

## Anand Kishore Agarwal Vs XIth Additional District Judge and Others

**Court:** Allahabad High Court

**Date of Decision:** July 21, 1997

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

**Hon'ble Judges:** Sudhir Narain, J

**Bench:** Single Bench

**Advocate:** K.L. Grover, for the Appellant; K.M. Dayal, for the Respondent

**Final Decision:** Dismissed

### Judgement

Sudhir Narain, J.

This writ petition is directed against the order dated 9.12.1991, passed by the Prescribed Authority, Respondent No. 2, allowing the release application of the landlords and the order dated 6.1.1994, dismissing the appeal against the aforesaid order.

2. The Petitioner is a tenant of first floor portion of house No. 50/197, Naughara, Kanpur. Deokl Nandan Shukla was its landlord. He died during

the pendency of the case and was substituted by his heirs, Respondents 3 to 7. The landlord was residing on a ground floor portion of the same

house in which the Petitioner is residing. Deokl Nandan Shukla filed application u/s 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent

and Eviction) Act, 1972 (hereinafter referred to as the Act) for release of the portion of the house in occupation of the Petitioner on 24.2.1984. It

was stated by him that his family consists of himself, his wife, two sons aged about. 18 and 12 years, daughter 16 years and the mother. The

accommodation with him on the ground floor consists of two living rooms which is hardly sufficient. His one of the daughters has been married and

she often comes to reside with him. The tenant owns house No. 51/7D (Old), 51/30 (New) Ramganj, Kanpur and his father purchased the house

No. 128/3H2, Kidwai Nagar, Kanpur in the name of his wife and the Petitioner can shift in that house and will not suffer any hardship.

3. The Petitioner contested the application on the ground that the landlord has concealed the accommodation in his possession. He demolished

certain portions of the accommodation which were vacated by the tenants and if he needed the accommodation, he instead of demolishing those

portions could have repaired and started living in those portions. He clarified that house No. 51/7D is a commercial accommodation and the house

No. 128/3H2, Kidwai Nagar, Kanpur is in the name of his mother and he has no right to shift in that accommodation. The Prescribed Authority

allowed the application of the landlord by his order dated 9.12.1991. It came to the conclusion that the accommodation with the landlord was

insufficient for residential purpose. The landlord had not demolished any portion of the house as alleged by the tenant. The Petitioner can shift to

the residence of his mother, 128/3H2, Kidwai Nagar, Kanpur, which was acquired subsequently. This order has been affirmed by the appellate

authority, Respondent No. 1, by the impugned order dated 6.1.1994.

4. I have heard Sri K.L. Grover, learned Counsel for the Petitioner and Sri K.M. Dayal, learned Counsel for the Respondents.

5. Learned Counsel for the Petitioner submitted that the accommodation with the landlord is sufficient for residential purpose. In this respect a

Commissioner was appointed. He found that the house in question consists of ground floor, first floor and second floor. On the ground floor, the

landlords are residing. They have got four rooms -- (1) 12" x 15", (2) 8" x 9", (3) 5" x 5" and (4) 7" x 8". One is being used for storeroom,

another small room for Poojaghar and two rooms are being used for the residential purpose. On the second floor, the landlords have only one

small Barotha and in shed which can hardly be used for residential purpose. The tenant has three rooms in his tenancy. Deoki Nandan Shukla, the

landlord died during the pendency of the case. He was survived by his widow, Respondent No. 3, two sons -- Manish Kumar and Mohit Kumar.

Manish Kumar has since been married, Mohit Kumar is alleged to be aged about 25 years and is of marriageable age. The two daughters though

have been married but they come and reside with their mother. Considering the number of family members, it was found that the landlord needs at

least five rooms for residential purpose. This finding is based on appreciation of evidence by Respondents 1 and 2 and does not suffer from any

manifest error or law.

5. The second submission of learned Counsel for the Petitioner is that the landlord had demolished back portion of ground floor and the first floor

of this very house is in occupation of other tenants and since the landlord himself demolished those portions, he cannot claim that his need is bona

fide and genuine inasmuch as instead of demolishing those portions, he could have occupied the portions vacated by the tenant and could have

used the same after making necessary repairs in those accommodations. This aspect was considered in detail by the Prescribed Authority and has

found that the version of the Petitioner that the landlord had demolished those accommodations was incorrect. In fact, those portions were in

dilapidated condition and had fallen down in due course.

6. Sri Grover, learned Counsel for the Petitioner vehemently urged that the finding recorded by the Prescribed Authority was erroneous, It was

specifically urged before Respondent No. 1 that the finding of the Prescribed Authority was erroneous on facts and was not based on material

evidence on record. Respondent No. 1 in spite of the arguments being raised before it did not record any specific finding on this aspect.

7. Normally, the Court deals with the points urged by the parties. If in the judgment, there is no specific finding on any point, the presumption is

that the point was not raised in arguments. In case any point has been urged and it is not decided, it was appropriate, that counsel for the Petitioner

to have filed an affidavit before the same authority pointing out that an argument on certain aspect was raised but it has not been decided. The

Court concerned could have considered that aspect of the case. In Bank of Bihar Ltd. Vs. Mahabir Lal and Others, , it has been held that where a

statement appears in the judgment of a Court that a particular thing happened or did not happen before it, it ought not ordinarily be permitted to be

challenged by a party unless both the parties to the litigation agree that the statement is wrong, or the Court itself admits that the statement is

erroneous. The remedy of a party aggrieved is by way of review.

8. In Kunwarpal v. Deputy Director of Consolidation, Mathura and Ors. 1986 ALJ 576, the Court considering the various decisions of the

Supreme Court held that if an observation is made in an order that has to be accepted as correct unless an application is filed before that very

authority and it records a finding that the observations are incorrect. The same principle will be applicable where a point is alleged to have been

raised before a Court/Authority but that was not considered by such authority. An application with affidavit of the counsel who argued the case,

could have been filed before the same Court immediately on receiving the judgment stating that certain point was urged but was not decided. The

Court could have considered such application.

9. In this case, an affidavit of the counsel has been filed in this Court who is alleged to have argued the case before Respondent No. 1. He has

stated that it was urged before Respondent No. 1 that the landlord himself demolished certain portions of the building but that aspect has not been

considered by Respondent No. 1. A counter-affidavit has been filed controverting this fact. It is not necessary to go into this controversy. The

Prescribed Authority has recorded a specific finding that the landlord did not deliberately demolish any portion of the building as alleged by the

Petitioner. The sole question is whether this finding can be said to be perverse.

10. Learned Counsel for the Petitioner has placed reliance upon the report of S.C. Nigam, Engineer dated 20.1.1991. He has made observation

that he could not inspect the southern and western portions of the house as the iron Jangla over the courtyard of the owner has been removed but

he has seen from the staircase of the first floor and from visible observation he was of the view that the building was quite strong and the portions

which stand demolished were dismantled by the landlord. In the counter-affidavit, the Respondents filed two reports of the Commissioner. The

Petitioner had filed Suit No. 1643 of 1983 for injunction against the landlord. In that suit, he got appointed a Commissioner to make a local

inspection of the house in question. The Commissioner found that the house was in dilapidated condition and the accommodation in possession of

the landlord was also disclosed. A copy of the said report dated 4.1.1984 has been annexed as Annexure 5 to the counter-affidavit. A perusal of

this report clearly indicates that the western portion of the house was in dilapidated condition and had fallen down. Against this report, the

Petitioner did not file any objection. It was in fact, the report submitted by the Commissioner in the said case at the instance of the Petitioner. The

Petitioner had also filed a report in another Suit No. 14 of 1984 in which a Commission was issued who submitted the report dated 28.2. 1986, a

copy of which has been annexed as Annexure 4 to the writ petition. The report of the Commissioner indicates that the western portion of the

house was in dilapidated condition and had fallen down. In paragraph 8 of the counter-affidavit, it is stated that the Petitioner had filed objection

against the said report which was rejected. As these reports dated 4.1.1984 and 28.2.1986 state that the western portion of the disputed house

was in dilapidated condition and had fallen down, the view taken by the Prescribed Authority that it was not deliberate act on the part of the

landlord in dismantling the western portion is not erroneous. Smt. Champa Devi was one of the tenants of western portion of house No. 50/197,

Naughara, Kanpur. His son Shashi Bhushan filed affidavit stating that his mother had voluntarily vacated the portion in the year 1980 as that was in

dilapidated condition. The case of the landlord was that these portions had fallen down between the period 1976 to 1980. The Petitioner relies

upon the report of the Engineer S.C. Nigam dated 20.1.1991. He had not in fact even visited the portion which had already been vacated but from

the first floor of the house, he formed an opinion that as certain walls were existing and they were in a strong position, he opined that the landlord

might have dismantled the portion. The earlier reports of the Commissioner who had actually inspected the house, and had found that they were

totally in dilapidated condition and the portions had fallen down. In view of the earlier reports, the Prescribed Authority was justified in taking the

view that the landlord had not deliberately demolished any portion of the portions alleged to have been vacated by the other tenants in the same

house.

11. The next submission of learned Counsel for the Petitioner is that the Petitioner shall suffer greater hardship in case the Petitioner is dispossessed

from the house in question. The Prescribed Authority found that the parents of the Petitioner were living with him till the year 1975 and after 1975

house No. 128/3H, Kidwal Nagar was acquired in the name of his mother which consists of about 8 rooms. It was found that the Petitioner's

objection to the release application was not maintainable In view of the Explanation to Section 21(1)(a) of the Act. Even if It be taken that the

Explanation is not applicable, the Petitioner can shift to that house and if he is not willing to shift in the house of his parents, he is to find out

alternative accommodation.

12. The last submission of learned Counsel for the Petitioner is that the Petitioner may be permitted to take the ground floor and he is prepared to

give three rooms which he has in his occupation on the first floor. This offer was also considered by Respondent No. 1. It has been found that the

landlord needs, atleast five rooms for residential purpose and considering the accommodation with the landlord and alter getting the

accommodation of the Petitioner, he will have five living rooms. The view taken by Respondent No. 1 does not suffer from any manifest error of

law.

13. In view of the above discussion there is no merit in tills writ petition. It is accordingly dismissed.