

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**

**Shiv Kumar Sharma and anr. Vs. Vth Additional District Judge, Muzaffar Nagar and ors.**

**Shiv Kumar Sharma and anr. Vs. Vth Additional District Judge, Muzaffar Nagar and ors.**

**SooperKanoon Citation : [sooperkanoon.com/471984](http://sooperkanoon.com/471984)**

**Court : Allahabad**

**Decided On : Mar-14-2002**

**Reported in : 2002(2)AWC1518**

**Judge : Anjani Kumar, J.**

**Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules - Rule 17**

**Appeal No. : C.M.W.P. No. 5984 of 1989**

**Appellant : Shiv Kumar Sharma and anr.**

**Respondent : Vth Additional District Judge, Muzaffar Nagar and ors.**

**Advocate for Def. : S.C.**

**Advocate for Pet/Ap. : Pankaj Mithal, Adv.**

**Disposition : Writ petition allowed**

**Judgement :**

**Anjani Kumar, J.**

1. By means of the present writ petition under Article 226 of the Constitution of India the petitioners, who are the tenant of non-residential accommodation (shop), have challenged the orders dated 7.3.1984 and 10.3.1989, passed by the prescribed authority as well as the appellate authority, respectively. Annexures-11 and 12 to the writ petition.

2. The facts leading to the filing of present writ petition are that the landlord-respondent Nos. 3 and 4 filed an application under Section 21 (1) (b) of U. P. Act No. XIII of 1972 hereinafter shall be referred to as 'the Act' on the ground that the building in which the shop is situated, is in a dilapidated condition, therefore, it requires demolition and reconstruction. This application was subsequently amended and requirement under Clause 21 (1) (a) of the Act was also added, i.e., the building in question is bona fide required by the landlord. The prescribed authority as well as the appellate authority has not accepted the case set up by the landlord with regard to Section 21 (1) (a), i.e., the bona fide requirement. However, with regard to Section 21 (1) (b) of the Act, the application was accepted and the petitioner was directed to vacate the shop in question. The petitioner has filed this petition against that part of the order of prescribed authority, whereby the application under Section 21 (1) (b) has been allowed. The landlord has not challenged the order passed by the appellate authority with regard to the rejection of his application under Section 21 (1) (a) of the Act.

3. Sri Pankaj Mithal, learned counsel appearing on behalf of the petitioners-tenant has argued that from the facts and circumstances of the case as also the evidence led before the prescribed authority, the building cannot be said to be in dilapidated condition and as such, it cannot be released for demolition and re-construction. On this aspect of the matter, both the courts below, namely, the prescribed authority as well as the appellate authority has recorded findings. Sri Mithal challenged these findings on the ground that the material evidence has not been considered by either of the authorities. Petitioners' counsel refers to an affidavit of Harishchandra, a labour, who had been engaged by the landlord for demolition of the roof of last portion of the shop and thereafter on the pretext that it requires repairs he left it open for rain water to pour in order to make out a case under Section 21 (1) (a) of the Act. Both these averments are made in the written

statement but the landlord denied the same. In view of the submissions and denial. It was incumbent on the part of the authority to have recorded a finding but the authority has not recorded the findings and has arrived at the conclusion that the building is in dilapidated condition. Surprisingly, this finding has been recorded after the spot inspection by the Court and it is this Court which has found that the last portion of the roof of shop of the building is removed, but in spite of the pleadings the evidence it has not considered the materials and arrived at the findings as to whether it was deliberately done or it was the natural fall because of which the roof has fell down. Sri Mithal relied upon a decision in Ram Kumar v. IIIrd Additional District Judge. Faizabad and others, 1986 (2) ARC 275. Paragraphs 6 and 7 of the aforesaid decision are relevant, which are reproduced below :

'6. Section 21 (1) reads that the prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely :

'(1) (b) that the building is in dilapidated condition and is required for purpose of demolition and new construction.' 7. In the aforesaid section itself, there is nothing to reveal that if the house is not in a dilapidated condition and it is damaged then in the latter case what result would follow and if there should be any distinction in that event. In the case of Smt. Chando Devi and others v. IIIrd Additional District Judge, Mathura, 1984 AWC 5 : 1984 ALJ 56, it was held that the word 'dilapidated' cannot be read in isolation or divorced from the context in which it is used ..... requirement of reconstruction gives clue to the sense in which the word 'dilapidated' should ..... In order to attract Section 21 (1) (b) the building in question must be beyond repairs and it has to be demolished and reconstructed intended by introducing Section 21 (1) (b) of the Act that a dilapidated building shall be that building which is decayed in the natural course and not that which is made dilapidated deliberately. This is why nothing about the damaged building has been mentioned in the Act. So, it has to be seen that if the landlord has deliberately damaged the building with a view to evict the tenant as the landlord was interested in evicting tenant. If it is made permissible to a landlord

to damage or make his building dilapidated for achieving his ends of evicting the tenant, there would be a gross misuse of the provisions of Act XIII of 1972.'

4. The second decision relied upon by Sri Mithal for the this purpose is in Smt. Chando Devi and others v. IIIrd Additional District Judge, Mathura and others, 1984 AWC 5 : 1984 ALJ 56, wherein this Court has explained the meaning of the dilapidated house under Section 21 (1) (b) of the Act. Paragraph 2 of the aforesaid decision deals with the word 'dilapidated' in the context of Section 21 (1) (b) of the Act, which reads thus :

'2. Dilapidated has not been defined in the Act. It has therefore, to be understood in its ordinary sense. In Webster Third International Dictionary it is defined as. 'decayed' 'deteriorated', injured or 'fallen into partial ruin specially because of neglect or misuse'. In Little Oxford Dictionary 'dilapidation' is defined as 'state of bad repair' 'falling into decay' and the word dilapidated as 'in decay'. In Black's Legal Dictionary dilapidation is explained thus. The term is also used in the law of landlord and tenant, to signify the neglect of necessary repairs to a building or suffering it to fall into a state of decay or the pulling down of the building or any part of it. Therefore, range or variation is quite wide. From neglect of repair to decay or necessity to pull down are all included. In what sense it has been used in the Act? To find out if there is any indication in the Act itself as to in which sense Legislature has used the milder one, that is even for repair, or stronger one, in state of ruins there can be no better guide than to examine the context in which it has been used in sub-section itself which reads as under :

(a) that the 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, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling or where the landlord is the trustee of a public charitable trust for the objects of the trust :

(b) that the building is In a dilapidated condition and is required for purposes ofdemolition and new construction ;

It shall be seen that along with word dilapidated two other words have been used : demolition and reconstruction. Surely if building was worth repair only then Legislature was not making a provision in a social legislation meant to protect the tenant from eviction, for its release because the landlord shall demolish and raise in its place new building. The requirement of demolition and reconstruction have to be follow up action, consequence for result because the building cannot continue in its existing form, it is in ruins, in decay. 'True demolition and reconstruction are additional requirements to be satisfied before a building can be released but the word dilapidated cannot be read in isolation or divorced from the context in which it is used. Requirement or reconstruction gives clue to the sense in which word dilapidated should be understood. The Legislature while using the word dilapidated along with demolition or reconstruction left no room for doubt that it should be understood in its stronger sense that is the building is beyond repairs and it should be demolished and reconstructed. If the word is understood in sense of a building having cracks or old or needing repairs due to neglect then it shall frustrate objective of its enactment and shall result in pretext in hands of landlords to get rid of their tenants from old buildings.'

5. The next contention of Sri Mithal that no categorical finding has been recorded by the authorities that the landlord has complied with the provisions of Rule 17, which according to Sri Mithal is mandatory. Rule 17 is reproduced below :

'17. Application for release on the ground for demolition and new construction [Sections 21 (1) (b) and 34 (8).--(1) Before allowing an application for release of a building under Section 21 (1) (b) on the ground that it is required for purposes of demolition and new construction, the prescribed authority shall satisfy itself :

(i) that the building requires demolition ;

(ii) that a proper estimate of expenditure over the proposed demolition and new construction has been prepared ;

(iii) that a plan has been duly prepared and conforms to the bye-laws or regulations of the local authority or other statutory authority under any law in that behalf for the time being in force ; and

(iv) that the landlord has the financial capacity for the proposed demolition and new construction.'

6. A perusal of the order of prescribed authority as well as the appellate authority will clearly demonstrate that the landlord has only stated that he had ten thousand rupees in his possession and that has been relied upon by the respondents as the sufficient compliance of Rule 17 without arriving at the conclusion as to whether this ten thousand was for demolition or for re-construction of the building in question and whether there was a duly sanctioned plan by the local body concerned. This clearly demonstrates that both the authorities have declared themselves from the guidelines prescribed under Rule 17 and thus have committed the error of law. Sri Mithal further relied upon an affidavit of Harishchandra, which has been annexed as Annexure-9 to the writ petition, against which there was no rebuttal and the authorities without referring and considering the affidavit have arrived at the findings that the building is in dilapidated condition. Sri Mithal next relied upon a decision of Apex Court in Achutananda Baidya v. Prafulla Kumar Gayen and others, 1997 AWC (Supp) 556 (SC) ; JT 1997 (5) SC 75, in which in paragraph 11, the Supreme Court has ruled thus :

'11. If the evidences on record in respect of a question of fact is not at all taken into consideration and without reference to such evidence, the finding of fact is arrived at by inferior court or Tribunal, such finding must be held to be perverse and lacking in factual basis. In such circumstances, in exercise of the jurisdiction under Article 227, the High Court will be competent to quash such perverse finding of fact.'

7. Lastly, it was contended by Sri Mithal that since undertaking by the landlord to the effect that after the demolition and reconstruction, the shop will be given to the petitioner on the rate of rent fixed in accordance with the provisions of law, having not been given, the release order should not have been passed. The averment to this effect has been made in paragraph 37 of the written statement, which has been annexed as Annexure-2 to the writ petition. There is no reply of this paragraph 37 and learned counsel for the petitioner has fairly conceded that this

undertaking is not there, which in view of the law laid down in the case in Smt. Shoshi Goyal v. IInd Additional District Judge, Bulandshahr and another, 1997 (3) AWC 1810 : 1997 (1) ARC 572, is the condition precedent for release of an accommodation under Section 21 (1) (b) of the Act. Sri Mithal relied upon a decision in S. Subramaniam, Chairman and Managing Director, Central Bank of India and others v. State of U. P., and another, 1995 (5) ARC 463, In which in paragraph 7 it has been said that 'even if there was no such undertaking, the prescribed authority could have Imposed the condition under Section 21 (1) (b) of the Act', but nothing has been done by the prescribed authority. Learned counsel for the landlord has made a statement that this Court may Impose the condition. Needless to say that this Court in exercise of powers under Article 226 of the Constitution of India is to Judge whether the prescribed authority and the appellate authority have considered the matter in accordance with law or not. In this view of the matter, this Court will not put the condition, which ought to have been taken into account, either by the prescribed authority, or by the appellate authority.

8. The distinction has to be marked in the application when it is filed under Sections 21 (1) (a) and 21 (1) (b) of the Act. Section 21 (1) (a) of the Act is sought for the release for the use of the landlord and Section 21 (1) (b) is for release of shop for demolition and reconstruction. Reading Section 21 (1) (a) along with Section 21 (1) (b) of the Act, it is clear that in the case of an application being 21 (1) (b) of the Act, the tenant has a right to the shop in the newly constructed building on the rent prescribed under the Statute. Learned counsel for the landlord has relied upon a decision in Munawar Ali v. District Judge, Shahjahanpur and others. 1999 (UP) RCC 492, in which in paragraph 7, it has been held that :

'7. The first attack is in respect to the findings of the Court below on the grounds.-- 'Whether accommodation in question is dilapidated' as contemplated under the provisions of the Act. Learned counsel for the petitioners submitted that the findings of the both the courts below recorded by respondent Nos. 1 and 2 on this aspect cannot be sustained, inasmuch as the said contention has been recorded without dealing with the evidence and material filed on behalf of the tenants specifically referring one by one. In none of the writ petitions it is mentioned that which affidavit or material filed by any of these tenants has not been referred by

the courts below In spite of reference being made to said material on record at the time of hearing. Secondly, perusal of the Judgments, rendered by respondent Nos. 1 and 2 (Annexures-3 and 4 to this petition) filed by Manuwar All, shows that both authorities have meticulously referred the evidence led by the parties and it had considered the same. The appellate authority, while affirming the finding on the issue recorded by prescribed authority, independently referred to the reports of the Engineer filed by respective parties and discussed other relevant material on record while considering the question, whether a building is dilapidated, is a finding of fact. Learned counsels for the petitioners have not been able to point out as to how the said finding of fact, concurrently recorded by respondent Nos. 1 and 2, is vitiated. This Court is not required to reappraise the evidence while exercising jurisdiction under Article 226/227, Constitution of India. The submission of the learned counsel for the petitioners, on this score, fails. It may, however be noted that respondent Nos. 1 and 2 have concurrently accepted the case of the landlord under Section 21 (1) (a) of the Act.'

9. It is with regard to the aspect as to whether the building is in dilapidated condition or not. In view of the discussions made above, in my opinion, this writ petition deserves to be allowed and the orders passed by the prescribed authority as well as the appellate authority deserve to be quashed.

10. The writ petition therefore is allowed. The orders dated 7.3.1984 and 10.3.1989 passed by the prescribed authority as well as appellate authority, Annexures-11 and 12 to the writ petition, respectively, are quashed. The parties shall, however, bear their own costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**