

2022 LiveLaw (SC) 239

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
UDAY UMESH LALIT; S. RAVINDRA BHAT, JJ.
January 7, 2022.

CIVIL APPEAL NO.253 OF 2022 (@ Out of Special Leave to Appeal (C) No(s).9501/2018)

HARISH KUMAR (Since deceased) Through: Lrs. *VERSUS* PANKAJ KUMAR GARG

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1)(a) - Ground of bona fide requirement does not strictly require the landlord to be "unemployed" to maintain an action. All that the provision contemplates is that the requirement so pleaded by the landlord must be bona fide.

Constitution of India, 1950 - Article 227- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - The High Court while exercising jurisdiction under Article 227 of the Constitution of India not justified in upsetting the finding of fact rendered by the Appellant Authority.

Summary - Appeal against High Court which held that appellant-landlord could not maintain an application under Section 21(1)(a) since the son for whose benefit the release was sought is not unemployed - Allowed - It may be that the son of the appellant was having some income but that by itself would not disentitle him from claiming release of the premises on the ground of bona fide need.

(Arising out of impugned final judgment and order dated 19-12-2017 in WPMS No. 1754/2014 passed by the High Court Of Uttarakhand At Nainital)

For Petitioner(s) Mr. Anil Kumar Sangal, Senior Advocate Mr. Siddharth Sangal, AOR Ms. Nilanjani Tandon, Advocate

For Respondent(s) Mr. Dhananjay Garg, AOR

ORDER

Leave granted.

This appeal challenges the final judgment and order dated 19.12.2017 passed by the High Court of Uttarakhand, Nainital in Writ Petition No.1754 of 2014 (M/S).

The appellant (Since deceased, represented by his legal heirs and represent alives) preferred an application under Section 21(1)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ("the Act" for short in its application to the State of Uttarakhand) seeking release of the premises in possession of the respondent-tenant. The premises were described in the application as under:-

"A shop facing west in whose east, there is a passage abachak, road in west, shop of Trilok Chand Satija in the north and in the south, shop of Ramkishan Dass, Arvind Kumar situated in Mohalla Mehtan, Main Bazar, Jwalapur District:- Haridwar"

The ground on which release was sought was pleaded as under:-

“3. That the younger son of the Plaintiff Vertul Kumar whose age is approximately 24 years who has taken the education upto B.Com.. But despite making lots of effort he is not able to get the service and he is totally unemployed.

4. That the plaintiff has met with an accident approximately four years ago and there has been fracture in his right leg and he often keeps sick and due to this reason, he is not able to do the business. The son of the plaintiff is Vertul Kumar who has also been unemployed, due to this reason, there is tension in the house. The plaintiff wants to be free from his duty and responsibility by getting the business started for his son Vertul Kumar and wants to settle him but plaintiff does not have any property apart from the property in question in which he could settle him by getting his business started. The defendant does not have any requirement of the said shop. The shop is often closed and defendant mostly does the business of property dealing and he has occupied the property merely for name sake and he does not have any requirement of the property in question.

5. That the plaintiff wants to get his son Vertul Kumar settled by starting the business but the plaintiff does not have any other property apart of the property in question for starting the business for his son. Due to this reason, the plaintiff has immediate and legal and bonafide requirement of the property in question so that he could get his son settled by getting him in business and he could be relieved from his responsibility.

6. That because Vertul Kumar is unemployed, there is also problem in his marriage also not getting married.”

In response to the aforesaid application, the respondent submitted inter alia that after filing of said application seeking release, he had been searching for an appropriate place to shift his business but till the date of filing of the response, no proper place could be secured by the respondent.

The Prescribed Authority by its order dated 21.02.2011, rejected the application preferred by the appellant. However, in an appeal arising therefrom, the Appellate Authority by its order dated 30.06.2014, accepted the submissions made by the appellant and allowed the application for release preferred by the appellant. The Appellate Authority found that the bona fide requirement as pleaded by the appellant was genuine. The relevant observations of the Appellate Authority were:

“30. In this way on the basis of the entire analysis, the court is of the view in regard to the bona fide requirement of the plaintiff does not have any such place or property available with him in addition to the disputed property where the Plaintiff/Appellant could get the independent business for livelihood of his unemployed son. The Plaintiff has the right that he should make the proper place available to his unemployed son for establishing his business.

31. In this way on the basis of the entire analysis, the Court is of the view that the application for eviction of the disputed property has been filed by the plaintiff for establishing his unemployed son in any business and that too in the circumstances where the son of the plaintiff is educated unemployed and the plaintiff does not have any commercial property then under these circumstances the requirement of the plaintiff for eviction of the disputed property will be immediately and will be considered to be bona fide. In this way, this Court is not in agreement with the finding of the lower court that the plaintiff does not have the immediate and bona fide requirement of the present shop.”

Thereafter the issue of comparative hardship was also dealt with by the Appellate Authority and answered in favour of the appellant.

The matter was carried further by the respondent by filing Writ Petition No.1754 of 2014 under Article 227 of the Constitution of India. Said petition was allowed by the High Court principally on the ground that the son of the appellant for whose benefit the release was sought was assessed to Income Tax and was having income of Rs.1,14,508 per annum and therefore was not an “unemployed” person. The High Court thus found that no case was made out to maintain an application under Section 21(1)(a) of the Act. The writ petition was thus allowed and the application for release preferred by the appellant was dismissed.

In this appeal challenging the decision of the High Court, we have heard Mr. A.K.Sangal, learned Senior Advocate in support of the appeal and Mr. D.K. Garg, learned advocate for the respondent.

Section 21(1)(a) of the Act, under which the application for release was filed, reads as under:

“21. Proceedings for release of building under occupation of tenant.- (1) The Prescribed Authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists namely-

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust

It is quite clear that aforesaid provision seeking release of the premises on the ground of bona fide requirement does not strictly require the landlord to be “unemployed” to maintain an action. All that the provision contemplates is that the requirement so pleaded by the landlord must be bona fide.

It is to be noted that the instant premises have been in the occupation of the tenant for more than 30 years and are situated in Jwalapur near Haridwar. The facts on record indicate that the appellant had suffered an accident and he genuinely wanted his son to be settled in 5 business. It may be that the son of the appellant was having some income but that by itself would not disentitle him from claiming release of the premises on the ground of bona fide need. The need pleaded by the appellant was found to be genuine and was accepted by the appellate authority which is the final fact-finding authority. The issue with regard to comparative hardship was also answered in favour of the appellant.

In the circumstances, the High Court while exercising jurisdiction under Article 227 of the Constitution of India was not justified in upsetting the finding of fact rendered by the Appellant Authority.

We, therefore, allow this appeal, set aside the view taken by the High Court and restore the order passed by the Appellate Authority.

At the request of Mr. D.K. Garg, learned advocate appearing for the respondent, we however grant to the respondent time upto 31.12.2022 to vacate the premises subject to the filing of usual Undertaking in the Registry of this Court within three weeks from today.

Needless to say that the respondent shall clear all the arrears of rent and continue to pay monthly rent regularly and shall vacate the premises and handover peaceful possession to the appellant on or before 31.12.2022.

In case the Undertaking is not filed within three weeks from today, the order passed by the Appellate Authority shall become executable forthwith.

The appeal is allowed in aforesaid terms. No costs.

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