

**Mohd. Umar and Another Vs. Iind Additional District Judge, Moradabad and Others**

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**Court :** Allahabad

**Decided On :** Feb-10-1998

**Reported in :** 1998(2)AWC1045

**Judge :** J.C. Gupta, J.

**Acts :** Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1)

**Appeal No. :** C.M.W.P. No. 38030 of 1997

**Appellant :** Mohd. Umar and Another

**Respondent :** Iind Additional District Judge, Moradabad and Others

**Advocate for Def. :** S.C. and ;M.A. Quadeer, Adv.

**Advocate for Pet/Ap. :** Raj Kumar Khanna and V.M. Sahai, Adv.

**Judgement :**

**J.C. Gupta, J.**

1. Since counter-affidavit and rejoinder-affidavit have been exchanged and with the agreement of the parties' counsel this writ petition is disposed of finally.

2. This is tenant's writ petition against the judgment and order dated 20.9.1997 passed by respondent No. 1 deciding Rent Control Appeal No. 14/96 connected with Rent Control Appeal No. 15 of 1996 arising out from judgment and order, dated 24.2.1996 passed by the Prescribed Authority, Moradabad, respondent No. 2 in P.A. Case No. 102/94 connected with RA. Case No. 103/94.

3. The dispute relates to two shops which are in the tenancy of petitioner Nos. 1 and 2 respectively. Respondent No. 3 is the landlady.

4. The family of the landlady consisted of self, her husband and three sons, namely Mohd. Subhan Khan, Mohd. Usman Khan and Mohd. Farhan Khan. In the year 1992, the landlady applied for the release of the disputed shops on the ground that they are genuinely required for the bona fide need of her two sons Mohd. Usman Khan and Mohd. Farhan Khan, who were unemployed and wanted to start their own business and for that purpose they needed disputed shops. The said applications were contested by the petitioners, inter alia on the grounds that the eldest son of the landlady, Mohd. Subhan Khan, was settled in Saudi Arabia and the status of the landlady was very sound. The need of the two sons of the landlady was disputed. It was further pleaded that the landlady was in occupation of a vacant Baithak wherein her two sons, if at all they desired, could start their business. The prescribed authority by the order, dated 17.2.1992 rejected the release applications of the landlady. The said order was affirmed in appeal. It was held in those proceedings that both the sons of the landlady were unemployed and she required at least two shops for setting up her sons in business, but as the landlady possessed in vacant state a big three doors accommodation in the form of a Baithak. her need for the requirement of the disputed shops was not bona fide.

5. After the rejection of the aforesaid applications, the landlady on 12.12.1994 moved applications in question under Section 21 (1) (a) of the U. P. Act No. XIII of 1972, hereinafter referred to as the 'Act'. She came with the case that after the rejection of earlier applications, circumstances have drastically changed inasmuch as the eldest son of the petitioner Mohd. Subhan Khan has come back to India from Saudi Arabia permanently with his wife and children and has started living in

the 'Baithak' with his family because no other accommodation was available with the landlady which could be used by Mohd. Subhan Khan as his residence. It was further pleaded that the other two sons of the landlady were still unemployed and the shops in question were bona fide required for setting them in business.

6. The petitioners contested the said applications and their case was that Mohd. Subhan Khan has come to India temporarily and the landlady, who has with her sufficient accommodation to accommodate Mohd. Subhan Khan, has created a new ground with an oblique motive simply in order to get an eviction order against the petitioners by saying that the Baithak was being used for residential purpose by Mohd. Subhan Khan. Both the parties adduced evidence before the prescribed authority who accepted the landlady's case and allowed her release applications by the order dated 24.4.1996. Appeals filed against the said order have also been dismissed by the Lower Appellate Authority by the order dated 30.9.97. Aggrieved by the said orders the present writ petition has been filed.

7. Both the Courts below have recorded concurrent findings of fact that need of the landlady for the disputed shops for the purpose of setting her sons in business is bonajlde and that her hardship is greater than the tenants' hardship. It is well-settled law that this Court ordinarily does not interfere with concurrent findings of fact in a writ jurisdiction and for this a reference may be had to the decision in *Munni Devi v. Additional District Judge*, AIR 1973 SC 29.

8. Learned counsel for the petitioners Sri V. M. Sahai, however, Wed to assail these findings of fact by contending that when in the earlier decision, it had been found as a fact that the 'Baithak' was being used for commercial purposes and was available to the landlady in a vacant state for setting up her two sons in business, the landlady in order to get rid of the said finding with oblique motive has set up a case that her eldest son on return from Saudi Arabia has started living therein. He submitted that had her sons really needed some premises to start their business, they would not have waited for long and the landlady should not have permitted the Balthak to be converted into residential use by her eldest son and, therefore, her need should have been held to be not bonajlde.

9. After examining the record, I find no substance in the above submission of the learned counsel for the petitioner. A perusal of the judgments of the Courts below would show that both the Courts have repelled the contention of the petitioners that the eldest son of the landlady has not come back to India permanently. The finding is to the effect that the said son has come back to India permanently and as the landlady was not having sufficient accommodation with her to accommodate her eldest son and his family, the said son had to be accommodated in the said Baithak for his residence. When the eldest son of the landlady has come back to India permanently, he definitely needed some place to live in and when the landlady had no other accommodation to accommodate the said son. there was nothing illegal if she allowed him and his family to occupy the Baithak for residential purpose. Every owner has a right to use his premises in the way he likes. Therefore, the landlady could not be compelled not to have permitted her eldest son to occupy the Baithak for his residential use. The eldest son could not have been forced to remain on street. From the mere fact that the landlady instead of using the Baithak for commercial purpose allowed her eldest son to reside therein, it cannot be inferred that her need was not bonafide. It is also well-established law that the mere fact that on an earlier occasion an application for release of the landlord was rejected, that would not preclude the landlord from applying afresh for the release of the said accommodation, if there has been a material change in the circumstances on account of subsequent events. Both the Courts below have recorded a categorical finding of fact that at the time of earlier applications, the eldest son of the landlady was staying in Saudi Arabia and she had available with her a Baithak wherein her two unemployed sons could start their proposed business but subsequently on account of the return of the eldest son to India, position has changed and the aforesaid Baithak was no more available to the landlady's sons fo,r starting business. In the changed circumstances, the Baithak was no longer available to the landlady for setting up her two unemployed sons in business. Even earlier it was found that the two sons of the landlady are unemployed and they needed business premises to start their business and that position still continues but since the Baithak, which was earlier available for their business is no longer available to the landlady, her requirement for the shops in question is genuine and bonafide.

10. No other point was raised before the Court by the learned counsel for the petitioners.

11. For the above reasons and discussion, this writ petition is to be dismissed and is accordingly, dismissed with no order as to costs. In the circumstances, however, the petitioners are allowed six months time to vacate the accommodation in question.

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