# Fateh Singh Vs Arun Kumar Bishwas and Others

**Court:** Allahabad High Court

**Date of Decision:** Sept. 12, 2002

**Acts Referred:** Constitution of India, 1950 â€" Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 â€" Section 1, 18, 2

**Citation:** (2002) 5 AWC 3632

**Hon'ble Judges:** S. Harkauli, J

**Bench:** Single Bench

**Advocate:** Pankaj Mithal, for the Appellant; K.S. Singh, for the Respondent

**Final Decision:** Dismissed

## Judgement

S. Harkauli, J.
I have heard Sri Pankaj Mithal, learned Counsel for the Petitioner and Sri Kripa Shankar, learned Counsel appearing on

behalf of the Respondents.

2. The Petitioner is occupant of the disputed shop since 1980 admittedly. By the order dated 24.4.2002, vacancy was declared in respect of the

said shop on the allegation that it was covered by the Rent Control Act (U.P. Act No. 13 of 1972) and the Petitioner"s occupation was without an

allotment order. That decision about the vacancy was challenged by way of Writ Petition No. 18865 of 2002 and that writ petition has been

dismissed as infructuous today on account of the present writ petition whereby the order confirming the vacancy but setting aside the release order

has been passed by the revisional court u/s 18 of the said Act.

3. According to the learned Counsel for the Petitioner, the shop in question was not covered by the Rent Control Act in the year 1980 when the

Petitioner was inducted as tenant, therefore, there was no question of allotment order. The occupation of the Petitioner cannot be said to be

unauthorized and there would be no vacancy or deemed vacancy. The crucial fact in this regard would be the date of completion of construction of

the building. On this point, the Petitioner has set up the case that the original building was a residential building and it was remodelled by fixing

shutters and some other alteration, into a commercial building consisting of several shops. This remodelling was done during the period 1979-80. It

is also alleged by the Petitioner that the municipal assessment of annual (letting) value of the building was enhanced by the Cantonment Board from

Rs. 660 to Rs. 4,500. A copy of the municipal assessment of 1981-1984 is on record.

4. The courts below have held that the municipal assessment does not necessarily indicate new construction. It has also been found that mere fixing

of shutters does not amount to new construction, therefore, the case of the Petitioner that new construction of the building took place in 1979-80

has been disbelieved.

5. This is essentially a finding of pure fact returned by the impugned order, which is capable of challenge on very limited ground under Article 226

of the Constitution of India. The contention of the Petitioner that two affidavits had been filed from his side of the persons who are alleged to be

independent witnesses have not been considered by the Rent Control Officer is not sufficient to challenge the said finding of fact. In fact, the

revisional court has also expressly referred to these affidavits and has stated that disbelieving these two witnesses by the trial court cannot be said

to suffer from any serious infirmity.

6. However, it does not appear necessary to go into this question of pure fact for the reasons given below.

7. It appears that Explanation 1 of Section 2 of U.P. Act 13 of 1972 contains two clauses regarding reconstruction. These Clauses are (b) and (c).

8. The Clause (b) contemplates a situation where the existing building has been wholly or substantially demolished and thereafter new construction

has taken place. In this case, tenant has not come forward with any case of substantial demolition of the existing building, therefore, Clause (b) will

not apply.

9. The Clause (c) contemplates a situation where substantial addition is made to the existing building to such an extent that the existing building

becomes a minor apart of the whole building. This means that the addition must be greater than originally existing structure. There is no such plea

from the side of the tenant therefore, this clause will also not apply.

10. It would appear from the reading of these two provisions that the Act contemplates a fresh period of holiday from the Act only where (a) either

substantial demolition and thereafter new construction has been made ; or (b) new construction is by way of an addition exceeding the original

building. No other remodelling appears to have been considered sufficient by Legislature to grant fresh period of holiday from the Act.

11. In such circumstances, I do not find any merits in the writ petition. It is therefore, dismissed.