

(2014) 01 AHC CK 0039

Allahabad High Court (Lucknow Bench)

Case No: Rent Control No. 33 of 1998

Shiv Kumar

APPELLANT

Vs

Ist Additional District
Judge and OthersRESPONDENT

Date of Decision: Jan. 20, 2014**Acts Referred:**

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21, 23

Citation: (2014) 103 ALR 32**Hon'ble Judges:** Sibghat Ullah Khan, J**Bench:** Single Bench**Advocate:** H.S. Sahai, Smt. Preeti Saxena and U.S. Sahai, Advocate for the Appellant; D.C. Mukherjee and C.S.C, Advocate for the Respondent**Final Decision:** Allowed

Judgement

Sibghat Ullah Khan, J.

Heard Shri U.S. Sahai, learned Counsel for landlord petitioner and Shri D.C. Mukherjee, learned Counsel for the tenants respondents. Original respondent No. 3 Harbhajan Singh since deceased and survived by legal representatives was the original tenant. This is landlord's writ petition arising out of proceedings for eviction/release initiated by him against the tenant original respondent No. 3 on the ground of bona fide need u/s 21 of U.P. Act No. 13 of 1972. The release application was registered as Rent Control Case No. 14 of 1992, Shiv Kumar v. Harbhajan Singh. Prescribed Authority/J.S.C.C. Sitapur, Dismissed the release application on 29.3.1999. Against the said order landlord petitioner filed Rent Control Appeal No. 5 of 1996. First A.D.J. Sitapur dismissed the appeal on 9.12.1997 hence this writ petition.

2. The property in dispute is a shop dimension of which are 7 feet X 14 feet. Rent is Rs. 60 per month. Adjoining shop of same dimensions is in occupation of the landlord from

where he is carrying on business. Landlord purchased the property from its previous owner/landlord through registered sale-deed in the year 1971. Landlord asserted that he wanted the shop in dispute to expand his cloth selling business by combining the two shops. Advocate Commissioner was also appointed to inspect the other properties in possession of the landlord as well as tenant.

3. The Prescribed Authority held that both the parties acted in unfair manner during the course of the proceedings. Prescribed authority found that tenant had several other shops in his possession but it rejected the release application mainly on the ground that the landlord could construct a very good shop/commercial establishment (Vyawsayik Pratisthan) in the adjoining open space, house situate towards back of the shop in dispute and his shop Nos. 2 and 3. This view is utterly erroneous in law. No landlord can be compelled to make construction upon land available to him and in the residential house even if it is in dilapidated condition or disuse, but not seek release of tenanted accommodation on the ground of bona fide need.

4. Landlord had also stated that one of his sons also required to do business and he would do business from the bigger shop alongwith his son.

5. Prescribed Authority severely criticized the conduct of Smt. Saraswati Devi mother's sister of the landlord for not permitting the advocate Commissioner to inspect the accommodation in her possession. Prescribed Authority also held that a shop had been vacated. However the said shop belonged to Smt. Saraswati Devi. Accommodation available to the mother's sister of the landlord cannot be said to be available to the landlord. The shop No. 3 belonged to Smt. Saraswati Devi who did not open the lock of the shop when Advocate Commissioner visited the spot. As Smt. Saraswati Devi was not party in the proceedings hence firstly order of the Court was not binding upon her and secondly even if she did something wrong, landlord could not be made to suffer due to that.

6. Prescribed Authority held that the plea of the landlord that tenant was keeping the shop closed and not carrying on business therefrom was not correct as the Commissioner had also reported that in the shop cloths were found. However Commissioner reported that there was no electric fan in the shop. The tenant asserted that he had got the electric connection disconnected due to faulty meter. No proper shop can be run without electricity. Accordingly by the own admission of the tenant he was not doing business from the shop in dispute. By maximum he was using it as godown. Prescribed Authority also held that the tenant was having four shops adjoining to the shop in dispute as indicated in the Commissioner's map hence he would not suffer any loss or hardship in case of eviction. It was also held that tenant was having a house in which there was a shop. Even Appellate Court held that tenant was having sufficient accommodation at his disposal and he would not suffer any hardship in case of eviction. However, both the Courts below held that question of hardship was secondary and primary question was of bona fide need of landlord and landlord had failed to prove that he had any bona fide

need.

7. Lower Appellate Court held that a shop in the tenancy occupation of Ram Gopal was got vacated under release proceedings and subsequently it was let out to Ram Kumar Gupta. Landlord asserted that the said shop belonged to his mother and she had sought release of the same for the need of her other son. Petitioner cannot be made to suffer for the wrong of his mother. In the house purchased by the tenant alongwith his wife his son was carrying on business.

8. The Supreme Court in [Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada](#), has held that the gravity of need lies in the realm of comparative hardship. Accordingly even if it is assumed that the need of the landlord is not too grave, still release application deserve to be allowed as the Courts below particularly the Prescribed Authority held that tenant had several other shops available to him to do the business. Moreover as per report of the advocate commissioner and admission of the tenant, the electricity had been got disconnected by the tenant which proved that the tenant was not doing business from the shop in dispute.

9. In [Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others](#), it has been held that need to expand business even at another place is bona fide. In [Siddalingamma and Another Vs. Mamtha Shenoy](#), it has been held that entire Rent Control Act leans in favour of the tenant and provision of release on the ground of bona fide need is the only provision which treats the landlord with some sympathy.

10. In [G.C. Kapoor Vs. Nand Kumar Bhasin and Others](#), the Supreme Court reversed the judgments of all the three Courts below (Prescribed Authority, Lower Appellate Court and High Court) and allowed the release application outrightly.

11. In the instant case I find that the findings of both the Courts below that landlord had not proved the bona fide need are patently erroneous in law and are based upon misconception of bona fide need as used in section 21 of U.P. Act No. 13 of 1972. Findings of comparative hardship have already been recorded against the tenant by the Courts below.

12. Accordingly writ petition is allowed. Both the impugned orders are set aside. Release application of the landlord is allowed.

13. Tenants-respondents are granted six months time to vacate provided that:

1. Within one month from today tenants file an undertaking before the JSCC to the effect that on or before the expiry of aforesaid period of six months they will willingly vacate and handover possession of the property in dispute to the landlord-petitioner.

2. For this period of six months, which has been granted to the tenants-respondents to vacate, they are required to pay Rs. 6000/- (at the rate of Rs. 1000/- per month) as

rent/damages for use and occupation. This amount shall also be deposited within one month before the Prescribed Authority and shall immediately be paid to the landlord-petitioner.

14. In case of default in compliance of any of these conditions tenants-respondents shall be evicted through process of Court after one month. It is further directed that in case undertaking is not filed or Rs. 6000/- are not deposited within one month then tenants-respondents shall be liable to pay damages at the rate of Rs. 2000/- per month since after one month till the date of actual vacation. Similarly, if after filing the aforesaid undertaking and depositing Rs. 6000/- the shop in dispute is not vacated on the expiry of six months then damages for use and occupation shall be payable at the rate of Rs. 2000/- per month since after six months till actual vacation. It is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and initiate execution proceedings u/s 23 of the Act.