

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 6479 of 2021

Petitioner :- Zulfikar Ahmad And 7 Others

Respondent :- Jahangir Alam

Counsel for Petitioner :- Vinayak Mithal

Counsel for Respondent :- Gaurav Dhama,Raj Kumar Singh,Rajat Aren,Sheetla Sahai Srivastava

Hon'ble Ajit Kumar,J.

1. Heard Sri Vinayak Mithal, learned counsel for the petitioners and Sri Rajat Aren and Raj Kumar Singh, learned counsel for the respondent.
2. Learned counsel for the petitioners states that petitioners do not want to file rejoinder affidavit and the petition may be heard and decided on the basis of pleadings available on record.
3. Petitioners before this Court are tenants in the premises in question of respondent no. 1. The release application for the two shops in question was filed by respondent/ landlord on the ground of personal need to open a shop to carry out motorcycle and scooter repairing works, which he was doing in a premises taken on rent and the landlord of that premises, according to him, had asked him to vacate the premises. The release application stood granted by the Prescribed Authority finding the bonafide need to be in existence and comparative hardships there to be in favour of the respondent/ landlord. Said order was unsuccessfully appealed against and hence the order passed by the appellate authority is also under challenge.
4. The only argument that has been advanced by learned Advocate appearing for the petitioner Mr. Vinayak Mithal is that the Prescribed Authority had failed to give due consideration to the alternative accommodation available in the form of a third shop which could have been used reasonably to set up the business by landlord, in view the provisions as contained under rule 16(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972. It is submitted further that the court of appeal has also manifestly erred in affirming the order passed by the Prescribed Authority.
5. Leading the argument on the above point, Mr. Mithal has taken the Court to a specific stand taken by him in his objections filed to

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the release application vide paragraph no. 4 to state that the landlord has wrongly shown a shop already available with him on eastern side of the tenanted premises and since it was pleaded in the statement on affidavit by the tenant for which ultimately an amendment was carried out in the release application to raise a pleading to the effect that the particular premises was having a stair case also and could not be used as a shop, rather it was already being used as a store.

6. It was further pleaded in the objection filed to the amendment application that in the plaint case in a partition suit being O.S. No. 1524 of 2008 the landlord had himself referred to three shops in question which included the shop which was not being shown as store. It is thus sought to be argued that this alternative accommodation which was very much available, was a fact that had been deliberately concealed by the landlord while applying for release of the shop in question. Hence, there was hardly any bonafide need. According to Mr. Mithal, this aspect of reasonable suitability of alternative accommodation was not accorded due consideration and the release application came to be allowed only on the ground that there was no other shop available to him believing the statement of the landlord that third shop was a store and further that the landlord being the sole arbiter of his need and requirement, the tenant could not have suggested about the suitability of alternative accommodation to the landlord.

7. Mr. Mithal strenuously argued that this alternative accommodation and its suitability required to be discussed by the Prescribed Authority while considering the point of comparative hardships and non consideration thereof, according to him, is a manifest error of law and fact in the order of Prescribed Authority granting release. Mr. Mithal has placed reliance upon a judgment in the case of **Smt. Raj Rani Mehrotra v. IInd Additional District Judge and Others, Allahabad Rent Cases 1980 pg 311 (Civil Appeal No. 3113 of 1979)** decided on 29.10.1979, wherein it has been held that whether the plea under Rule 16(1)(d) of U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Rules, 1972 was taken or not, it was the duty of the court to take into account that tenant's plea of alternative accommodation is accorded due consideration. According to Mr. Mithal a mere wish or desire of the landlord to acquire possession over the tenanted premises cannot be said to be a bonafide and reasonable requirement. Requirement implies an element of necessity and, therefore, once the landlord concealed this material fact though brought it subsequently by way of amendment, it sufficiently

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demonstrated that he was not in pressing need of the premises in question and just wanted to get the tenant evicted. It is also submitted by Mr. Mithal that the landlord has not been able to place any material in support of his plea that the shop in which he was running the repair works of automobiles, he was directed to vacate the shop by the landlord. He has further relied upon a judgment of this Court in the case of **Suresh Prasad v. Additional District Judge & others, 2016 (3) ADJ** where the matter was remitted with a direction to the court of appeal to permit parties to lead evidence in respect of another accommodation available to judge the point of bonafide need afresh. Mr. Mithal has also relied upon a judgment of Supreme Court in the case of **Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada, AIR 200 SC 2713** wherein on the point of comparative hardship it was held that release can be refused if the comparative hardship goes against the landlord.

8. Meeting the argument advanced by learned counsel for the petitioner, Mr. Aren, learned counsel appearing for respondent/landlord contended that once it has come to be established on affidavit filed in evidence that there was a stair case in the shop and the landlord admitted that third shop, in which there was stair case, was being used as a godown, it does not lie in the mouth of tenant to suggest that even then this accommodation being available to the landlord can be suitably utilized by him to run scooter repairing workshop. He submits that the order passed by the Prescribed Authority as well as appellate authority absolutely deal with every aspect of bonafide need and comparative hardships including the availability of alternative accommodation much talked about and referred to by learned counsel for the petitioner. He has placed reliance upon various authorities of this Court as well as Supreme Court:

(i) Munni Lal Gupta v. Seventh Additional District and Sessions Judge, Aligarh, 1996 0 Supreme (All) 1221; (ii) Mst. Bega Begum and others v. Abdul Ahad Khan (dead) by L.R.s and others, (1979) 1 SCC 273; (iii) Rais Mian v. Abdul Samad, 2014 SCC OnLine Del 4286; (iv) Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222; (v) Dhannalal v. Kalawatibai and others, (2002) 6 SCC 16; (vi) Muni Lal and others v. Prescribed Authority and others, (1977) 3 SCC 336; (vii) Mohan Amba Prasad Agnihotri and others v. Bhaskar Balwant Aher (D) through LR's, (2000) 3 SCC 190; (viii) Laxmikant Revchand Bhojwani and another v. Pratapsing Mohansingh Pardeshi (1995) 6 SCC 576; and (ix) Mohd. Yunus

9. Having heard learned counsel for the respective parties and having perused the records, I, at the very threshold may observe that there is absolutely no quarrel about principle discussed in the authorities of Supreme Court cited before me that on the point of bonafide need the court will have to consider the other alternative accommodation available to the landlord and it is after giving due consideration there to find out as to whether it is a suitable accommodation or not from the point of view of landlord as to the need set up, that question of bonafide need should answered. However, this would depend upon facts of each case because in every case the issue would be as to what kind of alternative accommodation is proposed and how the court takes it to be suitable or not. It may at times also depend on many other factors like the landlord's family is very large one and he needs to settle so many persons of the family to run business and even otherwise where landlord may use a larger area than available one and the suitability of accommodation to run a kind of business which may not be possible in alternative accommodation. Since it has been held that the landlord is best arbitor to decide as to which accommodation would suit him to establish business, the Prescribed Authority will be slow in rejecting the release application only on the ground of alternative accommodation referred to by tenant as available to the landlord because the landlord should always be left to utilize the property the way he wants and just because he has let out a particular portion of his property on rent to a third party inducting it as a tenant, it should not become as irrevocable tenancy forever. A tenant should be at the pleasure of landlord in a sense that as and when the landlord needs the property for his personal use, he will have to release. The court has to just see, whether the need is bonafide one or not.

10. Similarly the authorities cited by learned counsel appearing for the respondent correctly lay down proposition when this Court may and may not interfere with orders passed by rent authorities and that ultimately it is the landlord's need to use his accommodation according to his purpose, should be accorded weightage.

11. In the instant case the respondent though has sought to state that sometimes landlord is running repair works from the shop with store but it could not be disputed absolutely that the respondent/ landlord was running scooter repairing work from a tenanted premises of another owner and that he needed these two shops to make one to run the scooter repairing work and also a sale

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shop for auto spare parts. The shop about which much reference was made by the tenant was admitted by the landlord being used as store and there is stair case also. Naturally if the shop is having stair case then the members of family would be going to first floor or roof top using that stair case itself and there privacy may be exposed to the strangers visiting the shop which would not be proper. In the circumstances, therefore, the tenant was not justified in saying that the alternative accommodation available was reasonably suitable so as to run the scooter repair works. The Prescribed Authority was fully justified in holding that it is the landlord who is in best position to tell which would be the best suitable accommodation and this has been also the settled legal position. The Prescribed Authority has also referred to the notice given by the land owner of other premises where the scooter repair work was being done by the respondent and that notice was brought on record. This order of the Prescribed directing for release upon bonafide need and comparative hardships has come to be further affirmed in appeal.

12. I have gone through the judgment of appeal also and find that the appellate court has discussed the statements of both the parties in detail more especially the stand of the tenant/ petitioner that the landlord having sufficient property. The court of appeal has also discussed about the width of the road in front of the shops in which the scooter repair works is proposed to be carried out and has further held that space in these two shops would be sufficient for the auto repair works and auto spare parts sale shop which the landlord needed to set up. So far as the third shop which was being claimed by the tenant in possession of the landlord and which could have been utilized for doing the scooter repair work, the appellate court has held that the shop was not suitable place to carry out the auto repair works and sale of auto spare parts at the same time.

13. Thus, even on the principle of rule 16(1)(d) of the Rules, 1972 I find that the findings returned by the Prescribed Authority affirmed in appeal are sound enough and cannot be said to be suffering from any such error apparent on the face of record or any manifest error of law which may warrant interference by this Court in exercise of powers under Article 227 of the Constitution of India.

14. In view of the discussion as held above, I do not see the authorities cited to be of any help to the petitioners. The point of bonafide need and comparative hardships having been decided in favour of the landlord after discussing all the relevant aspects, the

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petition held to be devoid of merits and is accordingly **dismissed** with no order as to cost.

Order Date :- 26.11.2024

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