

(2005) 05 AHC CK 0276

Allahabad High Court

Case No: C.M.W.P. No. 41729 of 2005

Swaraj Kumar

APPELLANT

Vs

Arvind Kumar

RESPONDENT

Date of Decision: May 27, 2005**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21, 21(1), 22
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 16(1), 16(2)

Citation: (2005) 4 AWC 3387**Hon'ble Judges:** Anjani Kumar, J**Bench:** Single Bench**Advocate:** A.K. Gupta, for the Appellant; K.K. Arora, for the Respondent**Final Decision:** Allowed

Judgement

Anjani Kumar, J.

This writ petition filed by the petitioner-tenant under Article 226 of the Constitution of India arises out of proceedings u/s 21(1)(a) of U.P. Act No. 13 of 1972 (in short "the Act").

2. The brief facts leading to filing of the writ petition are as under :

"The respondent-landlord filed an application for the release of the accommodation in dispute u/s 21(1)(a) of the Act with the allegation that his family consists of himself, his wife and two sons who are unemployed and are to be engaged in business. The tenant can take some other accommodation. The petitioner contested the application by filing his written statement. The stand taken by the petitioner-tenant are that Arvind Kumar grandson of owner of the house in dispute

Devi Saran has been collecting the rent on behalf of Devi Saran. Devi Saran, owner of the property in dispute, has large number of properties. Even with regard to Arvind Kumar who is collecting rent and may be covered within the definition of "landlord", it is stated by the petitioner-tenant that Arvind Kumar is having a big factory known as Classic Collection in which Arvind Kumar and his two sons are actively engaged and the first floor of two properties in which Lohia Brass is tenant on the ground floor, the other portions are lying vacant. Apart from this, many other properties have been referred to by the petitioner-tenant which are in possession of Arvind Kumar. Thus, it is submitted by tenant that in fact, the petitioner-tenant is in the same business which is being carried out by Devi Saran and his grandson, Arvind Kumar therefore in fact there is a business rivalry which instigated the landlords to file release application."

3. The prescribed authority before whom the parties adduced the evidence, after exchange of the pleadings, has considered the respective case of the parties and arrived at the conclusion that the need of the landlord is not bona fide and therefore the application by the landlord u/s 21(1)(a) of the Act was dismissed by the prescribed authority. Aggrieved thereby the landlord preferred an appeal before the appellate authority as contemplated u/s 22 of the Act. The appellate authority reversed the findings recorded by the prescribed authority and found that the need of the landlord is bona fide and that the tilt of comparative hardship is also in favour of the landlord. The appellate authority therefore, allowed the appeal and set aside the order of the proscribed authority and directed for release of the accommodation in dispute in favour of the landlord. Aggrieved thereby the petitioner preferred this writ petition.

4. Learned counsel for the petitioner has argued firstly that in view of the provisions of Section 21(1)(a) of the Act it was incumbent on the part of the prescribed authority as well as the appellate authority before directing release of the accommodation in dispute u/s 21(1)(a) of the Act, to consider as to whether the release of the part of accommodation will serve the purpose of the landlord and tenant both and if it would have come to the conclusion that the release of the part of the accommodation will serve the purpose, it should direct for release of part of the accommodation not of entire. Learned Counsel for the petitioner further argued many other points but since the writ petition succeeds on this point of part release of the accommodation, the other points are not discussed. For ready reference Section 21(1)(a) is quoted below :

"21. Proceedings for release of building under occupation of tenant.--(1) The prescribed authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely :

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any

member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust."

5. As against the point of part release, learned Counsel for the respondent raised objections to the effect that since this point was not raised either before the prescribed authority, or before the appellate authority, therefore, petitioner cannot be permitted to raise it before this Court for the first time. Learned Counsel for the petitioner relied upon the decision of the Apex Court in *Smt. Raj Rani Mehrotra v. IInd Additional District Judge and Ors.*, 1980 ARC 311, wherein the Apex Court has ruled as under :

"We have heard counsel for the parties. On going through the judgments of the lower authorities also of the High Court we are satisfied that the issue arising under Rule 16(1)(d) of the Rules framed under the U.P. Urban Buildings (Regulations of Letting, Rent and Eviction), Rules 1972, as to whether the landlord's need could have been satisfied by releasing only a part of the premises has not been gone into or considered by any of them. When the plea under the said rule was pressed on behalf of the tenant in the High Court, the High Court rejected it on the sole ground that no such plea has been raised by the tenant in his written statement and as such it could not be considered. It is clear that under the relevant rule it is duty of the Court to take into account that aspect while considering the requirements of personal occupation of the landlord and therefore, this issue will have to be remanded to the High Court.

We accordingly set aside the order of the High Court dismissing the writ petition and remand the matter back to it for determination of aforesaid issue. If necessary, the parties may have to be allowed to lead fresh evidence, if the High Court is unable to decide it on the materials on the record. If evidence becomes necessary, the High Court may in its turn remand the matter back to the trial court, which will give an opportunity to both the parties to lead fresh evidence."

6. It is then submitted by learned Counsel for the petitioner that in view of the law laid down by the Apex Court, the objection raised by respondent deserves to be rejected. It is then submitted by learned Counsel for the respondents that since the accommodation in dispute is a non-residential accommodation which is governed by the provisions of Rule 16(2) of the Rules framed under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 and not by the provisions of Rule 16(1) of the aforesaid Rules, therefore, the question of considering the part release by the authorities does not arise. In reply to the aforesaid objection learned Counsel for the petitioner further relies upon other decision of the Apex Court in *Ramesh Chandra Kesharwani v. Dwarika Prasad and Anr.*, 2002 (4) AWC 2737 (SC) : 2002 (2) ARC 298, wherein taking notice of the Sub-rules (1) and (2) of Rule 16 of the aforesaid Rules, 1972 the Apex Court has ruled as under :

"5. The first contention raised by Shri R.B. Mehrotra looked attractive prima face, but on a closer reading of Section 21(1) it leaves little scope for doubt that the Prescribed Authority is vested with the power to order eviction of a tenant from the building under tenancy, or any specified part thereof if it is satisfied about exercise of the ground specified in the section. No distinction is made between residential and non-residential premises in the section. Therefore, by interpretation, it cannot be held that the power vested in the authority to order partial eviction is confined to the residential premises only.

Regarding Rule 16, it is to be noted that Sub-rules (1) and (2) lay down certain factors for consideration by the Prescribed Authority which is considering the question of eviction from the premises. Rule 16(1) deals with premises in occupation for the purpose of residence and Rule 16(2) deals with premises in occupation of a tenant for the purpose of any business. Clause(d) of Rule 16 (1) provides that

where the tenant's needs would be adequately met by leaving with him a part of the building under tenancy and the landlord's needs would be served by releasing the other part, the Prescribed Authority shall release only the latter part of the building. This provision, in our view, merely reiterates the power vested in the authority to order eviction of the tenant from the premises in entirety or portion of it. No doubt a similar provision is not found in Sub-rule (2) of Rule 16, but that does not affect the power of the authority vested u/s 21 of the Act to order eviction of tenant from a portion of the premises in an appropriate case if the authority is satisfied that on the facts and circumstances of the case interest of justice will be served by passing such an order. Therefore, the first contention raised by Shri Mehrotra cannot be accepted."

7. Learned Counsel for the petitioner has also relied upon another judgment of this Court in *Pratap Narain Tandon v. Abdul Makatadir*, 2005 (1) AWC 921 : 2005 (1) ARC 555, wherein in the similar circumstances this Court quashed the order of the prescribed authority as well as the appellate authority and remanded the matter to the authority to decide in accordance with law in the light of observations made in the judgment.

8. Considering the aforesaid facts and arguments and the law laid down by the Apex Court and this Court, this writ petition deserves to be allowed and is hereby allowed. The order dated 31.3.2005 (Annexure-15 to the writ petition) passed by the appellate authority is quashed and the matter is remanded to the appellate authority to consider the question of part release and decide the same in the light of the observations made in this judgment and in accordance with law. Since the matter is old, the appellate authority is directed to decide the question involved within three months from the date of presentation of certified copy of this judgment before him.