

(2006) 08 AHC CK 0207

Allahabad High Court

Case No: None

Zamir Ahmad Khan and Others

APPELLANT

Vs

Addl. District Judge, Court No. 5
and Others

RESPONDENT

Date of Decision: Aug. 30, 2006

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1)(a)

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Rakesh Tiwari, J.

Heard counsel for the parties.

2. Landlords had filed an application for release of the shop in dispute. Both the courts below have recorded a finding of fact that the need of the landlords is genuine and bona fide. Though the prescribed authority has also gone into the question of comparative hardship, its finding on this issue, has been reversed by the appellate court on the ground that during the pendency of the appeal, one shop of the landlords became vacant, as such, need of the landlord stood extinguished.

3. The appellate court failed to take into consideration the fact that the tenant has his own shop which is hardly 100 metres away from the shop, in dispute where he has established his son in business. The application of the petitioner was moved u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act"). Once the tenant acquired an alternative accommodation in vacant possession and established his son in business, question of bona fide need and comparative hardship would not be relevant on the analogy

of Explanation (1) to Section 21(1)(a) of the Act. It was not open for the appellate authority in the circumstances to take into consideration the question of comparative hardship due to factum of possession of one shop by the landlords in vacant position during pendency of suit proceedings.

4. For the reasons stated above, the writ petition is allowed. Judgment and order dated 24.7.2001 passed by the respondent No. 1 (Annexure-7 to the writ petition) is quashed. The respondent will vacate the shop, in dispute, within a month from today. In case, the shop is not vacated by the respondent within the stipulated period of one month from today, the petitioner-landlord will be at liberty to evict him with the aid of local Pplice, force. No order as to costs.