

**(2005) 12 AHC CK 0143**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 17319 of 1985

Smt. Noor Jahan and Others

APPELLANT

Vs

Prescribed Authority (under U.P.  
Act 13 of 1972) and Smt. Sarla  
Goyal

RESPONDENT

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**Date of Decision:** Dec. 1, 2005

**Citation:** (2006) 2 AWC 1201

**Hon'ble Judges:** S.U. Khan, J

**Bench:** Single Bench

**Advocate:** R.H. Zaidi, Dinesh Rai, Vinod Sinha and M.A. Zaidi, for the Appellant; V.P. Varshney and S.C., for the Respondent

**Final Decision:** Allowed

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### **Judgement**

S.U. Khan, J.

Landlady Smt. Sarla Goyal - respondent No. 2 filed three release applications against her three tenants u/s 21(1)(b) of UP. Act No. 13 of 1972. In the said applications release of the shops in the occupation of the tenants was sought on the ground that the shops were in dilapidated condition. Applications were filed against Nazir Ahmad since deceased and survived by the petitioners, Kundan Lal Sahai and Abdul Rahim. The applications were registered as P.A. case No. 190, 191 and 192 of 1974 on the file of Prescribed Authority, Meerut. In all the three cases tenants agreed to vacate the shops provided the landlady reconstructed them. Accordingly all the three release applications were allowed on 27.8.1976 with the direction that landlady should give one month's notice to the tenants to vacate the shops and within sixty days from taking possession of the shops landlady should reconstruct and deliver possession of the newly constructed shops to the tenants. The said order was not challenged initially. In-fact the said order was passed on compromise hence it could not be challenged. Thereafter landlady also filed eviction suits against the three tenants which were dismissed. Thereafter in terms of compromise order

dated 27.8.1976, notices were given by the landlady to all the tenants in June 1984 and on the failure of the tenants to vacate the premises, landlady filed execution applications u/s 23 of the Act. The tenants filed objections stating that the execution applications having been filed on 31.7.1984 i.e. after about eight years were barred by time and that by filing suit for eviction landlady had waived her right to get possession in pursuance of order dated 27.8.1976. It was also stated in the objections by the tenants that order dated 27.8.1976 was bad in law as landlady had not complied with the provisions of Rule 17 of the Rules framed under the Act. Prescribed authority over ruled the objections and directed the tenants to deliver possession within fifteen days of the order failing which landlady was permitted to take steps for taking the possession through court amin. The said orders were passed on 4.11.1985. The said orders were challenged by all the three tenants through three writ petitions. In the instant writ petition the said order was challenged by legal representatives of Nazir Ahmad. The other tenant Abdul Rahim filed writ petition No. 17318 of 1985 and the third tenant Kundan Lal Sahai filed writ petition No. 17320 of 1985. Kundan Lal Sahai got his writ petition dismissed as infructuous on 8.4.2005 on the ground that he had purchased the shop in dispute. Writ petition of Abdul Rahim was dismissed in default on 24.5.2005.

2. Learned counsel for the petitioner stated that in September 1997 he had filed a Supplementary affidavit alongwith an application. The said application and affidavits were not on record hence learned counsel for the petitioner supplied duplicate copy of the same which is placed on record. In para-3 of the Supplementary affidavit it has been stated that above the shop in dispute landlady has raised new constructions and is carrying on business therefrom. Photographs have also been filed as Annexures S.A. 1 and 2 respectively which clearly show that above the shop in dispute new constructions have been raised. No counter affidavit to the said Supplementary affidavit has been filed. During arguments no one appeared on behalf of landlady-respondent No. 2. In the Supplementary affidavit it has also been stated in para-6 that the shop in possession of Abdul Rahim was vacated by him and landlady let out the same to one Chhotey Lal in the year 1992 on Rs. 200/- per month rent and premium of Rs. 1 lac. Probably it is for this reason that no one appeared to press the writ petition of Abdul Rahim (writ petition No. 173118 of 1985) and it was dismissed in default on 24.5.2005.

3. In the impugned order there is absolutely no error. It is doubtful as to whether there is any limitation to file an application u/s 23 of the Act for execution of the release order u/s 21 of the Act. In any case if any limitation is to be read for such application then it will have to be twelve years, the limitation which is prescribed under the Limitation Act for filing execution application for execution of decree of a suit. Filing of suit for eviction and its dismissal in between release order and filing of execution application could not have any effect on execution.

4. However, in view of the subsequent fact of construction of building over the property in dispute, the initial order of 27.8.1976 allowing release application on the basis of compromise has become un-executable. The ground floor cannot be demolished without demolishing the building constructed at first and other floors. No one has appeared on behalf of the landlady to assert that in case possession is delivered to her by the petitioners then she will demolish the entire construction including the newly constructed portion over the shop in dispute. No counter affidavit has also been filed to the Supplementary affidavit filed by the petitioners.

5. In view of the above writ petition is allowed even though on different grounds and order of the Prescribed authority dated 4.11.1985 is set aside.

6. I have held in *Khursheeda v. A.D.J.* 2004 (2) A.R.C. 64 that while granting relief to the tenant against eviction in respect of building covered by Rent Control Act writ court is empowered to enhance the rent to a reasonable extent. In para-6 of the Supplementary affidavit it has been stated that in the year 1992 similarly situate adjoining shop which was vacated by Abdul Rahim was let out to Chhotey Lal after receiving Rs. 1 lac as premium and on a monthly rent of Rs. 200/- while Abdul Rahim was paying only Rs. 8.50/- per month as rent. If that was the position in 1992 then today the market value of the shop in dispute must not be less than about Rs. 3 lacs. Existing rent appears to be about Rs. 10/- or 20/- per month, which is virtually as well as actually no rent.

7. Accordingly, it is directed that with effect from January 2006 onwards tenants-petitioners shall pay rent to the landlady-respondent No. 2 at the rate of Rs. 1,000/- per month.