

**Har Bilas Sharma Vs. the First Additional District Judge, Mathura and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/460558](http://sooperkanoon.com/460558)

**Court :** Allahabad

**Decided On :** Oct-13-1976

**Reported in :** AIR1976All555

**Judge :** N.D. Ojha, J.

**Acts :** Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976

**Appeal No. :** Civil Writ No. 3986 of 1975

**Appellant :** Har Bilas Sharma

**Respondent :** The First Additional District Judge, Mathura and ors.

**Advocate for Def. :** J. Gupta, Standing Counsel

**Advocate for Pet/Ap. :** V.K. Gupta, Adv.

**Disposition :** Petition allowed

**Judgement :**  
ORDER

**N.D. Ojha, J.**

1. The petitioner is the tenant of an accommodation of which respondent No. 3 is the landlord. An application was made by respondent No. 3 for release of the aforesaid accommodation in his favour under Section 21 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, on the ground that he bona fide needed it for his own use. The application was contested by the petitioner but was allowed by the Prescribed Authority. Against the order of the Prescribed Authority an appeal was filed by the petitioner. It came up for hearing before the 1st Additional District Judge Mathura and was dismissed on March 31, 1975. It is these two orders which are sought to be quashed in the present writ petition.

2. It was urged by counsel for the petitioner that the order of the Additional District Judge is liable to be quashed inasmuch as he has not considered the hardship which is likely to be caused to the petitioner in the event of the application made by respondent No. 3 under Section 21 of the Act being allowed.

3. Having heard counsel for the parties I am of opinion that there is substance in this submission. A perusal of the order of the Additional District Judge leaves no manner of doubt that he has not considered the question as to what hardship, if any, would be caused to the petitioner in the event of the application under Section 21 being allowed. He has also not considered the question as to whether the hardship which may be caused to respondent No. 3 in the event of the application being dismissed would be greater than that which would be caused to the petitioner in the event of the application being allowed. Section 21 of the Act has since been amended by U. P. Act 28 of 1976. Section 14 of the Amending Act inter alia provides that in Subsection (i) of Section 21 of the principal Act after the third proviso thereto the following proviso shall be inserted and shall be deemed always to have been inserted :--

'Provided also that the prescribed authority shall, except in cases provided for in the Explanation, 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 that purpose shall have regard to such factors as may be prescribed.'

In view of the newly added proviso, which is retrospective in its operation the likely hardship to the petitioner from the grant of the application as against the likely hardship to the landlord from the refusal of the application had to be considered by Additional District Judge and since he has not done so his order cannot be sustained.

4. It has, however, been urged by counsel for respondent No. 3 that in view of the finding of the Additional District Judge that Explanation (iv) to Section 21 was applicable to the facts of the instant case, the newly added proviso would not be applicable because of the words 'except in case provided for in the Explanation' used in the newly added proviso. I find myself unable to agree with this submission. The proviso referred to above was, as already noticed inserted by Section 14 of U. P. Act 28 of 1976. By the same Section 14, Explanations (ii) and (iv) were omitted so that now Section 21 has only two Explanations, viz. -- Explanations (i) and (Hi). It was urged that Explanations (ii) and (iv) have not been omitted with retrospective effect. Even if for the sake of argument it is accepted that these two Explanations have not been omitted with retrospective effect, in my opinion, it would have no material bearing on the question as to what was meant by the word 'Explanation' as used in the newly added proviso.

5. The only effect of omission of Explanations (ii) and (iv) not being given a retrospective operation would be that if a case instituted prior to such omission was covered by Explanation (ii) the need of the landlord shall be deemed sufficient and if the case was covered by Explanation (iv) the fact mentioned in the said Explanation shall be conclusive to prove that the building is bona fide required by the landlord. Both these Explanations really deal with the mode of proof of the need of the landlord. If either of these two explanations was attracted it was not necessary for the landlord to produce any other evidence in proof of his bona fide need. The effect of the omission of these two explanations would be that the landlord in order to prove that his need is bona fide would have to produce evidence as in any other case. If the omission of these explanations is retrospective a finding recorded prior to its omission that the need of the landlord was bona fide would be liable to be set aside on this ground alone in case such finding was based only on both or either of these ex-planations and on no other

evidence. This would not be so if the omission of these explanations is not retrospective. In such a case the finding that the need of the landlord was bona fide would continue to be valid finding even after the omission of these explanations notwithstanding the fact that the said finding was based only on both of either of these explanations and on no other evidence. But the question whether in such a case the hardship which is likely to be caused to the tenant in the event of the application of the landlord being allowed has to be considered or not is an altogether different question. The answer of this question would not depend on the omission of these explanations being retrospective or otherwise but would depend on what was meant by the word 'Explanation' as used in the newly added proviso to Section 21. Did it contemplate only Explanations (i) and (iii) or also (ii) and (iv) In my opinion since Explanations (ii) and (iv) were simultaneously omitted by the same Section 14 of the U. P. Act 28 of 1976 by which the newly added proviso was inserted it would be reasonable to hold that U contemplated only Explanations (i) and (iii) and not (ii) and (iv). The nature of Explanations (i) and (iii) on the one hand and that of Explanations (ii) and (iv) on the other also support my conclusion. Even though the newly added proviso made it incumbent on the Prescribed Authority also to consider the likely hardship to be caused to the tenant in the event of the application of the landlord being granted it made an exception in regard to the cases covered by the Explanation. Referring back to the four Explanations to Section 21 as they stood before the commencement of U. P. Act 28 of 1976, it would be seen that if a case falls within Explanation (i) the question of consideration of the hardship of the tenant hardly arises inasmuch as he has already an alternative accommodation at his disposal. Likewise in cases falling under Explanation (iii) the exigencies of the situation require that the members of the family of a landlord whose case is covered by Explanation (iii) should forthwith be provided residential accommodation even if the tenant was to be put to greater hardship. The purpose behind enacting Explanation (iii) apparently was that a member of the armed forces serving under special conditions should have no worry about the residence of his family members. This was a matter of national interest. It was in this view of the matter that in the newly added proviso the cases covered by either Explanation (i) or Explanation (iii) were sought to be given an exemption from the applicability of the said proviso. The exi- gencies of situation

as contemplated by Explanations (i) and, (iii) are not to be found in Explanations (ii) and (iv) which now stand omitted after the enforcement of U. P. Act 28 of 1976. If the newly added proviso is to be applied now Explanations (ii) and (iv) cannot be said to be included within the word 'Explanation' as used in the said proviso. Can it be said that while incorporating the exception in the newly added proviso the legislature had intended to make a discrimination between those tenants against whom cases were instituted before the coming into force of U. P. Act 28 of 1976 and those against whom cases were to be instituted thereafter In my opinion there seems to be no rational basis for taking the view that any such discrimination was aimed at. For all these reasons I am of opinion that the word 'Explanation' in the newly added proviso refers to only Explanations (i) and (iii) and not Explanations (ii) and (iv) which were simultaneously omitted by the same section by which the aforesaid proviso was inserted.

6. In view of the foregoing discussions the writ petition succeeds and is allowed. The order of the 1st Additional District Judge dated March 31, 1975, is quashed and he is directed to decide the appeal expeditiously afresh in accordance with law keeping in mind the observations made above. In the circumstances of the case the parties bear their own costs.

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