

**Bundu Khan Vs. Viiiith Additional District Judge and ors.**

**Bundu Khan Vs. Viiiith Additional District Judge and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/483499](http://sooperkanoon.com/483499)

**Court :** Allahabad

**Decided On :** Jul-10-2002

**Reported in :** 2002(4)AWC2641

**Judge :** S.P. Mehrotra, J.

**Acts :** Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 2(2), 21(1) and 24(2); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 20

**Appeal No. :** C.M.W.P. No. 8952 of 1989

**Appellant :** Bundu Khan

**Respondent :** Viiiith Additional District Judge and ors.

**Advocate for Def. :** Pramod Jain, S.C.

**Advocate for Pet/Ap. :** B.D. Mandhyan, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**S.P. Mehrotra, J.**

1. This writ petition has been filed by the petitioner, inter alia, challenging the judgment and order dated 20th March, 1989, passed by the appellate authority

(respondent No. 1) (Annexure-2 to the writ petition) and the judgment and order dated 15th September, 1987, passed by the Prescribed Authority (respondent No. 2) (Annexure-1 to the writ petition).

2. The dispute relates to a shop situated at Bazar Mangal, Qasba Behsuma, district Meerut. The said shop is hereinafter referred as 'disputed accommodation'.

3. It appears that the respondent No. 3 who is landlord of the disputed accommodation filed a release application under Section 21 (1) (b) of the U. P. Act 13 of 1972 (in short 'Act'), against the petitioner-tenant in respect of disputed accommodation. The release application was filed on the ground that the disputed accommodation was in a dilapidated condition and was required for the purposes of demolition and new construction. The said release application was registered as Release Case No. 68 of 1985.

4. The Prescribed Authority by its judgment and order dated 15.9.1987 (Annexure-1 to the writ petition) allowed the said release application. It was, inter alia, held by the prescribed authority that requirements of Rule 17 of the Rules framed under the Act had been duly complied with by the landlord-respondent No. 3.

5. Against the said judgment and order dated 15.9.1987, the petitioner filed an appeal under Section 22 of the Act which was registered as P.A. Appeal No. 240 of 1987.

6. The appellate authority by its judgment and order dated 20.3.1989 dismissed the said appeal filed by the petitioner. Hence, the present writ petition has been filed by the petitioner.

7. Counter-affidavit and rejoinder-affidavit have been exchanged between the parties.

8. I have heard Sri B.D. Mandhyan, learned counsel for the petitioner and Sri Pramod Jain, learned counsel for the respondent No. 3 and perused the record.

9. Sri B.D. Mandhyan, learned counsel for the petitioner made an effort to assail the findings recorded on the issue by the authorities below. I have perused the

judgments of both the authorities below. I do not find any illegality or perversity in the findings recorded by the authorities below. The Prescribed Authority as well as the appellate authority have considered the evidence on record in detail and have given cogent reasons for concluding that the disputed accommodaaiion was in dilapidated condition and was required for the purposes of demolition and new construction. The Prescribed Authority as well as appellate authority have also recorded findings giving cogent reasons regarding due compliance of the requirements of Rule 17 of the Rules framed under the Act. I am of the view that the findings of fact recorded by the authorities below cannot be interfered with in the exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India.

10. Sri Mandhyan next contended that under Section 24 (2) of the Act, the original tenant has been given right to make an application for allotment of the new building after the same is constructed after demolition pursuant to release under Section 21 (1) (b) of the Act. Sri Mandhyan submits that direction be issued in this regard.

11. On the other hand, Sri Jain, learned counsel for respondent No. 3 submits that adjudication under Section 24 (2) of the Act is to be done by the District Magistrate when the requisite application is made under Section 24 (2) of the Act by the original tenant after reconstruction of the building, and no direction is required to be given in this regard in the writ petition.

12. Having considered the submissions of Sri Mandhyan, I am of the view that no direction is required for entitling the tenant to move the requisite application under Section 24 (2) of the Act :

Section 24 (23 of the Act lays down as under :

'(1) .....

(2) Where the landlord after obtaining a release order under Clause (b) of subsection (1) of Section 21 demolishes a building and constructs a new building or buildings on its site, then the District Magistrate may, on an application being

made in that behalf by the original tenant within such time as may be described, allot to him the new building or such one of them as the District Magistrate after considering his requirements thinks fit, and thereupon that tenant shall be liable to pay as rent for such building an amount equivalent to one per cent per month of the cost of construction thereof (including the cost of demolition of the old building but not including the value of the land) and the building shall, subject to the tenant's liability to pay rent as aforesaid, be subject to the provisions of this Act, and where the tenant makes no such application or refuses or fails to take that building on lease within the time allowed by the District Magistrate, or subsequently ceases to occupy it or otherwise vacates it, that building shall also be exempt from the operation of this Act for the period or the remaining period, as the case may be, specified in Sub-section (2) of Section 2.'

13. Analysis of this provision shows that where the landlord after obtaining a release order under Clause (b) of Sub-section (1) of Section 21 of the Act demolishes a building and constructs a new building or buildings on its site, then the application may be made by the original tenant for allotment. Such application should be made within such time as may be prescribed by the Rules framed under the Act. If such an application is made, the District Magistrate may allot to the original tenant the new building or such one of them as the District Magistrate after considering his requirements thinks fit. Thereupon the tenant will be liable to pay as rent for such building an amount equivalent to one per cent per month of the cost of construction thereof (including the cost of demolition of the old building but not including the value of the land). It is further provided that in case such an allotment is made by the District Magistrate, the building shall, subject to the tenant's liability to pay rent as aforesaid, be subject to the provisions of this Act. On the other hand, if a tenant makes no application for allotment as aforesaid or refuses or fails to take that building on lease within the time allowed by the District Magistrate, or subsequently ceases to occupy it or otherwise vacates it, then the building shall also be exempt from the operation of the Act for the period or the remaining period, as the case may be, specified in Sub-section (2) of Section 2 of the Act.

14. It is thus evident that the original tenant has been given a statutory right under Section 24 (2) of the Act, subject to the fulfilment of conditions mentioned in the said provision. As noted above, accordingly, after the demolition of the existing building and the construction of the new building or buildings on its site, the tenant has right to move the application for allotment within the period prescribed by the Rules framed under the Act. The period for making an application under Section 24 (2) of the Act has been prescribed under Rule 20 of the Rules framed under the Act.

The said Rule 20 provides as follows :

'Section 24 (2).--(1) An application by a tenant under Sub-section (2) of Section 24 or allotment of a new building or any one of them shall be made within one month from the date on which the construction of the building sought to be allotted is complete.

(2) The application shall also state the extent of the tenant's requirements regarding accommodation.

Explanation.--In this rule, the date of completion of construction has the same meaning as in the Explanation (a) of Sub-section (2) of Section 2.'

15. Hence, the application for allotment contemplated under Section 24 (2) of the Act is to be moved within one month from the date on which the construction of the building sought to be allotted is complete. The date of completion of construction of the building will be determined in accordance with Explanation (a) of subsection (2) of Section 2 of the Act. Rule 20 further provides that the application for allotment shall also state the extent of the tenant's requirements regarding accommodation.

16. On such application being filed by the original tenant, the District Magistrate may allot to him the new building or such one of them as the District Magistrate after considering his requirements thinks fit. Hence, it is evident that adjudication on the application for allotment is to be done by the District Magistrate. Thus, firstly original tenant has been given a statutory right to seek allotment of the new

building subject to the conditions mentioned under Section 24 (2) of the Act, secondly, when such application is filed, adjudication is to be done by the District Magistrate. Therefore, no direction is required to be given in this writ petition for entitling the tenant to exercise his right under Section 24 (2) of the Act.

17. Sri Mandhyan then submitted that after the building is released under Section 21 (1) (b) of the Act, no period is prescribed within which demolition and new construction is to be done by landlord, therefore, some reasonable period be fixed for the said purposes.

18. Sri Jain, learned counsel for the respondent No. 3 fairly stated that one year period would be reasonable for the purposes of demolition of disputed accommodation and new construction.

19. The case of Masjid Kacha Tank, Nahan, appellant v. Tuffail Mohammed, respondent, AIR 1991 SC 455, lays down as under (in para 4 of the said AIR) :

'.....,.... We, however direct that the landlord/appellant shall take effective steps for completing reconstruction of the building within a reasonable period, i.e., six months from the date the tenant/respondent vacates the building. The tenant is, however, given time till 31st March. 1991, to vacate the premises. We further direct the landlord/appellant to commence the construction work, if possible, the portion occupied by the tenant. Immediately after his vacating the said premises.....'

20. In the case of State of U. P. v. Additional District Judge Special Judge, E. C. Act Dehradun and Ors. 1997 (2) ARC 173, a learned single Judge of this Court was dealing with the matter of release of accommodation under Section 21 (1) (b) of the Act. Referring to the decision of Hon'ble Supreme Court in Masjid Kacha Tank. Nahan v. Tuffail Mohammed (supra), the learned single Judge laid down as under (in para 9 of the said ARC) :

'Considering the facts and circumstances of the present case, the writ petition is dismissed as regards the order of demolition and reconstruction is concerned but the petitioner shall hand over possession within a month from the date the map is

sanctioned by the appropriate authority and the intimation to this effect is given to the petitioner as well to the prescribed authority respondent No. 2. The Prescribed Authority on finding that the map has been duly sanctioned shall order the petitioner to vacate within one month. On such vacation respondent No. 3 shall construct the building as proposed by him, possibly within six months and after reconstruction shall offer it to the petitioner.'

21. In *Brij Kishore Rastogi v. IVth Additional District Judge, Shahjahanpur and Ors*, 2000 (2) ARC 494, a learned single Judge of this Court was dealing with the matter of release of shops in dispute under Section 21 (1) (b) of the Act. The learned single Judge laid down as under (in para 7 of the said ARC) :

'In the aforesaid facts and circumstances of the case, it is provided that petitioner shall vacate the shops in dispute on the date the map of the building in question is sanctioned by the competent authority and shall hand over vacant possession of the shops to landlord respondent No. 3. The respondent No. 3, thereafter, shall construct the two shops over an area measuring 105 sq. feets (one half in each shop), shall complete the construction of the shops in question by 30.6.2001 and permit the petitioner to occupy the same in accordance with and under the terms and conditions of Section 24 of the Act.'

22. In view of the aforesaid decisions, it is evident that reasonable period for demolition of existing building and construction of new building on its site may be allowed in cases of release under Section 21 (1) (b) of the Act.

23. The petitioner is accordingly directed to hand over vacant possession of the disputed accommodation to the respondent No. 3 within a period of three months from today, and further, respondent No. 3 is directed to get the demolition of disputed accommodation and new construction on its site done within a period of one year from the date on which possession of the disputed accommodation is handed over by the petitioner to the respondent No. 3.

24. In view of the aforesaid discussion, the writ petition fails and is accordingly dismissed subject to the aforesaid directions.

25. In the circumstances of the case, however, there will be no order as to costs.

26. Order accordingly.

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