

## Ashok Kumar Gupta Vs District Judge and Others

**Court:** Allahabad High Court

**Date of Decision:** Sept. 1, 2010

**Acts Referred:** Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 " Section 21(1)(A)

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 " Rule 17

**Citation:** (1997) 3 UPLBEC 1915

**Hon'ble Judges:** Satish Chandra, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Satish Chandra, J.

The present writ petition has been filed against the judgment and order dated 30th March, 2010 passed by the learned

District Judge, Hardoi in Rent Appeal No. 6 of 2006 Ashok Kumar Gupta v. Laxmi Prasad Gupta.

2. The brief facts of the case are that the petitioner is a tenant in the shop owned by opposite-party No. 3 at the rate of Rs. 140/- per month. The

petitioner is running Kirana business in the said shop since 1982. The opposite-party has started the proceedings u/s 21(1)(A) of the Uttar Pradesh

Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as Rent Act) by mentioning that the younger son of

the landlord wants to do business in the said shop, so the petitioner must vacate the shop within the stipulated period. Finally, the matter reached

before the Prescribed Authority/Civil Judge (S.D.), Hardoi in P.A. Case No. 4 of 1999 Laxmi Prasad Gupta v. Ashok Kumar Gupta where the

petitioner was directed to vacate the said shop. Being aggrieved, the petitioner filed an appeal before the learned District Judge, Hardoi, who

passed the impugned order by upholding the judgment of the trial court. Not being satisfied, the petitioner is before this Court.

3. With this background, learned Counsel for the petitioner Sri K.K. Singh submits that the need of the landlord is neither bona fide nor genuine.

He owns several shops. Even in the house, there are two shops and one shop is owned by Sri Parashu Ram, the landlord. The second shop is

owned by opposite-party No. 3 i.e. landlord. He also submits that the petitioner is running Kirana business in the said shop since 1982. The bread

and butter of the petitioner comes from the shop in question. The petitioner has total five members in his family. He has drawn the attention to the

site-plan indicated at page No. 68 of the writ petition and stated that the petitioner is ready for part release of the shop. He also submits that the

application for part release dated 17.8.2007 was not considered by the lower court. Simultaneously, he submits that the request dated 10.11.2008

for commission was not considered by the lower court. The need of the petitioner is greater need. He again submits that the need of the opposite-

party No. 3 for the shop in question is neither bona fide nor genuine nor it is bigger than the petitioner and that the opposite-party No. 3 has got a

vacant shop in his possession which situate in the house of him and his brother Parasu Ram situated on main road in Sandila Town itself hence he

would suffer no hardship. On the other hand, the petitioner has no shop or accommodation other than the shop in question to run the business and

to earn the bread for his family in which two members have attained the marriageable age. He further submits that after the pleadings of the parties

in the P.A. Case were completed, the opposite-party No. 3 had adduced evidence by filing affidavits of himself. Anshu Kumar Gupta (younger

son of the opposite-party No. 3), Jagdish Prasad son of Sri Ram Bhajan, Kanhaiya Lal s/o Sri Durga Prasad, Vishnu Kumar Gupta (elder son of

the opposite-party No. 3). The aforementioned persons who had filed their affidavits were cross-examined as PW-1, PW-2, PW-3, PW-4 and

PW-5 respectively by the petitioner's counsel. The opposite- party No. 3 had also filed certain documentary evidence, the details of which have

been given in the final judgment and order dated 7.10.2006 passed by the trial court. Learned Counsel further submits that the grounds of the

attack of the petitioner against the application for release of the opposite-party No. 3 was mainly that the opposite-party No. 3 has got alternative

accommodation/shop vacant on the ground floor of the house situated on main road in Sandila Town which was in possession of opposite-party

No. 3. The petitioner had also pleaded that the opposite-party No. 3 has got several other properties situated in Sandila Town itself and he may

use of any one for the business of his younger son but he disowned the same on flimsy grounds of life interest of his relative Smt. Ram Devi aged

about 85 years and that she being living separate and all alone. Lastly, he made a request that the petitioner is still in possession of the shop in

question and is running his business but the opposite-party No. 3 has now sought the legal process to vacate the petitioner from the shop in

question. The same is illegal, so he made a request that the impugned order may kindly be quashed and the petitioner may be allowed to continue

in the said shop as tenant where he is not a defaulter in paying the rents. Finally, he relied on the ratio laid down in the following cases:

1. 2002 (48) ALR 23 (Akhilesh Kumar and Ors. v. Anand Kumar Agarwal and Ors.;
2. 2005 (58) ALR 738 Ram Autar Agarwal v. Addl. District Judge (Special), Rampur and Ors.;
3. 2002 (48) ALR 275 Ramesh Chandra Keshewani v. Dwarika Prasad and Anr.;
4. 2005 (61) ALR 10 Girish Chandra Gupta and Ors. v. State of U.P. and Ors.;
5. 1972 SC 2531 Baikuntha Nath Paramanik (dead) v. Sashi Bhusan Pramanik (dead);
6. 1966 SC 411 Achuthan Nair v. Chinnammu Amma and Ors.
7. 1990 ALR (16) SC 78 H.C. Rameshwar Kumar v. IInd Additional District Judge, Muzaffarnagar and Anr. in C.M. Writ Petition No. 10752 of 1987);
8. 2009 (106) RD 168 G. Rangaiah v. Govindappa and Ors.; and
9. 1964 SC 136 F H.C. A. Raghavamma and Anr. v. A. Chenchamma and Anr.

4. On the other hand, Sri Ravi Nath Tilhari, counsel for the opposite-party No. 3, submits that the need of the opposite-party is greater. Part

release of the shop in question is not permissible as Rule 17 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is

applicable to the residential accommodation. He further submits that the request for commission was duly considered by the lower court and it was

rejected vide order dated 8.12.2009 (page No. 137 of the petition), against which the petitioner has filed the writ petition before this Hon"ble

Court bearing Writ Petition No. 163 of 2010 (R/C), which was dismissed by the Hon"ble Court. He further submits that the present petition is

nothing but is a delaying tactics adopted by the petitioner for not vacating the shop. Lastly, he made a request that the writ petition may kindly be

dismissed. In support of his arguments, he has cited the following case-laws:

1. Smt. Chanda Devi and Anr. v. the XII Additional District Judge, Kanpur 1983 ARC 825;
2. Shital Prasad v. I Additional District Judge, Moradabad 2002 (2) ARC 255; and
3. Kewal Chandra v. Additional District Judge 2004 (2) ARC 365
5. I have heard learned Counsel for both the parties at length and gone through the material available on record.
6. From the record, it appears that the opposite-party No. 3, hereinafter referred as landlord, sought release of the shop in question on the ground

that the same was required for his son Anshu Kumar who was unemployed and was sitting with his elder brother Vishnu Kumar, who was carrying

business in the neighbouring shop. It was further stated that the landlord wants to establish his son in the business of general merchant and ready-

made garments, so the shop in question requires for personal use. The landlord has no other shops to fulfill the need of his son. It was stated that

the petitioner has not made any effort to take any other shop and or purchase which are available in the market.

7. To counter, it is stated by the petitioner that several shops and vacant lands are available to the landlord and same could be used by him in

establishment of his new business. Apart from this, one shop with verandah is available on the main road which is vacant. Previously, the shops

were seized in the name of widow Mitthulal and after her death, one shop was given to landlord in mutual partition.

8. After hearing both parties at length and on perusal of material available on record, it appears that both parties have denied the allegations which

were made against each other but fact remains that the petitioner is a tenant in the shop in question at the rate of Rs. 140/- per month where he is

running Kirana business since 1982. The landlord has said that his need is greater and genuine as his son namely Anshu Kumar is to establish a

shop for independent business. The elder son of the landlord Sri Vishnu Kumar is carrying an independent business in a separate shop and he has

no concern with him.

9. When it is so, I am of the view that the landlord has genuine and bona fide requirement of accommodation in question. In the Act, word "bona

fide" has been mentioned. In the facts and circumstances, the need of the landlord appears greater and urgent. On the other hand, learned Counsel

for the petitioner has failed to prove that he has made any attempt to obtain alternative shop in the market on rent or on purchase basis. He wants

to continue at meagre rent in the shop in question. In the name of tenancy or bona fide need, the tenant tries to become the owner of the shop. The

need of the adult member of the family is greater as he is ready to start a separate business as per the ratio laid down by the Hon"ble Supreme

Court in a number of cases which has already been discussed in the impugned order and the same need not to repeat here. The court below has

categorically observed that the landlord has no space to establish his son in an independent business as the other premises are the disputed

premises of the family and the same are not available at the disposal of the landlord. The Apex Court in the case of Mst. Bega Begum and Others

Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, observed that each party should prove its relative advantages and disadvantages in a case

where the order for eviction is passed or refused. The landlord should not be expected to discharge the burden to provide an alternative

accommodation to the tenant. When the hardship of the landlord and tenant is considered, then the most important factor is as to whether the

tenant has made sincere efforts to search some alternative accommodation during pendency of proceedings for release. In this case, the petitioner

has failed to prove that he has searched an alternative accommodation during pendency of the case. The proceedings pertaining to the shop in

question are pending more than ten years and the petitioner has earlier filed the writ petition before this Hon'ble Court which was dismissed again.

The present petitioner can be considered as a delaying tactics.

10. In the circumstances mentioned above, there is no merit in the writ petition and the same is dismissed by upholding the orders passed by the

lower courts along with the reasons mentioned therein. Interim order, if any, is discharged.

11. The writ petition is, thus, dismissed.