

**Moln UddIn Vs. Ivth Additional District Judge, Mathura and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/478845](http://sooperkanoon.com/478845)

**Court :** Allahabad

**Decided On :** May-10-2002

**Reported in :** 2002(3)AWC1959

**Judge :** Anjani Kumar, J.

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

**Appeal No. :** C.M.W.P. No. 6703 of 2002

**Appellant :** Moln Uddin

**Respondent :** ivth Additional District Judge, Mathura and ors.

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

**Advocate for Pet/Ap. :** B.B. Paul, Adv.

**Disposition :** Writ petition dismissed

**Judgement :**

**Anjani Kumar, J.**

1. By means of the present writ petition under Article 226 of the Constitution of India, petitioner has challenged the order dated 23.1.2002, passed by the appellate court in M.C.A. No. 18 of 1998 filed by the landlord Annexure-9 to the

writ petition, whereby the appellate court has set aside the order dated 13.1.1998 passed by the prescribed authority.

2. The facts leading to the filing of present writ petition are that the petitioner, who is a tenant in shop in dispute, is carrying on a business of repairing of Cycle and Rikshaw in the shop in dispute and it is also the case set up by the petitioner-tenant that his tenancy is coming down from more than 40 years. The landlord filed an application under Section 21(1)(a) of U.P. Act No. 13 of 1972 (hereinafter shall be referred to as the 'Act') on the ground that his son Rajeev, who is not good in education, is 19 years old and now is not inclined to study further, therefore, the shop in dispute is required for starting a new General Merchant shop for his son and the father will also help in running the business of his son, which has been registered as P.A. Case No. 62 of 1994. It is also stated that another shop is also available to the tenant adjoining to the shop in dispute, where petitioner can easily shift his business and also the petitioner does not carry any business in the shop in dispute, therefore, if the shop in dispute is not released in favour of the landlord there will be more hardship in his favour.

3. The prescribed authority after the exchange of the pleadings and evidence on record has rejected the application vide its order dated 13.1.1998 holding that the shop in dispute under the tenancy of the petitioner tenant for more than 42 years and he is carrying on his business of repairing of Cycle and Rikshaw and he has earned a goodwill, the shop in dispute is situated in the market where mostly shops of repairing of Cycle and Rikshaw are there and thus shop in dispute is not fit for starting a new shop of General Merchant as well as the need of the petitioner-tenant is more than the landlord as he is working in Railway department and his son is studying. It is also stated that during the pendency of the application, the father i.e., the landlord, died therefore the need, if any, stood vanished. The prescribed authority after referring certain decisions of this Court has come to the conclusion that on the basis of the aforesaid law, the need of the landlord cannot be said to be bona fide and thus rejected the application filed by the landlord.

4. Aggrieved thereby, the landlord filed an appeal before the appellate authority under Section 22 of the Act and challenged the order passed by the prescribed authority. A perusal of the aforesaid order would demonstrate that the order does not contain any reason as to why the need of the landlord is not bona fide. As already stated above, the prescribed authority, has cited certain decisions, which were based on the facts of that particular case, and immediately came to the conclusion that the need of the landlord is not bona fide. The appellate court considered the pleadings and evidence on record and after discussing the different evidence has arrived at the conclusion that the need of the landlord is bona fide, more pressing and, therefore, reversed the findings by giving reasons with regard to the bona fide requirement of the landlord. As far as the comparative hardship is concerned, it has not been disputed as was also found by the appellate authority that the petitioner tenant is in possession of another shop in the vicinity of the shop in dispute from where same work is being done as was done in the shop in dispute by the tenant. The appellate authority has further relied upon that during the pendency of the application, no efforts have been made by the petitioner-tenant to find out any other shop and for this reason also the appellate authority came to the conclusion that if at all the need of the tenant was bona fide and more pressing, he ought to have made efforts to get another shop. The appellate authority after coming to the conclusion that the tilt of the comparative hardship and bona fide need is in favour of the landlord set aside the order passed by the prescribed authority and allowed the application filed by the landlord for the release of shop in dispute and thus allowed the appeal filed by the landlord.

5. Learned counsel appearing on behalf of the petitioner has relied upon a decision in *Gaga Prasad v. Pradeep Srivastava*, 2001(1) AWC 834(SC): AIR 2001 SC 803, wherein it has been argued as has been argued in the present case that 'before the Supreme Court, it was urged on behalf of the appellant-tenant that subsequent development should be taken into account, in particular, where the premises were sought for the personal use of the landlord, or members of his family.' The aforesaid argument has been repelled by the Supreme Court as has been held in paragraph 10 of the aforesaid judgment, which is reproduced below :

'10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of, the litigation the more would be number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get duster, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.'

6. Thus, the arguments advanced on behalf of the learned counsel for the petitioner that after the death of the landlord, the need, if at all was there, stood vanished, cannot be accepted. Learned counsel for the petitioner has further relied upon a decision in *Ashok Kumar and Ors. v. Sita Ram*, 2001(3) AWC 1997 (SC) : 2001 UPC and RCR (2) 418, wherein the Supreme Court has held that while reversing the findings recorded by the statutory authority, the High Court should normally not interfere with and thus the order passed by the High Court was set aside. The facts of the aforesaid case cited by petitioner's counsel are different than the facts of the present case. In the present case. It is the appellate authority, which has reversed the Judgment and order of the prescribed authority holding that the need of the landlord is bona fide, which is well within the scope of the

powers under Section 22 of the Act. Section 22 of the Act is being reproduced below :

' 22. Appeal. --Any person aggrieved by an order under Section 21 or Section 24 may within thirty days from the date of the order prefer an appeal against it to the District Judge and in other respects, the provisions of Section 10 shall mutatis mutandis apply in relation to such appeal.'

7. A perusal of Section 22 of the Act, referred to above, will clearly demonstrate that an appeal lies on questions of fact as well as on law. In this view of the matter, the decision relied upon by learned counsel for the petitioner is of no help. As already stated above, the appellate court has held that the need of the landlord is more pressing and bona fide and the need of the petitioner-tenant cannot be said to be as pressing as that of landlord, particularly in the circumstances when the petitioner-tenant has not made any effort to find out an alternative shop during all these periods and also coupled with the finding that there is another shop in which the tenant is carrying on the same business. Thus, I do not see any error in the judgment and order passed by the appellate authority. This writ petition, therefore, has no merit and is accordingly dismissed. The interim order, if any, stands vacated. However, there will be no order as to costs.

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