

**(2005) 05 AHC CK 0224****Allahabad High Court****Case No:** C.M.W.P. No. 37744 of 2005

Mohd. Qasim

APPELLANT

Vs

District Judge and Others

RESPONDENT

**Date of Decision:** May 20, 2005**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1), 21(7), 22

**Citation:** (2006) 1 AWC 765**Hon'ble Judges:** Anjani Kumar, J**Bench:** Single Bench**Advocate:** Arun Kumar Gupta and N.C. Gupta, for the Appellant; Komal Mehrotra, for the Respondent**Final Decision:** Dismissed**Judgement**

Anjani Kumar, J.

Heard learned Counsel for the parties.

2. This writ petition by the petitioner-tenant challenges the orders passed by the prescribed authority dated 27th February, 2004 and that of appellate authority dated 21st April, 2004, under the provisions of U.P. Act No. 13 of 1972 (hereinafter referred to as the Act).

3. The facts are that the respondent-landlord filed an application for release of the accommodation in question in favour of the landlord sometimes in the year 1983 which was registered as P.A. Case No. 136 of 1983 on the ground that the landlord requires the shop in dispute for his bona fide requirement as being landlady she does not have any source of income and her husband also is doing nothing. She proposed to start business of sewain and tea from the shop in dispute. The aforesaid application filed by the erstwhile landlord which was contested by the

petitioner-tenant up to this Court when a Writ Petition No. 20278 of 1988 was filed which has been decided by this Court on 3rd March, 2000.

4. During the pendency of the aforesaid writ petition the present landlord purchased the aforesaid premises sometimes in the year 1991. The present landlords filed an impleadment application before this Court during the pendency of the aforesaid writ petition with the prayer to implead them in place of the erstwhile landlord on the ground that they are purchaser of the premises in question and they may be permitted to contest the release application filed by the erstwhile landlord u/s 21(1)(a) of the Act. It is further asserted in the impleadment application that the erstwhile landlady Smt. Noor Jehan has died during the pendency of the aforesaid writ petition. This Court observed as under :

In view of the fact that now respondent No. 5 has purchased the property, neither respondent No. 3 nor respondent No. 4 nor their heirs are interested in the matter.

In view of the above the orders passed by respondent No. 1 dated 30.8.1986 and 28.9.1988 are hereby quashed. The matter will be examined by the prescribed authority afresh and will consider the matter in accordance with law on the need set up by respondent No.5 keeping in view the provisions of Section 21(7) of U.P. Act No. 13 of 1972.

The writ petition is allowed and the case is directed to be decided by the prescribed authority afresh in accordance with law.

5. It is by virtue of the aforesaid direction of this Court the present landlords have filed amendment application to the release application filed by the erstwhile landlord stating therein their own bona fide need for the release of the accommodation in question. The matter has been contested after remand by this Court before the prescribed authority and the prescribed authority after considering the pleadings of the parties and the evidence on the record arrived at a conclusion that since the landlady and her husband have no job nor any business, they bona fide require the aforesaid accommodation in question to augment their income for their livelihood. Thus, the need of the landlords was found to be bona fide. On the question of comparative hardship the prescribed authority recorded a finding that the landlady had no accommodation to start her proposed business unless the shop in dispute is released whereas the evidence and materials on the record show that the tenant is already carrying on his business of manufacture of sewain from the house where he is residing and the present shop is utilized by the tenant only as a showroom. Thus, the prescribed authority found that the tilt of comparative hardship is also in favour of the landlords. The prescribed authority, therefore, allowed the application and directed release of accommodation in question in favour of the landlords by order dated 27.2.2004. The tenant aggrieved by the order passed by the prescribed authority preferred an appeal u/s 22 of the Act before the appellate authority. The appellate authority by its order dated 21.4.2005, Impugned

in the present writ petition, affirmed the findings arrived at by the prescribed authority and dismissed the appeal filed by the petitioner-tenant. Thus, this writ petition.

6. Learned counsel for the petitioner argued that there is no finding by the appellate authority with regard to bona fide requirement of the landlords. Thus, the order passed by the appellate authority deserves to be quashed. On perusal of grounds of appeal and the arguments advanced before the appellate authority it is clear that no such argument was raised before the appellate authority and tenor of the order of appellate authority clearly demonstrates that the tenant has argued before the appellate authority admitting that the need of the landlords is bona fide and argued that still the tilt of comparative hardship is not in favour of the landlords. This argument deserves to be rejected and is rejected.

7. It is then contended that the appellate authority has not considered one report submitted by the Commissioner. I have gone through the report of the Commissioner. Every aspect of the matter which has been dealt with in the report of the Commissioner has been considered by the appellate authority while rejecting the appeal of the tenant. In my opinion allegation of non-consideration of report as alleged by the petitioner-tenant has no substance. It is further contended that the tenant has offered when the matter was pending at the earlier stage before the appellate authority that the shop in dispute which is 7 feet in width may be divided into two portions and half may be released in favour of the landlords and remaining half may remain with the tenant. This aspect of the matter has been dealt with by the appellate authority qua observations in earlier judgment on earlier appeal and the appellate authority has arrived at a conclusion that it is not practicable nor desirable to release only half of the shop coupled with the fact that the tenant is carrying wholesale business of sewain from his residence.

8. In view of what has been stated above the findings arrived at by the prescribed authority and affirmed by the appellate authority, in my opinion do not warrant any interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India, particularly in view of law laid down by the Apex Court in the case of Ranjeet Singh Vs. Ravi Prakash .

9. No other argument has been advanced.

10. In view of the above discussions I find no force In this writ petition. It deserves to be dismissed.

11. Lastly it is submitted by learned Counsel for the petitioner that the petitioner is carrying on business since long, as would be clear from the fact that the application is pending since 1983, therefore, he may be granted some reasonable time to vacate the shop in question. Considering the facts and circumstances of the case and In the Interest of Justice I direct that the petitioner shall not be evicted from the shop In dispute till 31st May. 2006. provided :

(1) the petitioner furnishes undertaking before the prescribed authority within a period of one month from today that he will hand over peaceful vacant possession of the shop In question to the landlords on or before 31st May, 2006 ;

(2) the petitioner pays the entire arrear of rent/damages calculated at the rate of rent within one month from today. If not already paid, by either depositing the same before the prescribed authority or paying the same to the landlord-respondents and keeps on depositing the future rent/damages by first week of the succeeding month in the manner prescribed above. The amount if deposited before the prescribed authority by the petitioner-tenant, the same shall be permitted to withdraw by the landlords.

12. In the event of default of any of the conditions mentioned above. It will be open to the landlords to get the order of eviction executed against the petitioner.

13. Except for the aforesaid observations this writ petition has no force. It is accordingly dismissed.