(1992) 11 AHC CK 0095

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 10935 of 1981

Prem Prakash Gupta and Others		APPELLANT
	Vs	
II Additional District Judge and Others		RESPONDENT

Date of Decision: Nov. 17, 1992

Acts Referred:

- Constitution of India, 1950 - Article 226
- Partnership Act, 1932 - Section 69
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 18, 21, 21(1), 21(5), 22
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 13, 15, 16, 7

Citation: (1993) 2 AWC 770

Hon'ble Judges: S.P. Srivastava, J

Bench: Single Bench

Advocate: R.S. Mishra and Ram Prakash Mishra, for the Appellant;

Final Decision: Allowed

Judgement

S.P. Srivastava, J.
Being aggrieved by the order passed by the appellate authority dismissing the appeal against the order passed by the Prescribed Authority rejecting the proceedings u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of letting, Rent and Eviction). Act, 1972 (U.P. Act No. 13 of 1972) initiated by the father of the present Petitioners praying for the release of the shop in budding No. 33, Thatheri Bazar, Allahabad which had been rejected, the present Petitioners have approached this Court seeking the quashing of the aforesaid orders.

2. The facts, shorn of details and necessary for (he disposal of the present case are that an application praying for the release of the accommodation in dispute which was being utilised for business purposes by the tenant-Respondent No. 3, since deceased, was tiled by the father of the present Petitioners asserting that the accommodation in dispute was required for the business purpose of M/s. Dakhini Prasad Makhan Lal Agencies and M/s. Kallash Finance Company which were partnership business in which one or the other son and one or the other lady of the family of the original applicant were partners. It was asserted that the aforesaid two partnership businesses were being run for the time being from a room in the interior residential portion of house No. 33, Thatheri Bazar, Allahabad and to lack of space it was not possible to open show display and retail show-room of the above concerns. It was also asserted that M/s. Kailash Finance Company required an office-cum-vhitors room and on account of lack of accommodation the business of the aforesaid two concerns was badly hampered and causing irreparable loss. The landlord had asserted that the need for the accommodation in dispute was genuine, bonafide and pressing. It was also asserted that the tenant had a suitable alternative accommodation in the same vicinity where the building in question was situate and could shift his business without any difficulty. The landlord further asserted that the hardship likely to be suffered by the tenant in the event of the grant of the release application would be much less as compared to the hardship likely to be suffered by the landlord in the event of the rejection of the application.

3. The release application mentioned above was contested by the tenant Respondent on varlous grenades denying the allegations made by the landlord and asserting that a new firms for whom the accommodation in dispute was sought to be released had been formed with a view to (sic) the tenant from the building in dispute in a malafide manner. It was asserted that the alleged requirement for satisfying which the release in question was sought was not at all bonafide or genuine. It was also asserted that the tenant was bound to suffer greater hardship in the event of the grant of the release as compared to the hardship likely to be suffered by the landlord in the event of the rejection of the release application. The Prescribed Authority after considering the evidence and materials on record came to the conclusion that the formation of the new partnership firms which were hardly one year old at the time of the presentation of the release application, indicated the possibility of the firms being created only to save income tax and sales tax and for making out a ground for eviction of the tenant from the disputed shop could not be ruled out. It also came to the conclusion that there was no need for creating another firm in the name and style of M/s. Dakhini Prasad Makhan Lal Agencies doing the same type of business which was being carried on by the father of the present Petitioners in the name and style of M/s. Dakhini Prasad Makhan Lal Ageceies So far as the business run in the name and style of M/s Kailash Finance Company was concerned, the Prescribed Authority was of the view that it could easily be run from the back portion of house No. 33. Thatheri Bazar and no shop was required for doing this business Accordingly the Prescribed Authority held that the need set up by the landlord for the release of the accommodation did not appear to be genuine.

4. The Prescribed Authority while considering the question relating to the relative hardships observed that whereas the landlord was not likely to suffer any hardship in the circumstances indicated above, the tenant was likely to suffer great hardship if he was asked to vacate the shop in dispute as he had no other suitable alternative accommodation where he could shift his (sic) business.

5. Thus, coming to the conclusion that the need of the landlord was not genuine and greater hardship was likely to be caused to the tenant If the application was allowed the release application filed by the landlord was rejected.

6. Feeling aggrieved by the rejection of release application an appeal was filed challenging the same. During the pendency of the appeal, Sri Anant Behari Lal Gupta, the original landlord expired and the names of his three sons Prem Prakash Gupta. Satish Chandra Gupta and Vijai Prakash Gupta were substituted in his place.

7. The appellate authority noticed that the original applicant and his sons and their wives were jointly residing in upper portion of house No. 33, Thatheri Bazar, Allahabad and he had two rooms on the ground floor in his occupation which were being used as a drawing room and for the purpose of the office of the new businesses under the names" and styles of M/s Kailash Finance Company and M/s. Dakhini Prasad Makhan Lal Agencies. It was also noticed that these two partnership firms had been constituted with one of his sons and ladies of the family as partiers therein, in the year 1975 and had been registered u/s 69 of the Indian Partnership Act as also under the provisions of the Income Tax Act and the Sales Tax Act. He also noticed that the nature of the financing business of M/s. Kailash Finance Company required an office room and for receiving and supplying orders of Paint items, M/s. Dakhini Prasad Makhan Lal Agencies also required an office room However, the original landlord had located these new partnership business in his own accommodation consisting of one room in the ground floor of the same house whereas the other room on the ground floor was being used for his drawing room.

8. The appellate authority after carefully considering the evidence and circumstances brought on record reversed the finding recorded by the prescribed authority to the effect that the firms had been created only to save income tax and sales tax and also to create the ground for eviction of the tenant from the disputed shop The Appellate Authority held that the two new firms had not been constituted with a malafide intention and the ground of release of the shop in question for the new firms could not be with-held on this ground. It was clearly held by the Appellate Authority that it could not be said that the landlord had no right to get the release of the shop in question for the new firms and that the "prescribed authority was not at all justified to call the new firms as "fake firms" with the motive of getting the shop released.

9. However, the appellate authority proceeding on the assumption that the nature of the financing business of M/s Kailash Finance Company and also the agency business of M/s. Dakhini Prasad Makhan Lal Agencies was such that it required only an office

accommodation where the work was to be carried on through correspondence and only few customers were visiting the office of these firms, arrived at a conclusion that the second room on the ground floor which was previously in occupation as drawing room of the original landlord had become available for making an office for one of the two new firms inasmuch as the need for the drawing room had ceased with the death of Sri Anant Behari Lal Gupta. The appellate authority recorded a clear cut finding that the new firms required a separte room for them but proceeding on the assumption that the room used for the purpose of drawing room had now become available for one of the rims from which it could satisfy its need, the appellate authority concluded that the requirements of the two new firms stood sufficiently fulfilled on account of the availability of the room in the ground floor of the same house and consequently no pressing need continued to exist for getting the shop released. Accordingly, the appellate authority on the aforesaid facts, determined that the need set up by the landlord for the release had ceased to be genuine and pressing.

10. on the question of relative hardships the appellate authority came to the conclusion that since the landlord could, on account of the availability of the extra-room during the pendency of the appeal, carry on the business of the new firms without any inconvenience and the business of utensils of the tenant was of a long period and further the tenant had no other suitable alternative accommodation where he could shift his business he was likely to suffer greater hardship as compared to the landlord, in the event of the grant of release taking into consideration the relevant principles envisaged under rule 16 of the Rules framed under the Act. As a result the appeal was dismissed.

11. Being aggrieved the landlord has now approached this Court for redress seeking the reversal of the orders passed by the appellate authority as well as the prescribed authority referred to hereinbefore.

12. I have heard Sri R.P. Misra, learned Counsel for the Petitioners and Sri A. Kumar learned Counsel representing the heirs of the deceased tenant-Respondent. I have also carefully perused the materials on. record.

13. The learned Counsel for the Petitioners has urged that having reversed the finding recorded by the prescribed authority on the question of bonafide need and having come to the conclusion that the requirement of the landlord for one separate room for each of the new firms was bonafide and genuine, the appellate authority acted with manifest illegality in evaluating the effect of the death of the original landlord during the pendency of the appeal and on its basis erroneously negatived the claim of the landlords about the requirement for the additional accommodation for the purpose of business as not genuine proceeding on the assumption that a room which was being utilised as a drawing room, could serve the purpose of satisfying the need for the release, ignoring altogether that considering the status of the landlords a drawing room for the family was a necessity and the landlord could not be compelled to dispense with the said requirement and use a portion of the residential house for a business purpose. It has further been urged that

Section 21 of the U.P. Act No. 13 of 1972 had been enacted for the benefit of the landlords and the underlying policy of the Act clearly appeared to be that no portion of any residential building could be released for occupation of business purpose indicating thereby that the object of the act was not to permit any portion of the residential accommodation for being used for business purposes. Learned Counsel for the Petitioners in this connection referred to the provision contained in Sub-clause (ii) of the third proviso to Section 21 of the Act which prohibits release of any residential building for occupation for business purposes. The contention raised is that when under the provisions of the U.P. Act No. 13 of 1972 an accommodation let out for residential purpose cannot be released for occupation for business purpose the question of refusing releaso of an accommodation utilised for business purpose on the ground that a portion of a residential building could be utilised for business purpose cannot be justified The learned Counsel emphasised that from the aforesaid provision the basic policy behind the provisions contained in Section 21 of the Act clearly appeared to be that the intention was not to convert any portion of residential building so as to reduce the availability of the residential accommodation by permitting change of user of any portion of the residential building from residential purpose to commercial or non-residential purposes.

14. Learned Counsel for the Petitioners has further urged that the Respondent authorities have acted with manifest illegality in considering the question relating to comparative hardships. It has been urged that the mere fact that the tenant is left with no alternative accommodation can be no ground for withholding the grant of a release of an accommodation. It has further been contended that on the findings recorded by the appellate authority on the material questions of fact there could be no justification for withholding the release sought for.

15. Learned Counsel for the Respondent on the other hand has urged that the findings recorded by the appellate authority on the questions relating to the bonafide requirement and relative hardships are findings which have been arrived at after appraisal of evidence on the record and being findings on questions of fact they should not be disturbed in the present proceedings specially when they do not suffer from any such infirmity which may justify interference in the exercise of the jurisdiction under Article 226 of the Constitution of India.

16. It has further been contended that Satish Chandra Gupta acquired an accommodation having the size of 20.8 ï¿½ 6 metres in the capacity of sub-tenant with the permission of the competent authority granted under the order dated 3-5-78 which accommodation, situate at premises No. 22/30, Mahatma Gandhi Marg, Allahabad was mere than sufficient for satisfying the alleged requirement of the landlord and the acquisition of the aforesaid accommodation unmistakably falsified the claim for the release in question. It has been asserted that in the facts and circumstances of the case no ground has been made for any interference in the impugned orders.

17. As observed by this Court in its decision in the case of Rajeshwari Prasad v. Fateh Bahadur Chaturvedi 1984 (1) ARC 347 the bonafide need is the foundation of the application for eviction of the tenant without which it cannot be allowed Hardship is relative word. In our society with divergence of economic prosperity no single test can be laid down for it. In some cases, drawing room, guest room, consultation room may be necessary. In other a pretext only. Why may be valid and relevant consideration in relation to one landlord and his tenant may not be relevant for the other.

18. In its decision in the case of Prem Prakash Dhawan v. Special Judge (Additional District Judge) Saharanpur 1990 (1) ARC 20, this Court had observed that if the landlord is forced to carry on business in the landlord''s drawing room because of the shortange of space and he requires the accommodation for carrying on business it cannot be said that the need of such a landlord was not genuine.

19. In the present case the appellate authority had come to the conclusion that the requirement for one room for both the firms was genuine and pressing. It has, however, negatived the claim of the landlord regarding the requirement of the premises in dispute on the ground that during the pendency of the appeal the original landlord, the father of the present petitioners, had died and on his death the requirement of a room for the purpose of the drawing room had ceased and that this room could be Utilised for satisfying the need. The appellate authority has recorded a finding that Anant Behari Lal Gupta formed a joint family with his sons and that one of the rooms at the ground floor was in fact being utilised as a drawing room and could not therefore, be used as a separate office for one of the new two turns. This having bean found that the room in question was in fact being utilised as a drawing room during the life time of Anant Behari Lal Gupta who formed a joint family with his sons, it is not understandable as to how the need of the family for the drawing room, specially considering their status as brought on the record got ceased. The finding that the necessity for the drawing room which was there during the life time of the father ceased to be in existence on his death is purely conjectural and is perverse. There is no evidence on the record worth the name which could lead to an inference that after the death of Anant Beharl Lal Gupta his sons who continued to form a joint family had ceased to use the said room as a drawing room or that there was any other room in the building which could be utilised for the purpose. In the circumstances of the case the requirement set up by the landlord which had been found to be genuine and pressing during the life time of Auant Behari Lal Gupta could not be hold to be not bonafide and not pressing on account of his death. Further the death of Anant Behari Lal Gupta could not have any such effect of making available an additional accommodation to the landlord as inferred by the appellate authority. The appellate authority has, therefore, manifestly erred in interpreting the effect of the death of Anant Behari Lal Gupta on the bonafids and pressing requirement of the landlord for the release of the shop in question and has refused to grant the benefit of his own finding on this question to the Petitioners on wholly irrelevant consideration.

20. It may further be noticed that taking into consideration the policy and the object behind Section 21 of the U.P. Act No. 13 of 1972 which is for the benefit of the landlord there can be no manner of doubt that the intention has been not to reduce the availability of the residential accommodation Sub-clause (ii) of the third proviso to Section 21 prohibits release of any portion of residential accommodation for business purpose. This provision re-enforced the above aspect. When an accommodation in the occupation of & tenant which is being utilised for residential purpose cannot be allowed to be used for business purpose and released on this account, there can arise any question of compelling a landlord to convert a part of the residential building in his occupation for use of business purpose and refuse the grant of release on the ground that a part of the residential accommodation can be utilised for business purpose compelling thereby the reduction of residential accommodation contrary to the policy underlying the provisions contained in Section 21 of the Act.

21. While considering the question relating to the relative hardships the appellate authority has observed that there was no doubt that the business of the tenant which was being carried on in the premises in dispute had got a set back and had recently been closed. Learned Counsel for the Petitioners has urged that in fact the shop in dispute is lying closed even now and no business was ever transacted during the long period which had elapsed since the order passed by the appellate authority in the year 1981 till today. In order to verify whether the shop was still lying closed as asserted, a commission was issued on 11-12-91 who inspected the premises in dispute on the same day and reported that the shop was continuing to remain closed and no visible sign of any business activity was found to exist showing any busines activity by the tenant since quite some time. In the case of Bega Begum v. Abdul Ahmad khan AIR 1979 SC 272, the Apex court had observed that while it was no doubt true that the tenant will have to be ousted from a house if decree of eviction had been passed yet such an event by Itself could not be a valid ground for refusing a decree for eviction. While considering the question of relative hardship the requirement of the landlord having regard to his profession or calling or even the status have to be taken into account. In the present case white the landlord had led sufficient evidence to show that no other alternative accommodation was available, the tenant had not let any such evidence which could show that he had ever attempted to search for an alternative accommodation of ever attempted to seek allotment of say accommodation which could be utilised for shifting his business which was dwindling day by day and as observed by the appellate authority itself, had been closed during the pendency of the appeal. Bo far as she accommodation acquired by Satish Chandra Gupta is concerned, to which a reference has already been made above, suffice it to say that no attempt whatsoever was made by the tenant to establish that Satish Chandra Gupta was a partner of the firms for the purpose whereof the accommodation was sought to be released. It cannot be overlooked that an alternative accommodation suggested to satisfy the requirement of the landlord should be one which is available to the landlord and the immediate possession whereof is secured in his favour so as to satisfy the requirement on which release is founded. The tenant in the present case had not let any

such evidence in this regard whatsoever.

22. In the cases where there is inaction on the part of the tenant in searching for an alternative accommodation by seeking allotment or otherwise inspite of coming to know that the building in his tenancy is genuinely required by the landlord for satisfying his bonafide need, the question of relative hardships envisaged under the 4th proviso to Section 21 of the Act deserves to be considered liberally in favour of the landlord specially when the bonafide need for the grant of release sought for is established. While it is true that a proviso embraces the field which is covered by the main provision and the main part cannot, be construed in such a manner so as to render a proviso redundant yet under the scheme of the act the 4th proviso to Section 21 does not appear to fall within those exceptional cases where this proviso may be said to be a part of the substantive provision itself. It should also not be lost sight of that a proviso cannot be permitted to defeat the basic intent expressed in the substantive provision which, as is apparent from the perusal of Section 21 of the Act, is to ensure the availability of the demised premises to the landlord on his successfully establishing the bonafide requirement of the same for the purpose envisaged in that section. It may be noticed in this connection that where the language of the main enactment is clear and unambiguous a proviso cannot be permitted to have any repercussion on the interpretation of the main enactment so as to exclude from it by implication what clearly falls within its express terms. Failure of tenant to make attempt to find out an alternative accommodation during the pendency of the release/ejectment proceedings would certainly be a factor against the tenant''s case for greater hardship.

23. The connotation of the term ''requirement'' should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated u/s 21 of the Act the provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since Section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as in advance the object behind the said provision, The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that inspite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardships may be titled in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will far outweigh the prejudice or the inconvenience which may likely be caused to the tenants.

24. This Court in its decision in the case of N.S. Datta v. VII Additional District Judge, Allahsbad 1984 (1) ARC 113, had observed that the proviso in question requires a mandatory regard being had to the advantages or disadvantages either In the event of the application for release being allowed or otherwise but each party was required to

adduce evidence to show that hardship could be caused to him by grant or refusal of the release of the building under tenancy and that the tenant must also adduce evidence to the effect that other reasonable accommodation was not available to him. It was further observed that the court is entitled also to take into account the fact that the tenant has neither alleged nor proved to have made effort to have an alternative accommodation and that non-availability of alternative accommodation to the tenant is not in itself an adequate ground to reject the landlord''s application for release. In its decision in the case of Dr. Munni Lal v. IV Additional District Judge, Etah 1984 (1) ARC 378, this Court has clarified that the fact that nothing is brought on record indicating that the tenant bad made any effort during the period of the pendency of the release application for getting some accommodation allotted in his favour or otherwise or that he had failed in his attempt is a relevant circumstances while considering the question relating to comparative hardships. Taking into consideration the scheme of the Act, I am of the firm opinion that such an inaction on the part of the tenant constitutes an additional circumstances which entitles the landlord to have a preference shown to him while striking the just balance between the genuine need of the landlord on the one hand and the likely inconvenience or trouble of the tenant on the other It may further be borne in mind that the use of the phrase "having regard to" as envisaged under the fourth proviso to Section 21 of the Act would clearly show that this provision was not obligatory The factors mentioned in Rule 16 of the Rules, should, however, have to be kept in mind deciding the release application. No single factor can be held to be conclusive. As observed in its decision in the case of Mohd. Muslim v. District Judge, Varanasi 1978 ARC 328 it is the cumulative effect of all that has to be seen The in-action of the tenant to search for an alternative accommodation, as already indicated hereinbefore, constitutes an additional factor which may outweigh the hardship if any, likely to be suffered by the tenant in the event of the grant of the release application in case where the bonafide requirement for the release stands conclusively established.

25. The application for release of the accommodation in dispute had been filed in the year 1978, the appellate authority had found that when made the requirement for the accommodation in dispute as set up initially was genuine bonafide and pressing. In the facts and circumstances of the case as Indicated herein above, the aforesaid finding did not require to be disturbed Further so far as the question of relative hardships is concerned in the circumstances, indicated hereinbefore the tenants-Respondents could not be deemed to suffer a greater hardship as compared to the Petitioners in the event of the release sought for.

26. Rule 13 of the Rules framed under the U.P. Act No. 13 of 1972 provides that every application for release of a vacant building shall as far as possible be decided within one month from the date of its presentation. Rule 15 of the Rules provides that every application for release of the building under the occupation of a tenant shall as far as possible be decided within two months from the date of its presentation. Rule 7 of the Rules which relates to appeals and revisions contemplated u/s 18 and 22 of the Act

provides that as far as possible a revision u/s 18 shall be decided within one month and appeal u/s 22 shall be decided within six months from the date of its presentation.

27. In view of what has been noticed above, it is apparent that the underlying policy of U.P. Act No. 13 of 1982 is that the matter of release of an accommodation should be decided most expeditiously, so that the landlord may not suffer. While it is true that U.P. Act No. 13 of 1972 is a beneficient piece of legislation and was intended for the benefit of tenants in view of the shortage of housing accommodation is the State, yet it cannot be overlooked that the aforesaid Act and the rules framed thereunder take care of the interest of the landlord also and in case, sufficient ground is made out for the grant of the release of a vacant building or a building occupied by a tenant, the proceedings have to be disposed of expeditiously as far as possible within the time limit prescribed under the rules to which a reference has already been made above. The words as far as possible'' as used in the aforesaid Rules signify that the time limit should be adhered to unless for cogent reasons, it is not possible to do, so. Such a provision has obviously been made to protect the interest of the landlord and to ensure that in case sufficient ground has been made out, the accommodation should be made available at the earliest to satisfy the requirement of the landlord.

28. In the circumstances, I do not find it necessary to remit the case for reconsideration. The Petitioner had made a prayer before this Court that apart from quashing the impugned orders, a direction may be issued to the Respondents to deliver to him the vacant possession of house No. 33, Thatheri Bazar, Allahabad. The jurisdiction of the writ court is wide enough to give substantial relief to the Petitioner, even though not specifically asked for in the writ petition. Article 226 of the Constitution of India confers on the High Court very wide powers, which were never possessed before and since the powers under this Article are discretionary, no limit can be placed upon discretion but of course, the discretion must be reasonable and not arbitrary. The concluding words of Clause (1) of Article 226 ''and for any other purpose'' make the jurisdiction of the High Court quite extensive It is by now well settled that the High Courts should not feel bounded by the procedural technicalities of the English prerogative writs in the exercise of Jurisdiction contemplated under Article 226 of the Constitution of India. It has to be kept in mind that such orders should be passed, which are truely effective. The Hon''ble Supreme Court in its decision in the case of Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, , has clearly held that High Court can issue directions orders or writs other than the prerogative writs.

29. In the facts and circumstances indicated hereinbefore, I am clearly of the view that is a fit case, in which not only the impugned orders dated 30-7-79 and 26-8-81 should be quashed but a direction should be issued requiring the Respondents Nos. 1 and 2 to proceed further from the stage of Section 21(5) of the U.P. Act No. 13 of 1972 deeming the building in question to have been released as contemplated therein, subject to the condition that the Petitioners deposit two years rent payable for the accommodation in dispute calculated at the rate of Rs. 150/- per month before the Prescribed Authority for

payment to the tenants as compensation as envisaged under second proviso to Section 21 of the U.P. Act No. 13 of 1972.

30. In view of the conclusions indicated hereinbefore, this writ petition succeeds and is allowed. The impugned orders dated 30-7-79 and 26-8-81 are quashed. It is further directed that this order shall be sufficient authority for deeming the building in question, released in favour of the landlord, as contemplated u/s 21(5) of the U.P. Act No. 13 of 1973 and the Respondent authority shall proceed further from that stage in accordance with law provided the Petitioners deposit two years rent payable for the accommodation in dispute calculated at the rate of Rs. 150/- per month before the Prescribed Authority for payment to the tenant as compensation. Any amount of rent, due in respect of the building in question upto the date of making the aforesaid deposit, shall, however, be adjustable as against the amount of compensation indicated above.

31. There shall be no order as to costs.