Suit No. 18 of 1994, which was a suit filed by him against another tenant Laxmi Kant. During the argument, learned counsel for the petitioner was asked by the court as to whether his client would be ready to take the said house on rent in case court did not find any error in the judgment passed by the courts below or not. Learned counsel for the tenant petitioner very fairly stated that in case his argument on merit did not find favour with the court the alternative accommodation offered by the land lord might be given to the tenant-petitioner."

7. Keeping in view the above fact, the following direction was issued by the High Court:

"Accordingly, while dismissing the writ petition, I direct that the accommodation offered by the landlord mentioned in the judgment of the lower appellate court (with regard to which landlord filed SCC Suit No. 18 of 1994 against the other tenant Laxmi Kant) should be given to the tenant on rent in exchange of accommodation in dispute on the same rate of rent at which the present accommodation is in tenancy of the tenant petitioner. Prescribed Authority is directed to implement the exchange, which must be simultaneous i.e. both the parties shall get possession on the same date. If needed be an Advocate Commissioner may be appointed to affect the change of the possession. Both the parties shall bear expenses of the Advocate Commissioner in equal share. However, the Prescribed Authority is at a liberty to adopt such mode for affecting the transfer, as it considers appropriate including police force if necessary. Both parties must appear before the Prescribed Authority on 18.8.2003 with the certified copy of this judgment. The petitioner shall not be evicted till the exchange."

8. The above direction of the High Court is challenged by the landlord in the present appeal. Notice was issued by this Court on October 06, 2003 and status quo was ordered to be maintained until further orders. Leave was thereafter granted and hearing was ordered to be expedited. Today the matter has been placed for final hearing.

9. It may be stated that during the pendency of the proceedings in this Court, the appellant died and his heirs and legal representatives have been brought on record.

10. We have heard learned counsel for the parties.

11. Learned counsel for the appellant-landlord contended that the High Court has committed an error of law and of jurisdiction in issuing direction to the landlord to make available alternative accommodation which he had obtained by getting a decree from another tenant. It was stated that even if the High Court felt that such an offer was made before the appellate authority without observing anything as to what had happened to that offer and whether the landlord was still willing to continue to make the said offer in favour of the tenants, no direct order could have been passed by the High Court. To that extent, therefore, the order passed by the High Court deserves to be set aside.

12. Learned counsel for the respondent-tenants, on the other hand, submitted that the High Court considered the fact that such an offer was made by the landlord before the appellate authority. If that fact was taken into account by the High Court and a direction was issued, it cannot be said that no such order could have been passed by the Court. In any case, under Article 136 of the Constitution, this Court may not interfere with such direction. Alternatively, the learned counsel submitted that if this Court feels that no such order could have been passed by the High Court, the impugned order may be set aside by remitting the matter to the High Court for fresh disposal in accordance with law.

13. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed. So far as bona fide requirement of the landlord is concerned, the prescribed authority recorded a finding of fact in favour of the land lord. The said finding was confirmed by the appellate authority. In the circumstances, even otherwise, in our opinion, the High Court could not have interfered with the finding of fact recorded by the prescribed authority and confirmed by the appellate authority in exercise of power of superintendence.

14. The question then only remains with regard to the direction of the High Court to make alternative accommodation available to the respondent-tenants. Even if it is true that such an offer was made by the landlord when the appeal was pending before the appellate authority, the High Court without recording a finding against the landlord or without confirming whether landlord still wanted to abide by the said offer, could not have issued a direction to the landlord to give alternative accommodation to the tenants. On that ground alone, the order of the High Court deserves to be interfered with to that extent and the appeal filed by the appellant must succeed. In view of finding of fact by all Courts, in our opinion, the case need not be remanded to the High Court for consideration.

15. For the foregoing reasons, the appeal is partly allowed. The finding as to bona fide requirement of the landlord recorded in favour of the appellant-landlord deserves no interference. The direction to the appellant-landlord that he will give possession of alternative accommodation to the tenants in respect of whom he had obtained possession from another tenant cannot be said to be legal or lawful and is, therefore, set aside.

16. The appeal is partly allowed to the above extent with no order as to costs.

17. At this stage, learned counsel for respondent-tenants stated that the premises in question is residential accommodation and if decree will be executed immediately, serious prejudice will be caused to the tenants. Learned counsel, therefore, prays for one year's time to vacate the premises. Learned counsel for the landlord, however, submitted that the proceedings are of 1992 and the order was passed in favour of the landlord believing bona fide requirement of the landlord. He submitted that at the most six months' time may be granted.

18. In our opinion, ends of justice would be met if we grant time to the respondent-tenants till August 31, 2009 to vacate the premises subject to filing usual undertaking within four weeks from today. A copy of such undertaking will be given to the learned counsel for the appellant landlord.

19. Ordered accordingly.