

Natthu Vs. Amar Nath Agarwal and Others

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Court : Allahabad

Decided On : Mar-03-1994

Reported in : AIR1995All420

Judge : B.L. Yadav, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 3, 21, 21(1), (2) and 22; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules - Rule 16(1) and (2); [Constitution of India](#) - Article 226; Uttar Pradesh Temporary Central of Rent and Eviction Act, 1947

Appeal No. : Writ Petn. No. 10675 of 1989

Appellant : Natthu

Respondent : Amar Nath Agarwal and Others

Advocate for Def. : S.C. Gupta, ;G. Kaluani, Advs. and ;C.S.C.

Advocate for Pet/Ap. : D.C. Mukharji, ;P.L. Misra and ;M.G. Misra, Advs.

Judgement :

ORDER

B. L. Yadav, J.

1. The ambit, construction and effect of fourth proviso of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972, Act 13 of 1972 (The Act for short) read with R. 16(2)(a) of the Rules framed under the Act, in granting or refusing the application for release under S. 21(1)(a) of the Act, is one of the questions that falls for determination in the present petition preferred under Article 226 of the Constitution by the tenant against whom the prescribed authority has allowed the application for release and the Appellate Court has affirmed that order. The prayer is that these impugned orders be quashed by issuing a writ of certiorari.

2. Portrayal of the essential facts are these. The respondent No. 1 is the landlord of a shop 38' x 11' boundaries indicated in para 1 of the application of the respondent No. 1 situate in Mohalla Railway Ganj, Hardoi and the petitioner is tenant and runs a cycle repairing shop. As the landlord was employed in Military Engineering Service, he wants to set up his own business of refrigerator after retirement on 5-11-1985. He moved application under S. 21(1)(a) of the Act (Annexure-1) for release as his needs were more genuine.

3. The present petitioner, the tenant contested the application of the landlord and filed a written statement (Annexure-2) denying and refuting the averments made in the application for release and stating that petitioner and his sons are using the shops for cycle repairing business for the last 54 years, and the cycle repairing is the only source of livelihood of the petitioner's long family of 22 members. The shop in dispute was let-out to the tenant, the petitioner in 1931, by the father of the landlord on a rent of rupee one and paise fifty and since then he is in occupation and cycle repairing, overhauling and stove repairs are carried on, close to the shop in question there was a shop of Ram Bhawan tailor and Ram Dayal barber which were got vacated by the landlord, were demolished and let-out to Govind Ram Punjabi after reconstruction on a fabulous rent. A year ago in Mohalla Betan Ganj, one of the best-localities to the road side of his own house, landlord, the respondent No. 1 got new shops built and let out to Raj Electric Works and Vimal Electric Works and he has also let out a number of other shops in Mohalla Ashraf Tola, all these shops could have been used by the landlord for his proposed refrigerator business. The landlord wants to enhance the rent beyond the capacity

of the tenant, but the later has no such financial capacity. Considering the hardship of the tenant the application for release could not be allowed.

4. The prescribed authority by its order dated 6-5-1987 (Annexure-2) held the need of the landlord, respondent No. 1 to be genuine and allowed the application under S. 21 of the Act.

5. The petitioner's appeal under S. 22 of the Act was dismissed by the 1st Addl. District Judge, Hardoi by the order dated 4-11-1989 (Annexure-23). Against these impugned orders dated 6-5-1987 and 4-11-1989 the present writ petition has been filed by the tenant with the prayer that these impugned orders be quashed by issuing a writ of certiorari.

6. The learned counsel for the tenant, the petitioner contended that the authorities below the respondents Nos. 2 and 3 did not apply their mind to the provisions of Fourth proviso of S. 21(1)(a) read with R. 16(2)(a) of the Rules framed under the Act, in respect of non-residential building where since the time of the tenant's father for the last more than 54 years (vide para 16 of the written statement of the petitioner, Annexure-2) the petitioner was a tenant since 1931. In view of these provisions as the petitioner was a tenant since 1931 a long period the application under S. 21 for release was filed on 25-9-1985 (Annexure-1) hence there was no justification to allow the application. In any case the Act and the Rules contain social beneficial legislation for the interest of tenant, hence the provisions ought to be interpreted in that light. In any case neither the shop in dispute was bona fide required by the landlord nor his requirement was genuine, and the findings of the respondents Nos. 2 and 3 are perverse and the impugned orders are manifestly erroneous and deserve to be quashed. Reliance was placed as *M/s. Novelty Glass House v. 1st Addl. D.M.J. Jhansi*, 1989 (1) All RC 90.

7. The learned counsel for the landlord, the respondent No. 1, refuted vehemently the submissions of the learned counsel for the petitioner and further urged that both the authorities have compared the hardship of the petitioner the tenant and landlord respondent No. 1, and the hardship of the landlord has been held to be bona fide and genuine. The findings are based on evidence on record and are findings of fact. The provisions of R. 16 were also considered. The petition is

devoid of merits. Reliance was placed on *Om Prakash v. Smt. Sunhari Devi*; 1993 (I) SCC 473, *Ashok Kumar Seth v. IVth Addl. District Judge, Aramgarh*, 1993 (1) All RC 93; *Mahavir Prasad v. VIth Addl. District Judge, Gonda*, 1993 (2) LCD 861; *Jag Mohan Lal v. 1st Addl. District Judge*, 1993 (1) LCD 69 and *Brij Behari Kapoor v. 1st Addl. District Judge*, 1983 (I) LCD 226. Having scrutinized the submissions of the learned counsel for the parties the principle question for consideration is the ambit and effect of the Fourth Proviso to S. 21 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act read with R. 16(2)(a) of the Rules and S. 21(1)(a) of the Act and as to whether the authorities below have decided the case in view of the particular manner sanctioned by law under 4th Proviso read with R. 16(2)(a) and whether the findings recorded by the authorities below about the needs of the landlord are consistent with the particular mode sanctioned by legislature, and if not its effect.

8. Before proceeding further, to decide the points it is convenient to keep in mind certain cardinal principles of the interpretation of the statutes pertaining of the landlord and tenant. There is no doubt that the Act and the Rules, contain provisions pertaining to beneficial legislation. It is obvious that the Act contains certain provisions which fall under the category of beneficial legislation with regard to the tenant, and there are certain other provisions which are beneficial legislations with regard to the landlord. There could be no doubt, however, that the provisions which fall in the category of beneficial legislation to the tenant, no effort need be made to interpret it in favour of the landlord as that would amount to negation of the very principle of such legislation. In that event that would be a position where cynical proverb 'heads I win the tails you lose'. (See *Arjun Khiyamal v. Jamunadas*. 1989 (4) JT (SC) 74: (AIR 1989 SC 1599) and *Latham v. R. Johnson and Nephew Ltd.*, (1913) 1 KB 398, 408). In fact the Act and the Rules interfere with the landlord's right and property and freedom of contract only for the limited purpose of protecting tenants from misuse of the landlord's power to eject them where in these days of scarcity of accommodation, by asserting his superior rights in property or trying to exploit his position by extraction too high rents, from helpless tenants. To this extent the Act contains the provisions, of beneficial legislation in favour of the tenant. (See *S. Ganpath Raj v. State of Tamil Nadu*, 1992 (5) (JT) SC 310; *Ganpat Latha v. Shashikant Vishnu Shinde*, 1978 (2) SCC

573 : (AIR 1978 SC 955). The provisions of social welfare legislation are not to be interpreted like a simple statute, the Court could be failing in its duty if it tries to interpret like a simple piece of legislation. There must be a liberal interpretation in favour of the persons for whose benefit the particular provisions have been enacted. The Court must adopt 'social beneficial rule of construction in such matters. In case a particular provision is capable of two interpretations that should be preferred which fulfils the policy of the Act and is more beneficial to the persons in whose interest the Act has been passed. In case, however, the language is plain, the Court must give its effect to. (See *M/s. Juwan Lal Ltd. v. Appellate Authority*, AIR 1984 SC 1842 : (1984 Lab IC 1458) and *Ramji Mishra v. State of Bihar*, AIR 1963 SC 1088 : (1963 (2) Cri LJ 173). In other words, where there is a provision aimed at social amelioration giving benefits for the have-nots or a particular sections to the society, i.e., tenants in the present case, as is obvious from a bare reading of R. 16(2)(a) of the Act. In that event such provision must receive liberal construction or in any case such construction must be placed which promotes the purpose of the Act, rather than, dry literal construction which could in most of the cases defeat the purpose of the legislation and rights of have-nots. (See *Bharat Singh v. Management of New Delhi*, AIR 1986 SC 842.

9. With the passage of time, the administration of justice can no longer be just protector of legal rights rather it must, as far as possible be dispenser of social justice inas much as justice -- social, economic and political -- is preamble to our Constitution. Betham's theory of greatest happiness of greater number, has to be made a hard reality, keeping in view these principles the arguments of the learned counsel have to be appreciated.

10. As regards the first question suffice it to say that the provisions of S. 21(1)(a) are in respect of general provision which indicates that the landlord has to make an application for eviction of the tenant from the building under tenancy and he has to satisfy that building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family either for residential purpose or for the purposes of any profession, trade etc. But the Fourth Proviso has been added with retrospective effect by U.P. Act No. 28 of 1976 which provides that except in cases

provided for in the Explanation, the prescribed authority, shall take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for the purpose regard must be had to the factors as may be prescribed.

11. It may be noticed that in this Fourth Proviso the word 'shall' is used by the legislature to make it mandatory. Under S. 21(2) of the Act the word 'may' has been used. Normally the word 'may' is directory and 'shall' is mandatory. But sometimes word 'may' is used as mandatory and 'shall' as directory according to the context and the object, keeping in view the public interest and injurious effect of non-compliance. But where the word 'shall' and 'may' has been used in the same section, in that event, it is manifest that legislature has used both the expressions after ascertaining its meaning. In that event it is not open to the Court to interpret word 'shall' as directory and 'may' as mandatory, In the Fourth Proviso also word 'shall' has been used in the mandatory sense to convey a command. To put it differently, it is a command from the legislature to the prescribed authority to read the Fourth Proviso with R. 16(2)(a) of the Rules. (See *Jaswam Singh Mathura Singh v. Ahmedabad Municipal Corporation*, (1992) Supply (1) SCC 5 : AIR 1991 SC 2130.

12. As the scope of the Fourth Proviso is being considered, it needs recalling the real nature of a proviso. By now it is well settled that a proviso is added to a section to except something out of the enactment or to qualify something enacted therein, which but for the proviso, would be within the purview of the main enactment (i.e., provisions of S. 21(1)(a) of the Act). In other words, Fourth Proviso has been added as an exception to the main provision under S.21(1)(a) of the Act inasmuch as that was a general provision where the prescribed authority was to consider the application of the landlord for the eviction of the tenant from the building under tenancy. The prescribed authority has to consider grounds as to whether the building was bona fide required by the landlord either in its existing form or after demolition and new construction.

13. In my opinion fourth proviso was inserted by U.P. Act No. 28 of 1976 with retrospective effect to carve out an exception to the extent that except in the

Explanation appended, which was obviously in respect of residential building, where as the present was a case in respect of non-residential building as the accommodation in dispute was a shop used by the tenant for the purpose of cycle and stove repairing, hence the object with manner which the fourth proviso was to be appreciated and added interpreted by reading fourth proviso with Rule 16(2)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules.

14. It needs recalling that there is a Latin Maxim 'ACTUS LEGITIMUS NON REPLICIMUS MODUM' which connotes that when doing of anything in a particular manner is sanctioned by law, then the thing cannot be done in a different way.

15. In *Taylor v. Taylor* (1876) 1 Ch D 426 it was observed that where a statutory power is conferred for the first time upon a court and mode of exercising it is pointed out, it means no other mode is to be adopted.

16. In *State of U.P. v. Singhere Singh*, AIR 1964 SC 358 : (1964 (1) Cri LJ 263) it was pointed out at page 361 of AIR.

'The rule adopted in (1871) 1 Ch 426 is well recognised and is founded on sound principles. Its result is that if a statute has conferred a power to do an act and has laid down method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner, than that which has been prescribed. The principle behind the rule is that if this were not as, the statutory provision might as well as not been enacted.'

17. In *Trans America Mortgage Advisors v. Harry Lewis, I NC (Jame)*, 444 US 11, 62 Law Ed 2d 146, 100 SC 242 it was held as follows:--

'Where statutes limit a thing to be done in a particular mode it has to be done in that way and for other remedies this principle also applies, A court must be chary of reading of other remedies into a statute which expressly provides a particular remedy or remedies; when a statute limits a thing to be done in a particular mode it includes the negative of any other mode.'

18. In brief fourth proviso read with Rule 16(2)(a) is the doing of a thing in mandatory commanding form, by the Prescribed Authority in respect of shop under

tenancy (other than residential building) in a particular manner and the same has been pointed out but under Rule 16(2)(a), in that event any other procedure was forbidden.

19. To put it differently even at the cost of repetition the fourth proviso is in the mandatory form and it is mandatory for the Prescribed Authority to take into account the likely hardship from the grant of the application against the likely hardship to the tenant from its refusal. Normally, a landlord's need if bona fide or genuine has to be considered first and thereafter the comparison has to be made with the need of the tenant whereas this proviso indicates that the Prescribed Authority shall have to take into account the likely hardship to the tenant from the grant of the application first. In this view of the matter I propose to decide the first question. The Prescribed Authority has to decide the hardship to the tenant keeping in view of the factors which may be 'prescribed'. The word 'Prescribed,' is defined under Section 3(a), 'Prescribed', means except in clause (a) it means prescribed by rules made under this Act. Rule 16 is a relevant rule for the present case, as it is in respect of the application for release on the ground of personal requirements. Rule 16 has been framed to indicate grounds of personal requirement. Rule 16(1) indicates that in considering the requirements of personal occupation, the Prescribed Authority shall also have regard to such factors as indicated in Clauses (a) to (g) including as to whether the landlord already has adequate and suitable accommodation having regard to the number of members of his family. Rule 16(2) is relevant for our purpose and is extracted below:--

'(2) While considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of a building let out for purposes of any business, the prescribed authority shall also have regard, to such facts as the following

(a) the greater the period since when tenant opposite party, or the original tenant whose heir the opposite party is, has been carrying on his business in that building, the less the justification for allowing the application;

(b) where the tenant has available with him suitable accommodation to which he can shift his business without substantial loss there shall be greater justification for allowing the application;

(c) the greater the existing business of the landlords own apart from the business proposed to be set up in the lease premises, the less the justification for allowing the application, and even if an application is allowed in such a case, the prescribed authority may on the application of the tenant impose the condition where the landlord has available with him other accommodation (whether subject to the Act or not) which is not suitable for his own proposed business but may serve the purpose of the tenant, that the landlord shall let out that accommodation to the tenant on a fair rent to be fixed by the Prescribed Authority;

(d) where a son or unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant of the landlord has, after the building was originally let out, completed his or her technical education and is not employed in Government service, and wants to engage in self employment, his or her need shall be given due consideration.'

20. A bare reading of Rule 16(2) would indicate that while considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of a building which has been let out for purpose of any business. In that even the Prescribed Authority has to keep in mind to the facts indicated in Rule 16(2) (a) of the Rules. That provision is to be kept in mind by the Prescribed Authority, the greater period since when the opposite party, the tenant or the original tenant whose heir the opposite party is, has been carrying on his business in that building, less the justification for allowing the application. In the present case it is admitted the case of the parties that the shop in question has been let out to the petitioner in 1931, as Cycle repairing shop. It means for the last more than 63 years even much prior to the enforcement of U.P. Temporary Control of Rent and Eviction Act 1947 the tenant, the petitioner, has been carrying out his business of cycle and stove repairing in that shop. As the tenant has been carrying on business of Cycle repairing for such a greater period. In that event the legislature indicates that there would be less justification for allowing the application. To put it differently this Rule 16(2)(a) which was necessarily and mandatorily to be considered and taken into account by the Prescribed Authority as was obvious with the use of expression 'shall' under the fourth proviso but neither the Prescribed Authority nor the Appellate Authority in appeal under Section 22 of the

Act have kept in mind the provisions of Rule 16(2)(a). It appears that the Authorities below were satisfied just by referring to Rule 16, without advertent to Rule 16(2)(a) and they did not care to read this sub-rule (2) of Rule 16 along with the fourth proviso.

21. The fourth proviso of Section 21 read with Rule 16(2)(a) would lead to the conclusion that this provision contains the provision of social beneficial legislation with regards the tenant, keeping in view the duration of the tenancy, in which the tenant was carrying out his business. At the cost of repetition, it can again be emphasised that the petitioner, the tenant was carrying out his business in the said shop since 1931 and if he has been carrying out his business of cycle repairing since such a long a period, in that event the application for release was to be disposed of with the observations that there would be less justification for allowing the application. In such matters the legislature does not leave any scope for speculation or to take into consideration other factors, as it limits a thing to be done in a particular manner, the other modes are forbidden, the respondents 2 and 3 erred in deciding the application for releases in view of the modes under Section 21(1)(a) read with Rule 16(1) (a) of the Rules.

22. Coming to the case cited at the bar M/s. Novelty Class House and Crokery, Jhansi v. 1st Addl. District Judge, Jhansi (ARC) (1) 1989-90 (supra) relied upon by the counsel for petitioner, was a case where the provisions of Rule 21(1) and Rules 16(2) (a) was considered and it was indicated that the likely hardship of the tenant to be taken into account. It was also stated that even if there was bona fide genuine needs of the landlord but first greater hardship of the tenant was to be considered and in case the hardship of the tenant was found to be genuine, in that event the application can be rejected. A ratio of this case was relevant to the facts of the present case.

23. Brij Behari Kapoor v. 1st Addl., District Judge 1983 LCD (1) 226 was the case, where the scope of 21(1)(a) and Rule 16 along with the fourth proviso was considered but the scope of Rule 16(2)(a) was not considered, along with the mandatory provisions of the fourth proviso. In this case it was indicated that the comparison of the hardship of the landlord and tenant was to be made. There is no

denying that principle but what was required by the legislature under Rule 16(a) was that in case for the greater period of tenancy a shop was let out for business purpose, in that event that itself was a paramount consideration for disposing of the application of the release.

24. Jag Mohan Lal v. The First Addl. District Judge and six others, 1983 (1) LCD 69 decided by Hon'ble T.S. Mishra, J. (as his Lordship then was) was also a case in which Rule 21(1)(a) and also the fourth proviso was considered and it was indicated that the High Court cannot reassess the value of evidence and interfere with a finding of fact merely because it thinks that the appreciation of evidence by the lower court is wrong. I respectfully agree to the ratio of this case as I would not proceed to reassess the value of the evidence nor I interfere with a finding of fact but what is decisive is that scope of Rule 16(2) has to be emphasised by the Prescribed Authority, Appellate Authority to dispose of the application, and how the Prescribed Authority has to proceed with an application for non-residential building has been indicated with the use of expression 'shall' which is in mandatory form and only inference possible is that the Prescribed Authority has to look into no other factors than the facts indicated under Rule 16(2)(a).

25. Om Prakash v. Smt. Sunhari Devi, 1993 (1) ARC 473 was the case decided by their Lordships of the Supreme Court where it was indicated that the High Court should restrict itself to question of law only and should not enter into reassessment of evidence nor it can dismiss the application on the ground that the landlord has failed to give particulars of the residential premises. In that case the High Court reassessed the evidence and in the opinion of the High Court the findings of the Appellate Authority was perverse. There is no denying that the High Court in the exercise of writ jurisdiction need not reassess the evidence.

26. Ashok Kumar Seth v. IVth Addl. District Judge, Azamgarh, 1992 (1) ARC 93 was also a case where the bona fide need of the landlord was considered in the writ jurisdiction it was pointed out that the findings of fact about the landlord's hardship need not be interfered with. It is well settled that the findings of fact recorded by the Subordinate Authorities are not open to interference in the writ jurisdiction.

27. The other question is about the genuine and bona fide requirements of the landlord and the findings recorded by the subordinate authorities in respect of question of fact are not to be set aside suffice it to say that the findings of fact in the present case have been recorded by the Prescribed Authority and also by the Appellate Authority without taking into account the mandatory provisions of the fourth proviso read with Rule 16(2) (a) of the Rules. In case Rule 16(2)(a) was read immediately after fourth proviso the only irresistible conclusion was that the Prescribed Authority has to decide the application for release in respect of a building let out for non-residential purpose. As in the present case the shop in question as let out for cycle repairing as long as in 1931. It was in the occupation of the tenant for the last about 63 years. In that event the legislature in its wisdom indicated a particular method and procedure in accordance with which the Prescribed Authority was to exercise its jurisdiction in view of Rule 16(2)(a) of the Rules, other mode or procedure was forbidden. As since a greater period, which means a period, which was above the normal or average period, the tenant was let out the accommodation or shop, hence except the procedure and mode under Rule 16(2)(a) other procedure was forbidden. As the petitioner was a tenant in the shop since 1931, since much prior to the enforcement of U.P. Temporal) Control of Rent and Eviction Act, 1947. The expression greater period, has not been defined. The word 'great' is both noun and adjective. Here it is used as an adjective. In common parlance, it means of a size or extent above the average. A tenancy commencing since 1931, is certainly since a great period. In case provisions of Section 21(1)(a) and fourth proviso added to it and Rule 21(2)(a) is to construe in the manner suggested by the learned counsel for the respondent, in that event the provisions of fourth proviso and Rule 21(2)(a) would be converted into a veritable regue's charter (see Lord Diplock in Devis & Sons Ltd. v. Atkins, (1977) AC 931).

28. In my opinion, therefore, the Prescribed Authority and the Appellate Authority have committed an error apparent on the face of the record in not considering Section 21(1)(a) and its fourth proviso along with Rule 16(2)(a) of the Rules. In case the same was read in that event the only inescapable conclusion was that as the tenancy of the petitioner, tenant commenced in 1931 and the shop was let out for cycle repairing for such a greater period of tenancy, there could be no justification to allow the release application filed by the respondent No. 1, landlord.

Consequently, the application for release is hereby rejected.

29. At one stage, however, I was considering to remand the matter to the Appellate Authority to reconsider the matter in the light of the fourth proviso to Section 21 read with Rule 16(2)(a). But I am of the opinion that no useful purpose would be served in as much as how the Prescribed and the Appellate Authority has to proceed with an application where the tenancy in respect of non-residential building has commenced from a greater period, in that event the procedure to be followed by the Prescribed or Appellate Authority or how it has to decide the application for release and pass an order is sanctioned as indicated by the legislature that there would be less justification for allowing the application for release. In other words, in that event, the application for release has to be rejected. Consequently, the course of section or the thing to be done in a particular mode is sanctioned, in that even it includes the negative of any other mode.

30. In view of the premises aforesaid and applying Aristotelian and Baconian methods of reasonings the petition succeeds and is allowed with costs throughout and the impugned order dated 6-5-1987 (Annexure 21) passed by the Prescribed Authority and the order dated 4-11-1989 (Annexure 23) passed by the Appellate Authority are hereby quashed. The application for release filed by the landlord, respondent No. 1 under Section 21(1)(a) of the Act is hereby rejected.

31. The office is however, directed to issue a certified copy of this order to the learned counsel for the parties within a week on making a proper application to that effect.

32. Petition allowed.