

Writ Petition No. 2067 (M/S) of 2001

Tilak Raj Bajaj and four others Petitioners

Versus

Shamshad Ahmad and six others. Respondents

Hon'ble P.C.Verma,J.

By means of this petition the petitioners have challenged the judgment and order dated 25.5.2001 passed by the III Additional District Judge/F.T.C., Dehradun, in Rent Control Appeal No. 165 of 1995, whereby the appeal of the respondents Nos. 1 to 6 was allowed and application moved by them under Section 21(1) (a) of U.P. Act No. XIII of 1972 was also allowed and the tenants/ petitioners were directed to vacate the premises in question and handover the peaceful possession thereof to the applicant / landlords/ respondents in this writ petition.

Respondents/ landlords/ applicants moved an application under Section 21(1)(a) of U.P. Act No. XIII of 1972 for release of the building on the ground of bona fide need to settle the husband and daughter of applicant No. 6 in independent business. The accommodation in question fell in to share of the applicant No. 6 in view of the decree passed on 01.4.1987 in Original Suit No. 174 of 1970. The petitioners were in possession of the premises in question as tenants. The bona fide need was substantiated on the fact that the husband of applicant No. 6 Matloob Ahmad was going to retire and her daughter Km. Farah and Shaba Shall carry on a business of ready-made garment. The tenant-petitioner is a rich man and has a very good income. He does not require the shop in question and in fact have sublet a portion of the accommodation illegally to one Sohal Lal. If the shop in question is not released, the applicant No. 6 shall face greater hardship and in case of release the tenant-petitioner shall not face any hardship. The petitioner filed an objection

Refuting the allegations made in the application and pleaded his hardship, if the building is released. The Prescribed Authority/ I Addl. Civil Judge (Sr. Division), Dehradun after considering the bona fide and comparative hardship of the parties in accordance with the provisions of the Act and Rule rejected the application on merit.

The applicants/ landlords filed appeal. During the pendency of appeal of the husband of applicant No. 6 retired and Km. Faraha has passed LL.B and started practice as an Advocate. These facts were incorporated in the application by way of amendment during the pendency of appeal. Further facts were incorporated that Km. Faraha needs an independent office as an Advocate which she could run in the back portion of the accommodation and in front portion husband of applicant No. 6 shall carry on business of ready-made garment. The property in question is very near to the Civil Courts building and is most suitable for opening office of an Advocate. The applicant's daughter does not have any other accommodation and as such she is facing greater hardship in practicing as an Advocate without an office.

The petitioners contested and pleaded that the applicants had not come with a clean hand. They concealed the material facts. In fact, they do not require the shop in question. They want to sell the same at the handsome rate after getting the same vacated. The petitioners were tenant in question since 1956 and has started his business and also has earned goodwill and the shop is the only source of income to support his big family. It was also stated that in view of Rule 16 (2) of U.P. Act No. XIII of 1972, as the business of petitioner-tenant is well established business for the last 40 years and they have no other alternative to shift his business, therefore, the application was liable to be rejected.

The appellate Court examined the bona fide need of the applicant No. 6 and held that it is well established on record that the shop in question is required by the applicants to settle the applicant's husband Matloob Ahmad who shall carry on his business in the first portion of the shop and for Km. Faraha who shall open the office of an Advocate in the latter portion of the premises in question. But the appellate Court rejected the plea of the petitioners that Km. Faraha has been selected in P.C.S. (J) i.e. Civil Judge (Jr. Division) and she will join the service soon. This plea of the petitioners have been rejected by the appellate Court on the ground that need of Km. Faraha to open an office as an Advocate does not vanish till she joins the service. it is for Km. Faraha to choose either to go in service or to continue in profession. On the question of comparative hardship, the appellate Court has held that though the petitioners have established goodwill of the business and is entitled of protection of Rule 16 (2) (a) of the Act but since he did not make any effort to search an alternative accommodation, therefore considering the comparative hardship of Km. Farah avis-vis petitioners-tenant in the light of Rule 16(2)(d) under the U.P. Act No. XIII of 1972 the appellate Court allowed the appeal and application under Section 21 of the Act.

The appellate Court, while considering the need of Km. Faraha, ought to have taken into account the fact that Km. Faraha had appeared in P.C.S.(J) examination and has been selected finally and there was no affidavit of Km. Faraha on record that she has decided not to go in service and she shall continue in profession. Therefore, the basis of bona fide need that Km. Faraha has to open an office stood implicitly vanished in absence of such an affidavit which shows that Km. Faraha may go to service. Thus, hardship of Km. Faraha could not have been taken into account. The appellate Court also fell into error in not taking into

account that Matloob Ahmad is a retired person and is getting pension and is living in his village which is at the distance of 5 Kilometers only while the petitioners are tenant from the year 1956 and has earned business goodwill and the same business is only source of livelihood of petitioner and his family members. On vacating the premises, entire business will be ruined and the family will have to face starvation till the business is not resettled. Therefore, the findings recorded by the appellate Court are contrary to the factors enumerated under Clause (a) of sub-rule(2) of Rule 16 of the Act.

For the reasons recorded above, the writ petition is allowed with costs. The order of the appellate Court dated 25.5.2001 is set aside and the application under Section 21(1) (a) of the Act is rejected.

(P.C.Verma,J.)

Dt. 28-9-2002
P.Singh