

SUPREME COURT OF INDIA

Mohd. Ayub

Vs.

Mukesh Chand

C.A.No.4495 of 2006

(Aftab Alam and Ranjana Prakash Desai JJ.)

05.01.2012

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. This appeal, by grant of special leave, is directed against the judgment and order dated 12.9.2005 passed by the High Court of Uttaranchal at Nainital partly allowing the Writ Petition No. 296 of 2004 filed by the appellants.

2. The appellants/landlords filed an application under Section 21 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short, 'the U.P Act') for eviction of the respondent/tenant on the ground that they bona fide required the premises occupied by the respondent to start business for their sons.

3. According to the appellants when the house in question was purchased by them the respondent was occupying two shops facing the road and two rooms situate at the rear of the said shops as a tenant of the previous landlord at the rent of Rs.35/- per month. These rooms are situated on the ground floor of the said building. The respondent continued to occupy the said rooms as tenant at the same rent. It is the case of the appellants that the first appellant is carrying on business in three small stalls situated in a shop of the Cantonment Council, the rent of which keeps increasing. The three sons of the appellants aged 23, 28 and 19 years are unemployed. Two sons want to start general merchant business in one shop and the third son wants to start wholesale egg business in the other shop. The appellants' family consists of 13 members. Their one son is married and has three children and

the two other sons are of a marriageable age. The married son wants to live in the room behind the shop. Presently, the appellants' family is living in three rooms and a verandah with great difficulty. On these grounds the appellants filed the application for release of the rooms in occupation of the respondent.

4. In response, the respondent inter alia contended that he is conducting photography business from the said shops for many years; that he is enjoying goodwill in the area; that he will find it difficult to get premises in the same area; that appellants are financially well off as compared to him; that they own other properties and that greater hardship would be caused to the respondent if the decree of eviction is passed than that would be caused to the appellants if it is not passed.

5. The Prescribed Authority dismissed the application holding inter alia that the appellants are financially sound and other properties were available to them whereas except the suit shops the respondent does not have any place for residence and business and hence, if he is evicted from the shops in his occupation, he will experience more difficulty. The appeal carried from the said judgment was dismissed by the District Court holding inter alia that financial position of the appellants is far better than that of the respondent. They could have purchased a vacant bungalow and started business for their sons. Learned District Judge held that the appellants have purchased the building to make profit and then filed the application for eviction. According to learned District Judge, the respondent was doing business from the said shops for many years and it would be difficult for him to find a place for business. Hardship caused to the respondent would be more.

6. While disposing of the petition filed by the appellants the High Court rightly held that the landlord cannot be dictated by the tenant what business his sons should do and the observations made by the courts below to that effect and the findings reached by the courts below on bona fide requirement of the landlord are perverse. However, without going into the aspect of comparative hardship, the High Court directed that only one room out of the four rooms should be handed over to the appellants by the respondent as from the affidavit it appears that the respondent was using it as a passage. Being aggrieved by the said judgment, the appellants have approached this Court.

7. Shri Vijay Hansaria, learned senior counsel, appearing for the appellants submitted that having come to the conclusion that the need of the appellants was genuine, the High Court erred in directing the respondent to only handover one room to the appellants. The High Court has wrongly granted only partial relief to

the appellants without going into the aspect of comparative hardship. In support of his submissions, learned counsel relied on Raghunath G. Panhale (Dead) by Lrs. v. Chaganlal Sundarji Co. 1, Bhimanagouda Basanagouda Patil v. Mohd. Gudusaheb 2, Ors. (1999) 8 SCC 1 2 (2003) 3 SCC 101 3 (2008) 7 SCC 770

8. Shri Achal Chabbra, learned counsel for the respondent on the other hand submitted that the High Court has balanced the interest of both sides and hence no interference is necessary with the impugned judgment.

9. There is no challenge to the High Court's finding that the appellants' requirement is bona fide. The respondent has not assailed the High Court's order. We concur with the High Court on this point. However, the High Court erroneously held that the view expressed by the courts below that greater comparative hardship would be caused to the respondent if decree of eviction is passed is correct so far as two rooms occupied by him for residence and one room in which he is running a shop is concerned. The High Court observed that no hardship will be caused to the respondent if one room is directed to be handed over to the appellants because it was used as a passage by the respondent. Surprisingly, the High Court has not given any reasons why only partial relief was being granted to the appellants. In fact, it has not discussed the issue of comparative hardship at all. Since this issue is of utmost relevance and the application of the appellants is of the year 1998, we proceed to deal with it.

10. Section 21 (1) (a) of the U.P. Act provides for eviction of a tenant on the ground of bona fide requirement of the landlord. The fourth proviso thereof states that the Prescribed Authority shall take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.

11. Rule 16 (2) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (for short, `the said Rules') states which facts the Prescribed Authority has to consider while dealing with an application for release under clause (a) of sub-section (1) of Section 21 of the U.P. Act. Rule 16 (2) refers to building let out for purpose of any business and the facts which have to be taken into consideration are: (a) length of tenancy of the tenant; (b) availability of suitable accommodation for tenant; (c) whether the landlords existing business is more flourishing than that which is proposed to be set up by him in the leased premises and (d) need of self-employment of a son or married or unmarried or widowed or divorced or judicially

separated daughter or daughter or a male lineal descendant of the landlord who has completed his or her technical education and who is not employed in government service.

12. In *Ganga Devi* this Court held that comparative hardship indisputably is a relevant factor for determining the question as to whether the requirement of the landlord is bona fide or not within the meaning of the provisions of the U.P. Act and the said Rules and it is essentially a question of fact. This Court observed that Rule 16 provides for some factors which are required to be taken into consideration. This Court clarified that the court would not determine the question only on the basis of sympathy or sentiment. This Court referred to its judgment in *Bhagwan Das v. Jiley Kumar* where it is observed that the outweighing circumstance in favour of the landlord was that two of her sons after completing their education were unemployed and wanted to carry on business for self-employment. This Court further observed that there was an additional circumstance that the tenant had not brought on record any material to indicate that at any time during the pendency of this long drawn out litigation he had made any attempt to seek an alternative accommodation and was unable to get it. This Court also referred to its judgment in *Rishi Kumar Govil v. Maqsoodan* 5 where it has particularly taken note of the fact that the landlady had no other shop where she can establish her son who is married and unemployed and there was nothing on record to indicate that the business of the father was huge or flourishing. This Court clarified that the length of the period of tenancy as provided under clause (a) of sub-rule (2) of Rule 16 of the said Rules is only one of the factors to be taken into account in context with other 4 (1991) supp. (2) SCC 300 5 (2007) 4 SCC 465 facts and circumstances of the case and cannot be a sole criterion or deciding factor to order or not the eviction. This Court held that in the circumstances of the case the balance tilted in favour of the unemployed son of the landlady whose need is certainly bona fide. After quoting the above judgment in *Ganga Devi* this Court gave six months time to the landlady to handover the premises to the landlord in the interest of justice.

13. In our opinion, *Ganga Devi* applies on all fours to the present case. The first appellant carries on his business from three small stalls of a shop of the Cantonment Council whose rent keeps on increasing. There is nothing on record to suggest that the appellants' present business is more flourishing than the business which they propose to start in the leased premises. All the three sons of the appellants are educated but unemployed. They want to start business in the premises in occupation of the respondent. One of them is married and has three

children. The other three are of a marriageable age. In all there are thirteen members in the appellants' family and they are living in three rooms and one verandah with great difficulty. As against that the respondent's family consists of four persons and there are four rooms in his possession. It is observed by the courts below that the appellants own other premises. However, details of those premises are not on record. The High Court has rightly noted that this bald assertion is based on conjectures. It is well settled the landlord's requirement need not be a dire necessity. The court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start. It was wrong on the part of the District Court to hold that the appellants' case that their sons want to start the general merchant business is a pretence because they are dealing in eggs and it is not uncommon for a Muslim family to do the business of non-vegetarian food. It is for the landlord to decide which business he wants to do. The Court cannot advise him. Similarly, length of tenancy of the respondent in the circumstances of the case ought not to have weighed with the courts below.

14. We also find that the courts below were swayed by the fact that the financial position of the appellants was better than the respondent. The District Court has erroneously gone on to observe that the appellants can buy another building and start business. It has also observed that the appellants had purchased the building to make profit. In this connection we may usefully refer to the judgment of this Court in *Bhimanagouda Basanagouda Patil* where the District Judge decided the issue of comparative hardship in favour of the tenant solely on the basis of affluence of the parties. This Court observed that if this is the correct approach then an affluent landlord can never get possession of his premises even if he proves all his bona fide requirements. This Court further observed that the fact that a person has the capacity to purchase the property cannot be the sole ground against him while deciding the question of comparative hardship. If the purchase is pursuant to a genuine need of the landlord the said purchase has to be given due weightage unless, of course, the purchase is actuated by collateral consideration. This Court rejected the High Court's finding that the landlord had secured the premises apparently in a game of speculation. Somewhat similar observations are made in this case by the District Court which in our opinion are totally unsubstantiated.

15. It is also important to note that there is nothing on record to show that during the pendency of this litigation the respondent made any genuine efforts to find out any alternative accommodation. We specifically asked learned counsel for the

respondent to point out any evidence to establish that the respondent made any such genuine efforts. He was unable to answer this query satisfactorily.

16. In the ultimate analysis, we are of the view that the perverse findings of the courts below on the aspect of comparative hardship must be set aside. The High Court has rightly found the need of the appellants to be bona fide.

It has however, fallen into an error in directing the respondent to handover only one room to the appellants. In our opinion, the hardship appellants would suffer by not occupying their own premises would be far grater than the hardship the respondent would suffer by having to move out to another place. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that the respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be the sole determinative factor. That hardship can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make alternative arrangement.

17. In the view that we have taken, the appeal succeeds. The impugned order is set aside to the extent it permits the respondent to retain possession of three rooms out of four rooms in his occupation. The respondent is directed to handover possession of all the rooms in his occupation to the appellants. He is granted six months time to vacate the premises in question on the condition that he files usual undertaking before the Registry of this Court within eight weeks from today.

18. The appeal is disposed of in the aforesaid terms.