

(2005) 02 AHC CK 0263**Allahabad High Court****Case No:** C.M.W.P. No. 46872 of 2004

Shree Kishan

APPELLANT

Vs

Addl. District and Sessions Judge
and Others

RESPONDENT

Date of Decision: Feb. 16, 2005**Acts Referred:**

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

Citation: (2005) 3 AWC 2172**Hon'ble Judges:** Anjani Kumar, J**Bench:** Single Bench**Advocate:** S.K. Mishra, for the Appellant; None, for the Respondent**Final Decision:** Dismissed**Judgement**

Anjani Kumar, J.

This writ petition under Article 226 of the Constitution of India has been filed by the Petitioner-tenant being aggrieved by the order passed by the prescribed authority and appellate authority under the provisions of U.P. Act No. 13 of 1972 (in short the "Act") with the prayer for quashing of these two orders and also for rejection of the application filed by the Respondent-landlord for the release of the accommodation in dispute u/s 21(1)(a) of the Act.

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

That the Petitioner is the tenant of the accommodation in dispute situated in the house No. 130/187, Colonelganj, Kanpur Nagar. The Respondent-landlord filed an application u/s 21(1)(a) of the Act with the allegation that the accommodation in dispute is in possession of the Petitioner-tenant falling in the share of the Respondent-landlord in a family partition and he is exclusive landlord of the

accommodation in question, which is under the tenancy of the Petitioner. The Respondent-landlord filed an application u/s 21(1)(a) of the Act for the release of the accommodation in dispute with the assertion that he is in possession of only one room which is too short for living of the landlord and his family, as his family consists of himself and his wife, one married son and daughter-in-law, one daughter and two sons who could not be married because of paucity of accommodation. This fact has been denied by the Petitioner-tenant in his written statement with the further allegation that the accommodation in dispute is jointly owned by the Respondent No. 3 and Smt. Chandrawati who has not been impleaded either as co-applicant or proforma Respondent therefore, the application filed by the Respondent No. 3 is not maintainable under the Act. On the question of bona fide need the allegation of the landlord is denied on the ground that the Petitioner-tenant is living for the past 50 years, if evicted will be thrown on the street. On the question of alternative accommodation various pleas were also taken by the tenant. The prescribed authority after considering the pleadings of the parties and their evidence and also discussed the plea of the tenant that the application is not maintainable on behalf of Respondent No. 3 alone because alleged co-landlord Smt. Chandrawati has not been impleaded either as co-applicant or proforma Respondent. This plea of the tenant has been rejected by the prescribed authority on the fact that neither there is any material nor evidence to controvert the family partition relied upon by the landlord between the Respondent No. 3 and alleged co-sharer, Smt. Chandrawati. In these circumstances, the prescribed authority arrived at the conclusion that the plea raised by the tenant that there was no family partition, cannot be accepted and held the application to be maintainable. In the alternative the prescribed authority has held that even assuming the applicant to be the co-landlord of the joint property, as laid down by Full Bench of this Court in 1987 (1) ARC 281 that the application for release of the accommodation in dispute filed by one of the co-landlord of the joint property, is maintainable. In this view of the matter, the plea regarding maintainability of the application filed by the Respondent No. 3 alone, raised by the tenant has been rejected by the prescribed authority. On the question of the bona fide requirement, apart from evidence on record the prescribed authority relying upon the decision of this Court in 1985 (2) ARC 206 and also in view of the case in 2004 (1) ARC 148, has arrived at the conclusion that considering the numbers of family members the requirement of the additional accommodation is bona fide and the averments to the contrary raised by the tenant are not acceptable. On the question of comparative hardship the prescribed authority has found that on the basis of evidence on record the tilt of comparative hardship is in favour of the landlord and therefore, directed for release of the accommodation in favour of the landlord.

3. Aggrieved thereby the Petitioner-tenant preferred an appeal u/s 22 of the Act. Before the appellate authority the Petitioner raised the question that from the evidence on record it is apparent that the landlord is permanently employed as a

peon at Nainital therefore, his need cannot be said to be bona fide. Apart from repeating previous arguments which were raised before the prescribed authority regarding his being employed at Nainital arrived at the conclusion that even assuming the applicant is permanently residing at Nainital, it cannot be inferred that the entire family of the applicant is residing as there is no pleading at Nainital therefore, the need for additional accommodation for the family members of the applicant at Kanpur cannot be rejected only on this ground. Therefore, the appellate authority rejected the plea of the tenant regarding applicant's being employed at Nainital. On the question of bona fide need and comparative hardship the appellate authority affirmed the findings of the prescribed authority.

4. Before this Court, same arguments are advanced by learned Counsel for the Petitioner regarding maintainability of the release application by one co-landlord and question of bona fide need. Learned Counsel for the Petitioner further submitted that the findings recorded by the prescribed authority and affirmed by the appellate authority deserve to be quashed by this Court.

5. So far as the maintainability of the application by one co-landlord, the law laid down by this Court in 1987 (1) ARC 281 , clearly suggests that this argument deserves to be rejected and therefore is rejected, apart from on facts both the authority found that Respondent alone is the sole landlord. It is settled law that this Court normally do not interfere with the findings recorded by the prescribed authority and affirmed by the appellate authority unless the same are demonstrated to be either perverse or suffering from manifest error of law particularly in view of the decisions of the Apex Court in Surya Dev Rai Vs. Ram Chander Rai and Others, and Ranjeet Singh Vs. Ravi Prakash, Nothing of the sort has been demonstrated that the findings recorded by the prescribed authority and affirmed by the appellate authority are either perverse or suffering from manifest error of law.

6. In this view of the matter, this writ petition has no force and is dismissed.