(2004) 09 AHC CK 0267

Allahabad High Court

Case No: C.M.W.P. No. 14154 of 2001

Maya Devi (Smt.) and Others		APPELLANT
	Vs	
Nirbhai Kumar and Another		RESPONDENT

Date of Decision: Sept. 23, 2004

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21, 21(1)

Citation: (2005) 1 ARC 56

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

This Judgment has been overruled by **: Nirbhai Kumar Vs. Maya Devi and Others, (2009) 7 JT 32 : (2009) 5 SCALE 328 : (2009) 5 SCC 399 : (2009) 4 SCR 1052**

S.U. Khan, J.
After setting aside the judgment dated 19.3.2004 through which I had earlier allowed the writ petition exparte, learned Counsel for both the parties were heard on merit.

2. The first point argued by learned Counsel for tenant-respondent is that Harveer Singh and his brother Sohanveer Singh were distinct owners of two portions of the shop in dispute hence release application by Harveer Singh alone u/s 21 of U.P. Act No. 13 of 1972 was not maintainable on the ground that he was at least one of the co-owners. This argument is not substantiated by written statement copy of which is Annexure-2 to the writ petition. In Paragraph 26 of the written statement, the tenant-respondent claimed himself to be the owner of one khand or (portion) of the shop. No such plea of ownership

of separate portions of the two brothers i.e. Harveer Singh and Sohanveer Singh was taken in the written statement.

3. Prescribed Authority allowed the release application of the landlord-petitioners. Appellate Court confirmed the findings of Prescribed Authority regarding bona fide need and comparative hardship, However, the appeal was allowed on the ground that notice given by the petitioners-landlord under 1st proviso to Section 21 (1) of U.P. Act No. 13 of 1972 was not served upon the tenant. Harveer Singh who filed the release application had also purchased the share of his brother Sohanveer Singh in the shop in dispute through registered sale deed dated 25.10.1986. Landlord Harveer Singh filed release application in the year 1996 i.e. after ten years of purchase of half share of his brother. Learned Counsel for the petitioners has placed reliance upon authority of this Court in Anwar Hasan Khan v. District Judge, Shahjahanpur 2000 (1) ARC 43, for the proposition that if release application is filed after more than three years from date of purchase then notice under 1st proviso to Section 21 (1) of the Act is to necessary. The said authority has been approved by the Supreme Court in the judgment of Anwar Hassan Khan v. Mohd. Shafi 2002 SCFBRC 149.

4. Accordingly, writ petition is allowed. Judgment and order passed by Additional District Judge/Special Judge (E.C. Act), Ghaziabad dated 6.2.2001 passed in rent control appeal No. 219 of 1999 is set aside and that of the Prescribed Authority/IIIrd Additional Civil Judge (S.D.), Ghaziabad dated 26.11.1999 passed in P.A. case No. 16 of 1996 is restored.

5. However, tenant-respondent is granted time till 30.9.2005 to vacate provided that within one month from today he files an undertaking before the Prescribed Authority concerned to the effect that on or before 30.9.2005 he will willingly vacate and handover possession of the property in dispute to landlord-petitioners.