

**(1992) 08 AHC CK 0052**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Writ Petition No. 5267 of 1990

Ishwar Dayal Tandon

APPELLANT

Vs

Vinod Kumar Tewari and others

RESPONDENT

**Date of Decision:** Aug. 6, 1992

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1), 21(1) Second Proviso, 21(1)(a), 34

**Hon'ble Judges:** S.C.Mathur, J

**Final Decision:** Dismissed

### **Judgement**

S.C. Mathur, J.

1. This is tenant's petition arising from proceedings for eviction from the shop in question under section 21 (i) (a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act No. XIII of 1972). The petitioner has lost before both the authorities below. The order of the Prescribed Authority is dated 13.3.1989 and of the II Additional District Judge, Gonda is dated 22nd May, 1990.

2, The Landlordopposite party claimed release of the shop in question on the ground that he had completed his education and had set up a Nursery School in a portion of the building of which the shop is a part. The Nursery School was growing up and additional accommodation was required. This was the need set up in the application. Later, through amendment it was asserted that he had been enrolled as an Advocate in the year 1987 and the shop in question was required for his chamber also. In respect of the tenantpetitioner it was stated that he would not suffer any injury as he had taken the accommodation in question on rent for his fair price shop which he had later shifted to another place. It was further asserted that in the shop in question the petitioner had started doing business in fertilizer, pesticide and seeds and in 1987 he had made construction on the land purchased by him in the

name of his wife in which the fertilizer, pesticide and seed business was being carried on under the name and style ♦Bharat Beej Bhandar.♦

3. The petitioner contested the aforesaid application and asserted that the Nursery School alleged by the Landlord opposite party existed only on paper and factually there was neither a student nor a teacher. He did not dispute that he had started pesticide, fertilizer and seed business in the shop in question and in 1987 he started storing the goods in a godown as there were Government orders under which retail and wholesale fertilizer business could not be done from the same accommodation. It was asserted that the wholesale business was being carried on from the godown and retail business was being carried on from the shop in question. The shop in question was stated to be necessary for the petitioner's retail business as it was situate in the city. It was also asserted by the petitioner that he was primarily dealing in retail business.

4. During the pendency of the proceedings some additional accommodation became available to the Landlord opposite party, on account of which it was pleaded by the petitioner that the need of the opposite party if there was one, stood satisfied. The Prescribed Authority and Additional District Judge through positive finding of fact accepted the opposite party's plea that he was running a Nursery School. This finding is one of fact and could not be shown to suffer from any legal infirmity. In respect of the legal practice the Prescribed Authority observed that the opposite party had enough accommodation at his disposal. For recording this finding the Prescribed Authority took into consideration the accommodation which became available to the Landlord opposite party during the pendency of the proceedings and in respect of which commissioner's report was on record.

5. The appellate court found that against the commissioner's report both parties had filed objections which were not disposed of and, therefore the commissioner's report could not be taken into consideration. However, the appellate court did not proceed to issue another commission. In the present proceedings the learned counsel for the petitioner strenuously pressed that after holding that the commissioner's report could not be relied upon, the learned Addl. District Judge should have issued another commission. On the facts of the present case, I am unable to accept the submission of the learned counsel. On the basis of the commissioner's report the Prescribed Authority had negatived opposite party's need for lawyer's chamber alone but had not negatived the opposite party's need based on Nursery School. So long as Landlord opposite party's need for the shop in question continues in respect of the Nursery School no prejudice can be said to have been caused to the petitioner by the failure of the appellate court to obtain another report of commissioner. It may also be pointed out that the material on record indicates that the additional accommodation which became available to the landlord opposite party during the pendency of the proceedings was not in the outer portion of the building, it was residential accommodation which was in the inner

portion of the building. The learned counsel for the petitioner could not satisfy me that the said accommodation existed in the outer portion of the building. Such an accommodation could neither be suitable for the purposes of the Nursery School nor for the purposes of lawyer's chamber.

6. The appellate court has observed that the Landlord opposite party would require atleast three rooms for his legal practice. Learned counsel for the petitioner submitted that the estimate made by the appellate authority is luxurious. It is not necessary to go into this question because the fact remains that according to the findings of both the authorities below the need for the shop in question is genuine.

7. In his judgment the appellate authority has referred to the manner in which the additional inner accommodation that became available to the opposite party may be utilised by him. Learned counsel submitted that there was no evidence in support of the observation. In the present proceeding I am concerned with opposite party's need for the shop in question. I have already observed hereinabove that the rooms which became available to the landlord opposite party during the pendency of the proceedings were not suitable for the need set up by the opposite party. Accordingly the submission of the learned counsel for the petitioner that the observation regarding the rooms did not have the support of evidence does not require further probe.

8. It was next contended by the petitioner's learned counsel that the petitioner had made application for leave to crossexamine opposite party's witnesses who had submitted affidavits but the crossexamination was disallowed. It is submitted that crossexamination was necessary in order to find out the truth.

9. Sri Ravi Nath Tilhari, learned counsel for the Landlord opposite party has submitted that applications under section 21 are decided primarily on the basis of affidavits and no party has got the right to insist on crossexamination of the deponents of the affidavits. For making the submission he has referred to section 34 (1)(b) of U.P. Act No. XIII of 1972 and has also cited 1982 (2) Allahabad Rent Cases 471 Pt. Mani Lal Tripathi v. Smt. Kamla Devi and others and 1989 (1) Allahabad Rent Cases 407 Smt. Gulaicha Devi v. Prescribed Authority (Munsif), Basti and another.

10. Section 34(1) of the Act lays down powers of various authorities and the procedure to be followed by them. Regarding the power of the Prescribed Authority and the appellate authority it states that for the purposes of holding any inquiry or hearing any appeal or revision under the Act, they shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of the matters specified in clauses (a) to (g), Clause (b) reads ♦ receiving evidence on affidavits. ♦ Interpreting this provision and taking into account the procedure which has been followed consistently in proceedings under the Act the learned Single Judge in Tripathi's case (Supra) has observed. ♦ The Act has been in operation for over eight years now and almost invariably the Prescribed

Authorities have been acting on the basis of affidavit evidence. ♦ Approving this procedure and rejecting the contention of the petitioner's counsel that oral evidence should be recorded, the learned Judge observed in paragraph 12. ♦ If an interpretation canvassed by the learned counsel for the petitioner were to be accepted, then the District Magistrate would also be obliged in proceedings under Section 16 to follow the rigid procedure of a civil suit. This would be clearly contrary to the intention of the Legislature♦. In paragraph 13 it has been observed that no rigid principle can be laid down in respect of the procedure to be followed by statutory Tribunals and that it is open to such Tribunals to follow such procedure as may seem to them just, so long as it is not contrary to law or to basic rules of natural justice. This authority indeed supports the proposition canvassed by Sri Tilhari.

11. In Smt. Gulaicha Devi's case it was observed that in applications for release of accommodation the Prescribed Authority should not normally permit crossexamination and that crossexamination may be permitted only in exceptional cases. In my opinion the present was not a case of exceptional nature which warranted crossexamination of landlord's witnesses.

12. It was next submitted that the petitioner was occupying the shop in question for business purposes and such an accommodation could not be sought release of for professional purposes. It was submitted that the profession of lawyer is not a business. Under clause (ii) of the Third Proviso to Section 21(1) release of a residential building cannot be claimed for occupation for business purpose. There is no bar under the Act to claim release of building occupied for business purposes, for professional purposes. Accordingly the contention of the learned counsel fails.

13. Lastly it was submitted that since petitioner's eviction was sought from business premises the authorities below should have awarded compensation to the petitioner and failure to do so renders the eviction order illegal. Under the Second Proviso to Section 21(1) the Prescribed Authorities have been conferred with the power to award to the tenant an amount not exceeding two years' rent as compensation. This amount is to be awarded, if at all, after considering all relevant facts of the case. From this it is apparent that the proviso is not of mandatory nature and it has been held so by this court in AIR 1974 All 120 Inderjeet Singh v. Prescribed Authority, Moradabad & others. It may also be pointed out that although compensation was not awarded to the petitioner by the Prescribed Authority he does not appear to have made any grievance of it before the appellate court. I am, therefore, of the opinion that the petitioner is not entitled to agitate the point at this stage nor the failure to award compensation vitiates the eviction order.

14. In view of the fact that the appellate court had rejected the commissioner's report the petitioner filed application in this Court for issue of commission. I have observed hereinabove that on the facts of the present case commissioner's report was not required. Accordingly I reject that application.

15. In view of the above, the petition fails and is hereby dismissed with costs to oppositeparty No. 1. Since the petitioner is already having alternate accommodation to shift his business I do not consider it necessary to allow him any time to vacate the shop in question. Interim order, if any subsisting, shall stand discharged.

(Petition dismissed)