

**Phoolwati (Smt.) and ors. Vs. Viiiith Additional District and Sessions Judge and anr.**

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**Court :** Allahabad

**Decided On :** Feb-23-2005

**Reported in :** 2005(1)ARC797; 2005(3)AWC2160

**Judge :** Mukteshwar Prasad, J.

**Acts :** Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1), 24 and 24(2); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules - Rule 17; [Constitution of India](#) - Article 226

**Appeal No. :** Civil Misc. Writ Petition No. 7036 of 2000

**Appellant :** Phoolwati (Smt.) and ors.

**Respondent :** Viiiith Additional District and Sessions Judge and anr.

**Advocate for Def. :** M.A. Ansari, Adv. and ;R.U. Ansari, C.S.C.

**Advocate for Pet/Ap. :** P.K. Jain, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Mukteshwar Prasad, J.**

1. This petition by the tenants under Article 226 of the [Constitution of India](#) has been filed for quashing the order-dated 19.11.1999 passed by respondent No. 1 in Rent Control Appeal No. 33 of 1997 whereby he allowed the application of the landlady-respondent No. 2 under Section 21 (1) (b) of U.P. Act No. 13 of 1972 (hereinafter referred to as the Act) and directed tenants-appellants to vacate the disputed garage within a period of three months.

2. Counter-affidavit has been filed by respondent No. 2. No rejoinder-affidavit has been filed on behalf of the petitioners. With the consent of the learned Counsel for the parties, the petition is being disposed of finally.

3. It appears that an application under Section 21 (1) (a) (b) of the Act was moved by the landlady for release of the garage bearing No. 301 mainly on the grounds that she needed the accommodation in question for opening a confectionary shop. She further alleged that the garage in question was very old and was in dilapidated condition and required demolition and reconstruction. The tenants contested the application. The parties filed affidavits in support of their respective allegations. After having heard learned Counsel for the parties and considering the evidence on record, learned Prescribed Authority found that no case for release of the garage in question was made out in favour of the landlady and the application was dismissed vide order-dated 12.11.1997.

4. The landlady filed Control Appeal No. 33 of 1997, which was partly allowed and the application of the landlady under Section 21 (1) (b) of the Act was allowed and the tenants were directed to vacate the disputed garage within a period of three months. Hence this petition. It is noteworthy that the appellate Court also found that case for release of the disputed accommodation under Section 21 (1) (a) was not made out.

5. I have heard Sri P.K. Jain, learned Counsel for the petitioners and Sri R.U. Ansari, learned Counsel for respondent No. 2 and have perused the record carefully.

6. Learned Counsel for the petitioners has urged that the landlady nowhere alleged in her application that after reconstruction, the petitioners would have an option of re-entry as provided under Sub-section (2) of Section 24 of the Act and the accommodation would be let out to them. He further contended that the provisions of Rule 17 which are mandatory were not followed and no sanctioned map was filed on behalf of the landlady and she got no map sanctioned by the local authority as provided in Clause (iii) of Rule 17. Moreover, the landlady had no sufficient fund to demolish or reconstruct the building, as claimed by her. It is true that the landlady filed an affidavit in the appellate Court to the effect that after reconstruction of the building, she would offer the shop to the petitioners on the ground floor in accordance with the provisions of U.P. Act No. 13 of 1972. Since there was no compliance of Rule 17, the Appellate Court committed illegality in allowing the application of the landlady under Section 21 (1) (b) of the Act and the impugned judgment is liable to be set aside.

7. Reliance was placed by the petitioner's learned Counsel on the following decisions:

1. Smt. Shashi Goyal v. IInd Additional District Judge, Bulandshahar and Anr., 1997 (1) Allahabad Rent Cases, 572.

2. Jokhan v. The District Judge, Basti and Ors., 1982 A.W.C., 549 : 1982 (2) ARC 290.

3. Pyare Lal v. IV Additional District Judge, Bijnor and Ors., 1980 A.R.C., 240.

8. On the other hand, learned Counsel for the respondent has supported the impugned judgment passed by the appellate Court and has contended with vehemence that there was complete compliance of Rule 17 and respondent No. 1 committed no illegality in allowing the application for release. He has urged that the landlady got an estimate prepared by an architect/engineer (Sri Y.C. Gupta) in respect of expenses on demolition and reconstruction of the building. The architect prepared a map also conforming byelaws and regulations of the local authority and the landlady gave her own affidavit regarding her financial capacity for the proposed demolition and reconstruction. He has drawn my attention to a Division

Bench decision of this Court in Bindra Prasad v. III Additional District Judge, Faizabad and Ors., 1984 (2) Allahabad Rent Cases, 306.

9. I have considered the rival contentions of the parties and perused the decisions relied upon by them. Admittedly, Paltoo Singh, husband of petitioner No. 1 and father of other petitioners, was the original tenant of the disputed garage. He died on 31.1.1993 and after his death, the petitioners inherited the tenancy. At the very outset, it may be mentioned that the learned Prescribed Authority rejected the prayer of the landlady under Section 21 (1) (b) of the Act on the sole ground that she had not proposed in her application that she would let out the accommodation to the petitioners after reconstruction of the building and she had sought release of the accommodation for the purposes of business of her husband. The Prescribed Authority has also observed that Sri Y.C. Gupta (an architect) had given a report that the garage was in dilapidated condition. He further gave his estimate of the expenses on demolition as well as reconstruction. He prepared a map also which had been filed in the office of Development Authority for sanction. The petitioners also admitted that the building required demolition. I further find that the appellate Court took into consideration the compliance of Rule 17 by the landlady and recorded a finding that admittedly the landlady had sufficient funds/resources for the purpose of demolition and reconstruction. The architect found that walls had been plastered by mud and there were cracks on the walls and lintel. In the opinion of the appellate Court, the petitioners could not rebut the affidavits filed on behalf of the landlady in this regard. So far compliance of Rule 17 is concerned, a Division Bench of this Court in Bindra Prasad's case (Supra) held that where only a plan has been prepared but it is still to be sanctioned by the competent authority, then, no doubt, the Prescribed Authority must examine whether the plan conforms to the building bye-laws or regulations. It means, the filing of sanctioned map is not required. The Prescribed Authority/appellate Authority is competent to see that map has been prepared in conformity with the bye-laws/regulations of the local authority/development authority. So far compliance of Section 24 of the Act is concerned, no doubt it was held in Smt. Shashi Goyal's case (Supra) that 'a petitioner who seeks eviction of a tenant on the ground of the building being dilapidated should, therefore, in his petition express his willingness that he is willing to let out the Reconstructed accommodation to the tenant whose eviction is

seeking. If he does not do so, it is the duty of the Prescribed Authority to inquire from him specifically whether he is so willing.' In Smt. Goyal's case, His Lordship himself questioned learned Counsel for the petitioner whether the landlady was willing to let out the reconstructed shops to the tenants, the petitioner's Counsel answered in negative. Then it was held that this is not permissible. In the instant case, on being questioned by the Appellate Court, the landlady filed her affidavit to the effect that she would offer the petitioners and would let out the reconstructed garage to them in accordance with the provisions of the Act. In this view of the matter, I find that there was sufficient compliance of the provisions of Section 24 of the Act also.

10. For the aforesaid reasons, I find no illegality in the impugned order passed by the Appellate Court and, in my opinion, respondent No. 1 was fully justified in allowing the application of the landlady under Section 21 (1) (b) of the Act. I See no good ground to interfere with the order impugned in this petition. The petition, in my opinion, lacks merit and is liable to be dismissed.

The petition is hereby dismissed. However, there will be no order as to costs. The petitioners are however allowed four months time to vacate the garage in question.

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